

Explanation of amendments to the OfS's regulatory framework

Following our consultation on revisions to our reporting requirements,¹ we are making amendments to the regulatory framework, with effect from 1 January 2022.

We have reproduced the relevant sections of the regulatory framework published in February 2018, below. Where our amendments will result in deletion of text from the regulatory framework, this is shown as follows: ~~deleted text~~. Where our amendments will result in the addition of text to the regulatory framework, this is shown as follows: **additional text**.

This document is for information purposes only and does not form part of the regulatory framework.

446. Once registered, and in order to demonstrate compliance with the general ongoing condition, the OfS will require ~~these a providers that it considers to poses~~ no increased risk in this area, to ~~submit or make available the minimum information required:~~

- ~~• provide to the OfS the latest version of the provider's governing documents when any changes are made~~

make publicly available the minutes of the meetings of its governing body and committees, except where such material is genuinely confidential.

Condition F3: Provision of information to the OfS

Condition F3: For the purpose of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:

- Provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.
- Permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS of such information as the OfS specifies at the time and in the manner specified, and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified.
- Take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it.

The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).

¹ See www.officeforstudents.org.uk/publications/consultation-on-ofs-approach-to-reportable-events-analysis-of-responses-and-decision/.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: Section 8 of HERA – mandatory.

Guidance

489. The information that a provider must supply to meet this condition will depend on its category of registration and the OfS's assessment of the risk for that provider.

490. This condition also applies to any information held by any subcontractors that may be providing services on the provider's behalf.

491. In judging whether the governing body of a provider has provided the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified, material that the OfS may consider includes:

- a. The quality, reliability and timeliness of information provided by the provider to the OfS, or to a person nominated by the OfS, in respect of any of the provider's conditions of registration or in respect of any of the OfS's functions.
- b. Whether the provider has properly reported 'reportable events' as defined below to the OfS **and done so on the basis of the time frame set out in the relevant F3 Notice**. ~~as soon as reasonably possible once such an event is contemplated or the provider becomes aware of it, or that it is likely to occur.~~
- c. Whether a provider in receipt of student support funding provides the information necessary for the Student Loans Company (SLC) to administer student support in line with regulations made under section 22 of the Teaching and Higher Education Act 1998. This information includes, but is not limited to:
 - i. Data related to eligible courses.
 - ii. Confirmation that the fee charged to a student correctly matches the student's course of study.
 - iii. Information about student registration and attendance.
 - iv. Information about any changes that may affect a student's eligibility for student support.
 - v. Timely information of a student's withdrawal from their course.
- d. ~~Whether the provider has reported to the OfS any information relating to the provider that a reasonable regulator in the OfS's position could regard as material to any of the matters that it regulates.~~
- d. Whether the provider has in place sufficient and appropriate resource and expertise to be able to provide reliable and timely information.

492. In judging whether the governing body of a provider has permitted the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified and has notified the OfS of the outcome of any independent verification at the time and in the manner and form specified, material that the OfS may consider includes:

- a. The substance of the actions taken by the provider to assist the OfS with the verification of information, or to provide information about the outcome of any independent verification.
- b. The findings of data audit activity carried out by, or on behalf of, the OfS or another body.

493. In judging whether the governing body of a provider has taken such steps as the OfS reasonably requests to cooperate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it, material that the OfS may consider includes:

- a. The substance and promptness of the actions taken by the provider to cooperate with any monitoring or investigation by the OfS and to provide access to information, documents, systems and people as the OfS deems necessary.
- b. The credibility of any explanations given by the provider.
- c. The availability, completeness and reliability of documents provided to the OfS.
- d. The openness and honesty of members of staff with whom the OfS may ask to meet.

Reportable events

494. A reportable event is any event or matter that, in the reasonable judgement of the OfS, negatively affects or could negatively affect:

- a. The provider's eligibility for registration with the OfS.
- b. The provider's ability to comply with its conditions of registration.
- c. The provider's eligibility for degree awarding powers, or its ability to comply with the criteria for degree awarding powers, where the provider:
 - (i) holds degree awarding powers; or
 - (ii) has submitted an application for degree awarding powers to the OfS, and for which the OfS has yet to reach a final decision.
- d. The provider's eligibility for university title, where the provider:
 - (i) holds university title; or
 - (ii) has submitted an application for university title to the OfS, and for which the OfS has yet to reach a final decision.

In interpreting 'the reasonable judgement of the OfS', the OfS will, as a matter of policy, consider whether a reasonable provider intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own commercial, reputational or other interests), would consider the event or matter to be material.

The OfS will set out in separate guidance from time to time further information about how it will apply this definition of a reportable event, including illustrative factors to assist a provider in

reaching decisions about reporting. The OfS may also provide further clarification about reportable events in the drafting of Notices issued to providers under condition of registration F3.

494. A reportable event is any event or circumstance that, in the judgement of the OfS, materially affects or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration. Reportable events must be reported to the OfS under condition F3(i) and include, but are not limited to:

a. A change in the provider's circumstances, including but not limited to:

- a sale of either the provider itself, a part of it, or its parent
- a merger of the provider with another entity
- an acquisition by the provider of another entity
- a material change in the provider's business model, such as a move to focus on further instead of higher education
- a change in the provider's legal status
- other, similar structural changes, such as the establishment of joint ventures, or the separation of the provider into multiple entities
- other changes resulting in a change of ownership of the provider.

b. **A change of ownership.** The OfS is principally, but not exclusively, concerned with situations where 50 per cent or more in the shareholding of the registered provider (or the closest equivalent, where the provider is not limited by shares) are, or may be, in common ownership. Common ownership includes:

- ownership by the same person or entity
- ownership by multiple entities themselves under common ownership or control
- ownership by multiple individuals or entities who, by agreement or practice, exercise their ownership rights in a co-ordinated way (and without restricting the scope of our understanding of what constitutes common ownership, we will deem people who are 'connected' to be exercising their ownership rights in a co-ordinated way)
- ownership by multiple individuals or entities on behalf of, or acting under the direction or in the interests of, the same third party, including a case where ownerships are held on trust for a common beneficiary, and
- any similar structure.

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the

first time, the transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end

- must inform the OfS of any change in ownership that affects 15 per cent by value or voting rights of the registered provider's shares, or closest equivalent. A provider must do so whether the change is brought about in one transaction or a series of connected transactions. A provider does not need inform the OfS of entirely unconnected transactions provided none of those transactions is individually above our notification threshold 130
- is not required to inform the OfS of changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and the changes only affect less than 15 per cent by value or voting rights of the minority ownership rights.

Some examples of changes that must be reported include:

- where all or any part of the majority ownership rights in the provider change:
 - i. Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One shareholder sells their shareholding to the others. This must be notified.
 - ii. Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.
 - iii. Example 3: There are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells their shareholding to a third party. This must be notified.
 - where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed
 - where a controlling proportion of a provider's shares is directly, or indirectly such as through those of its parent organisation(s), acquired by another individual(s), partnership(s) or organisation(s).
- c. **A change of control.** 'Control' has the meaning given by section 1124 of the Corporation Tax Act 2010, and 'change of control' means a change in control so defined. Where two or more entities or individuals, by agreement or practice, exercise their rights in a co-ordinated way, with the result that they together have control so defined, each will be treated as having control of the provider. A provider is required to notify the OfS of any change in the individual(s) or entity/ies who have control of the provider.
- d. The provider becoming aware of suspected or actual fraud or financial irregularity.
- e. The provider becoming aware of legal or court action.
- f. The provider resolving to cease to provide higher education.

- ~~g. Regulatory investigation and/or sanction by other regulators, e.g. Charity Commission, Home Office.~~
- ~~h. Loss of accreditation by a Professional, Statutory or Regulatory Body (PSRB).~~
- ~~i. Any new partnerships, including validation or subcontractual arrangements.~~
- ~~j. Opening a new campus.~~
- ~~k. Intended campus, department, subject or provider closure.~~
- ~~l. Any other material events with possible financial viability or sustainability implications, including but not limited to:
 - ~~• a material change in actual or forecast financial performance and/or position~~
 - ~~• a material change in gearing~~
 - ~~• a material change in student numbers that was not included in the provider's financial forecasts~~
 - ~~• for a provider with a legally binding obligation of financial support underpinning its financial sustainability, a withdrawal of the obligation (including as a result of a change of control, even where the new owner will offer a similar obligation) or a material adverse change in the counterparty's financial position or other standing that could affect its suitability as counterparty~~
 - ~~• the sale of significant assets~~
 - ~~• significant redundancy programmes.~~~~

Assessment

495. The OfS will assess, as part of its routine monitoring activities, the quality, reliability and timeliness of information supplied by a provider including through scheduled or ad hoc data audit activity. If the OfS has reason to believe that information received is not reliable, it may choose to investigate the matter. This investigation may result in additional steps to ensure compliance **with condition F3**, whether through enhanced monitoring or the imposition of specific ongoing conditions. The OfS may, for example, require the provider's accountable officer to implement an agreed action plan to improve the provider's information systems and processes and the oversight arrangements for these.