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Dear Sir Michael,

### **Strategic Guidance to the Office for Students – Priorities for Financial Year 2018/19**

The creation of the Office for Students (OfS) marks a new era for students as well as higher education regulation, and the forthcoming publication of the new regulatory framework is a key milestone in the delivery of the programme of reforms set out in the Higher Education and Research Act 2017 (HERA). I am delighted to be writing to you with the first annual statement of Government priorities for the OfS under this new regime.

#### **Creating a new regulatory system and ensuring a smooth transition**

I encourage you to be ambitious in developing the OfS as a champion of students and as the new market regulator of higher education, with a new mission, taking full advantage of this opportunity to improve the opportunities for and outcomes achieved by students in higher education. A key task this year will be to register current and new providers in time for the full regulatory framework to become operational for the academic year 2019/20.

The new regulatory framework moves away from the current one-size-fits all approaches, and instead focuses on what matters most: protecting students' interests while removing unnecessary regulatory burdens for providers. The OfS should be bold in its operation of the framework, explicitly supporting diverse, innovative approaches and models of provision.

To ensure the OfS regulated sector remains open to cutting edge providers, and provides a high level of choice and protection for students, the OfS should look beyond its register, develop an understanding of providers and students in the currently unregulated parts of the higher education sector and consider ways of encouraging such providers to register and engage with good regulatory practice. This will further drive choice and competition, ensuring students get a high quality higher education experience that is right for them, and can be part of a sector that continues to be world leading.

2018/19 will be a transition year and we will also look to the OfS to continue operating the existing regulatory arrangements effectively, including supporting the regulation of alternative providers, while achieving a smooth transition into the new system. This transition year should include ensuring preparations are made for full launch of the new regulatory system from 1 August 2019. This will mean using both powers previously exercised by HEFCE and the Director for Fair Access, and new HERA powers, during the transition year.

### **Student experience, quality and choice**

I would like the OfS to ensure that students' interests are central to the mission of the OfS. I would encourage the OfS to work with the sector, providers and students to promote a positive higher education experience for all students, regardless of background or circumstance. This includes working to counter harassment and hate crime in higher education, taking steps to make campuses places of tolerance for all students. I would also like the OfS to work with the designated quality body to entrench the quality and standards that students have a right to expect. In particular, unchecked grade inflation risks damaging the reputation of the entire Higher Education sector, and I would like the OfS to challenge this wherever it occurs.

I would like the OfS to continue to deliver on institutional TEF and managing the TEF subject-level pilots, driving improvements in teaching. The OfS should also play a key role in ensuring that better information, advice and guidance is provided to students so that they can make the right choice. This should include taking advantage of the better information contained within the new Longitudinal Educational Outcomes (LEO) dataset.

Students should have much more choice over how they learn, and therefore, I would like the OfS to support and encourage greater diversity of provision, including through accelerated degrees and student transfer where students wish to change course or provider.

I would also like the OfS to be a champion of freedom of speech, which is so crucial to higher education. Free speech is essential in ensuring that universities are places which expose students to new and uncomfortable ideas, and encourage robust, civil debate and challenge.

### **Access and participation**

Promoting access and participation in higher education amongst students from disadvantaged and under-represented groups should also be fundamental and integral to all that the OfS does. I would like the OfS to work with providers to seek continuous improvement in this - within the higher education sector, but also where possible to engage across the wider education system, including with schools, in supporting the ambitions set out in our plan on social mobility, *Unlocking Talent, Fulfilling Potential*. I would encourage the OfS to use this opportunity to review approaches taken by providers to support improved success. This should be not only in access to all types of higher education provision including the most selective, but also in retention, attainment and progression by disadvantaged and under-represented groups. I would also encourage the OfS to support innovation in access and participation activities, encouraging evaluation of these to develop our understanding of what works in addressing this key challenge.

## **Delivering value for money for the student and taxpayers**

Students and taxpayers rightly expect value for money, especially given the significant financial contribution they make to the higher education sector. In order to ensure that all students receive value for money, I would ask the OfS to work with the sector to protect quality and standards, hold governing bodies to account, and improve transparency, so that students know what they should expect and can effectively challenge providers who do not deliver on their commitments. I would also ask the OfS to work with the sector to ensure good governance, effective and efficient use of resources, including around senior staff remuneration, as well as engaging closely with the sector on its own self-regulation in this area.

In addition, I would like the OfS to consider how to increase transparency and visibility for students of what they can expect to receive for their investment at different providers, by making Longitudinal Education Outcomes (LEO) data more widely available such as through publication on Unistats, thereby enabling students to make the right choices for them.

## **Industrial strategy and skills**

The Government's Industrial Strategy sets out its long-term plan to boost productivity across all regions of the UK. Ensuring that graduates have the skills, competencies and informed career choices they need to secure employment in their desired field is an important part of this. I would like the OfS, in carrying out its functions and in consultation with UKRI, to have regard to how the higher education sector supports the Government's broader economic policy as defined by the Industrial Strategy. In doing so, I would like the OfS, in particular, to consider how to encourage sector support for the pipeline of skilled graduates from all backgrounds that is needed by the economy, for example through sector support for maths schools. Key to this will be promoting and enhancing collaboration between the higher education sector and employers, both nationally and locally, and I would like the OfS to work with Government on reviewing how funding can be used to stimulate this, and also on the impact of apprenticeships in achieving this goal as well as supporting access and participation.

## **Collaboration with UK Research and Innovation (UKRI)**

Joined up working between the OfS and UKRI (including Research England) will be essential to ensure a co-ordinated and strategic approach to the funding and regulation of the higher education system in England. I would like the OfS to prioritise collaboration with UKRI on those areas of shared interest, including: skills; capability and progression; knowledge exchange; the ongoing financial sustainability of HE providers; accountability and assurance; infrastructure funding; building robust evidence and intelligence; and ensuring that the Research Excellence Framework (REF), Teaching Excellence and Student Outcomes Framework (TEF) and Knowledge Exchange Framework (KEF) are mutually reinforcing.

## **Strategic priorities for funding**

The OfS' funding priorities, which remain broadly consistent with those set for HEFCE in relation to Teaching Grant in previous years, are set out in the attached table and the details of your allocation for 18-19 are set out in the finance annex (Annex B). Annex C sets out the condition that will apply to the grant in accordance with section 23 of the Higher Education Act 2004. We also look forward to the OfS supporting DfE on funding policy issues, including contributing to the Review of Post-18 Education and Funding and helping take forward the review's recommendations.

## **2018/19 deliverables and supplementary guidance**

The accompanying table (Annex A) provides more detail on the priorities that I would like the OfS to focus on during 2018/19.

Alongside this overall statement of Government priorities, I am also publishing the following supplementary guidance:

- Priorities for Access and Participation including Access and Participation Plan Guidance
- Degree Awarding Powers and University Title Guidance
- Facilitating Electoral Registration Guidance

There may be a need to clarify government priorities further during the year, and I will do this by providing supplementary guidance in line with HERA.

### **Developing the OfS**

The OfS sits at the heart of higher education regulation, and so it is vital for it to operate effectively and efficiently, with confidence and independence in regulating the sector, involving students, following the principles of best regulatory practice, and complying with the Regulators' Code voluntarily (until this becomes a statutory requirement). I would like the OfS to prioritise development of these characteristics in the OfS.

Finally, I'd like to thank the OfS for your engagement and commitment up until now on turning these reforms into reality, and look forward to engaging with the OfS in developing this new chapter in higher education.

Yours sincerely,

**SAM GYIMAH MP**

## Annex A: OfS Deliverables for 2018/19

This table provides more detail on the priorities that I would like the OfS to focus on during 2018/19 financial year.

Theme	OfS Deliverables for 2018/19 (financial year)
<b>Creating a new regulatory system and ensuring a smooth transition</b>	
<b>Smooth operational transition to the OfS</b>	<p>I would like the OfS to ensure a smooth transition from the Office of Fair Access (OFFA) and the Higher Education Funding Council for England (HEFCE) to the OfS in April 2018, and look forward to seeing the OfS develop as a new organisation, with a new mission and culture.</p> <p>I will look to the OfS to continue operating the existing regulatory system using powers previously exercised by HEFCE and the Director for Fair Access, as well as to register providers and ensure preparations are made for full operation of the new regulatory system from 1 August 2019.</p>
<b>Encouraging competition in the sector</b>	<p>I would like the OfS to actively encourage competition in the sector, and encourage innovative new entrants to create greater choice for students. As part of this, I would like the OfS to ensure that unnecessary regulatory burden is avoided as you work towards the full implementation of the regulatory framework, allowing high quality providers of all ages and sizes to thrive.</p> <p>I would also like the OfS to assess the current arrangements around validation agreements, identify any unnecessary barriers, and to consider what steps it could take and how it could encourage removal or mitigation of such barriers.</p> <p>Please also see the separate guidance on Degree Awarding Powers and University Title.</p>
<b>Responsibility for recognised and listed bodies orders and protection of sensitive words</b>	<p>From 1 April 2018, in line with HERA (sections 53 and 54), the OfS will take on responsibility for the Education (Recognised Bodies) (England) Order 2013 and the Education (Listed Bodies) (England) Order 2013. I would like the OfS to undertake the necessary preparations to become responsible for the protection of specific sensitive words and expressions including “university” in a company name by April 2019, and to set up a new service to verify individuals’ degree certificates from registered or formerly registered providers by August 2019.</p>
<b>Electoral registration</b>	<p>Please see the separate guidance on electoral registration.</p>

<b>Overseas providers</b>	<p>During the passage of HERA, a commitment was made to provide the OfS with guidance relating to overseas providers. Where a provider is not incorporated in the UK, but applies to be registered and meets the requirements to be an ‘English higher education provider’, or intends to become such a provider, I would expect the OfS to mitigate any additional risks, if they occur. For example, it might set a specific ongoing registration condition to ensure the provider submits to the exclusive jurisdiction of courts of England or Wales in proceedings relating to its English higher education provision.</p> <p>In addition, when risk-assessing such a provider for registration, I would like the OfS to consider:</p> <ul style="list-style-type: none"> <li>- whether the OfS has sufficient visibility of the provider’s set up, corporate control and ownership structures.</li> <li>- whether the feasibility of the provider’s student protection plan is affected, for instance where funds are held overseas.</li> <li>- whether any other risks arise from the provider being incorporated overseas that may affect its ability to meet the registration conditions, or the OfS’s ability to identify or react to any breach.</li> </ul>
<b>Student finance</b>	I expect the OfS to work closely with the Student Loans Company (SLC), including sharing information as appropriate, to ensure that student finance is paid to the right individuals and institutions at the right times.
<b>HE Funding Priorities</b> – to be considered as part of the overall teaching funding allocation (shown in the finance annex)	
<b>High cost subjects</b>	I would like the OfS to continue to protect high cost subject funding (including science, technology and engineering) in real terms. On the postgraduate supplement, I ask that funding supports high cost subject provision and is complementary to the impacts of the recent postgraduate loan support system.
<b>Access and participation, and small and specialist institutions</b>	For the coming year, the OfS should look to protect, as far as possible, funding for widening participation and small and specialist institutions with world-leading teaching.
<b>Health education</b>	I expect the OfS to continue delivery of the health education reforms including the expansion of medical places for 2019/20, supported by funding from the Department of Health.
<b>Higher Education Innovation Fund (HEIF)</b>	The OfS will be responsible for the teaching and student elements of Higher Education and Innovation Funding (HEIF) via the £47m Teaching Grant contribution to HEIF,

	working with Research England and UKRI. As part of this, the OfS, working with Research England, will evaluate the impact of the teaching and student elements.
<b>Jisc</b>	On Jisc, which provides the JANET digital network and other services to universities and colleges, I expect the OfS to take forward recommendations from the value for money study that HEFCE has commissioned in 17/18, working with other funders (including UKRI) as appropriate.
<b>Capital funding</b>	On capital funding, I ask that the OfS ensure that the capital allocated to them is invested where it can have the greatest benefit. Where the investment in institutions can benefit both research and teaching and it is more effective and efficient to do so, I expect the OfS to work together with UKRI.
<b>Student experience, quality and choice</b>	
<b>Student voice</b>	I expect the OfS to communicate effectively with students, and to promote student engagement and representation at provider and sector level. I will also look to the OfS to take a keen interest in how providers meet their statutory obligations under the Education Act 1994 relating to transparency and accountability in students' unions, particularly in respect of their finances.
<b>Student equalities, wellbeing and harassment</b>	<p>I would like the OfS to promote providers' active engagement with the welfare and wellbeing of their students, in particular their student mental health support measures proposed through both Universities UK's Mental Health in Higher Education programme and initiatives resulting from the current consultation on the Government's <i>Transforming Children and Young People's Mental Health Provision</i> Green Paper.</p> <p>I would also like the OfS to promote providers' continued positive engagement with work to counter harassment and hate-crime in higher education and to make campuses places of tolerance for all students. This should include supporting work following the Universities UK Taskforce's recommendations in their October 2016 <i>Changing the Culture: Report of Universities UK Taskforce Examining Violence Against Women, Harassment and Hate Crime Affecting University Students</i>. The OfS should look to work with providers on equalities issues too, to achieve consistently high standards of support across the sector for students with protected characteristics, and to support providers in meeting their obligations under the Equality Act 2010, including the Public Sector Equality Duty (where applicable), working with the Equality and Human Rights Commission and other key organisations, as appropriate.</p>

	<p>These include the Equality Challenge Unit, and its successor Advance HE; and the OIA given its role to review complaints by students in relation to individual higher education providers, including complaints relating to discrimination.</p>
<p><b>Student protection and consumer rights</b></p>	<p>As a first step in ensuring students' consumer rights are met, I would like the OfS to take steps to assess the provision of information by providers to students - to enable students to make informed decisions - and to assess the availability of impartial advice and support for students. This should be done with a particular view to build on the strengths of the established system of student complaints and alternative dispute resolution arrangements for students in higher education. Alongside this, I would like the OfS to drive communications actively to raise awareness among students of their rights as consumers.</p> <p>In addition, I would like the OfS to start work to develop a thorough understanding of providers and students in the currently unregulated parts of the higher education sector, and to consider and determine how the OfS will most effectively have a role in protecting the interests of students at these providers. I would like the OfS to consider what barriers to entry to the regulated sector remain for such providers, and how more providers could be encouraged to seek registration and offer greater protection for their students.</p>
<p><b>Improving and ensuring confidence in quality and standards</b></p>	<p>We expect the OfS to work with the designated quality body (DQB) to design and implement, by August 2018, a new Quality Review System, which will underpin the determination of whether providers' quality and standards conditions of registration are met. The reference points that the Quality Review System should use should be the Expectations and Core Practices of the UK Quality Code. In the event that the OfS assesses that the UK Quality Code (currently subject to consultation) does not fit with its approach to regulation, we expect the OfS to task the DQB to work with the sector to develop a set of reference points that do fit with the OfS's regulatory approach, and to provide the basis for a Quality Review System.</p>
<p><b>Unconditional offers</b></p>	<p>Whilst it is up to higher education providers, as independent and autonomous bodies, to decide on their admissions, I would also like the OfS to monitor and review the number of unconditional offers made by registered higher education providers and what, if any, impact they might have on student access and outcomes.</p>
<p><b>Grade inflation</b></p>	<p>I expect the OfS to annually analyse and arrange for the publication of information on grade inflation and consistency,</p>



	directly challenging the sector where there is clear evidence of grade inflation.
<b>Apprenticeships</b>	<p>I expect the OfS to take into account apprenticeships as appropriate when exercising its functions, in particular in developing its approach to quality assessment and a Data Strategy; and to work collaboratively with partner bodies (the Designated Data Body, DfE, ESFA, IfA, Ofsted and Ofqual) towards the common goal of high quality apprenticeships and occupationally competent individuals.</p> <p>I expect the OfS to ensure that apprentices are represented, as appropriate, within its widening access and participation activity.</p>
<b>TEF</b>	I expect the OfS to deliver institutional level TEF over this period (part of TEF year 3 and TEF year 4). I also expect the OfS to manage the subject level pilots, including exploring measures of teaching intensity and working with DfE to collect any lessons learned from those exercises.
<b>Improving student, information and choice</b>	<p>I would like the OfS to play a key role in delivering DfE's objectives to support informed student choice and address the existing information asymmetries for disadvantaged groups through the provision of objective and authoritative information, advice and guidance to students across the UK. In particular, the OfS should develop an approach to publishing and actively disseminating relevant information on access and outcomes for students from different backgrounds and at all stages of the student lifecycle, including non-continuation rates, earnings after graduation and in subsequent years (from LEO) and payback periods to ensure that all prospective students are able to access and interpret these. It should also work with providers and third parties to encourage them to communicate this information actively and accurately.</p> <p>Further to the publication and active dissemination of the information set out above, I expect the OfS to work with students and DfE to identify and agree what these students need and how it should be presented, including reforming Unistats by September 2019. This will also require the OfS to work closely with HESA (and subsequently the Designated Data Body), students, providers and third parties to ensure appropriate and up-to-date data for new and continuing sources of student information is consistently available. In providing information to support informed choice, the OfS should take advantage of the better information contained within the new LEO dataset, including publishing this on Unistats at the earliest possible opportunity.</p>

	<p>In addition, I would like the OfS to ensure students have a clear understanding of what the different registration categories mean for the levels of protection and assurance they can expect at different providers.</p>
<b>Student transfer</b>	<p>We would like the OfS to ensure, including through the use of powers previously exercised by HEFCE, that the collection of data on student transfer continues in the interim period before the duties and powers in HERA relating to student transfer enter into force.</p>
<b>Accelerated degrees</b>	<p>I would like the OfS to continue to subsidise the higher annual cost of accelerated degree courses through the teaching grant. We would like the OfS to work with DfE to promote wider provision of accelerated degree courses, in particular if the proposed legislative change, which would allow setting of higher annual fee caps for first degree courses, is implemented. We would like OfS to work with DfE to consider how the OfS will assist providers in identifying genuine accelerated degree courses that qualify for the proposed higher fee limit and regulate fee charging as part of the conditions of registration.</p>
<b>Prevent</b>	<p>Following formal delegation from the Secretary of State, I would like the OfS to continue the work HEFCE has previously done to monitor and assess how HE institutions are managing their responsibilities under the statutory Prevent duty.</p> <p>I would like the OfS to focus on ensuring that institutions continue to engage with their responsibilities, including pragmatic and sensitive consideration of issues such as balancing safeguarding students from radicalisation with ensuring and promoting free speech. I hope that the OfS will continue and develop the work that HEFCE did to proactively and supportively engage the sector, by delivering training and facilitating the sharing of good practice, including engaging with students where appropriate. The OfS should challenge those trying to obstruct the effective implementation of Prevent.</p>
<b>Free speech</b>	<p>The OfS should champion and promote freedom of speech. Free speech is essential in ensuring that universities are places which expose students to new and uncomfortable ideas, and encourage robust, civil debate and challenge. I would like the OfS to play an active role in responding to the Universities Minister's recent call to make sure the landscape around free speech is as clear and simple as possible, and that policies and procedures are not being</p>

	<p>used inappropriately to stifle free speech or avoid controversial speakers and events.</p> <p>The OfS should also work with providers, the Universities Minister and other regulatory partners to call out and challenge attempts to shut down freedom of speech, including the ‘no platforming’ policies held by some students unions. I also expect the OfS to participate actively in the summit announced by the Universities Minister this month, working with regulatory and sector partners to create high standards of good practice in managing external speakers, balancing the protection of free speech with the safety of students and the challenging of hateful and extremist speech.</p>
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<b>Access and participation</b>	
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	<p>Success in access and participation is a high priority for Government and its commitment to social mobility. I expect the OfS to maximise the opportunity the OfS brings in this regard by harnessing the new powers, levers and capabilities of the OfS to deliver a more coherent and effective approach to access and participation that will drive continuous improvement in reducing the gaps in access, success and progression for students from all backgrounds, both young and mature. A key priority will be to give greater focus to successful participation and progression, alongside improving access to higher education.</p> <p>In particular, I would like the OfS to target those student groups for whom the evidence tells us there are the most significant gaps in access and participation, including: students from less advantaged backgrounds; students with disabilities; students from some ethnic minority groups, particularly where there are significant gaps in outcomes; care leavers and students with specific learning difficulties and mental health needs.</p> <p>I expect that the OfS’ key activities will be on providing deeper and long-term support to schools to raise attainment; better engagement with employers to improve progression into employment, including to the top professions; improving access to the most selective institutions; and improving outcomes across the sector and across the student lifecycle for students in our target groups. I also expect the OfS to work closely across the policy landscape, both within and outside of HE, where success in access and participation delivers mutual benefits – such as in relation to our industrial and social mobility strategies.</p>
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	<p>In all of this I expect the OfS to have a strong and increasing focus on evidence, data and evaluation and that the OfS will harness the capabilities of the OfS and the sector in this regard.</p> <p>Please also see the separate Access and Participation Guidance.</p>
<b>Value for money for students and the taxpayer</b>	
<b>Value for money for students and the taxpayer</b>	<p>Ensuring value for money and institutional efficiency is a priority for Government. I ask that the OfS pay close attention to the elements of the regulatory framework that will deliver transparency, accountability and consequently drive better value for money, as well as to conditions of registration relating to senior staff pay, which will improve transparency in this area.</p> <p>I also ask that the OfS write to all providers to remind them of their responsibilities regarding good governance and public accountability, and review and republish HEFCE's guidance on severance pay and the remuneration of senior staff. This should be done in light of recent developments affecting senior staff pay, including the forthcoming Committee of University Chairs' fair remuneration code. To aid transparency, I would like to see providers publish their pay ratios.</p>
<b>Industrial strategy and skills</b>	
<b>Industrial strategy and skills</b>	<p>I would like the OfS, in carrying out its functions and in consultation with UKRI, to have regard to how the higher education sector supports the Government's broader economic policy as defined by the Industrial Strategy, in particular relating to the skills and employability of graduates from all backgrounds. Targeted use of the Catalyst Fund, or any future equivalent fund, could be considered for this purpose, in the context of a broader review of its priorities.</p>
<b>Institutes of Technology (IoT)</b>	<p>I would like OfS to be fully involved in the assessment process and take bid results through the necessary moderation processes during both Stages 1 and 2 of the IoT Competition, as well as supporting some of the bidder engagement in the lead up to the assessment stages. DfE will retain decision making responsibilities for the overall competition process.</p>
<b>OfS and UKRI co-operation</b>	<p>As will be set out in the collaboration agreement between the OfS and UKRI, I would like the OfS to prioritise collaboration with UK Research and Innovation (UKRI) on areas of shared interest. This should include establishing</p>

	<p>effective working practices, continued join-up on areas of shared interest, and through annual reporting to Parliament, as set out in HERA.</p>
<b>Exiting the EU</b>	<p>I would like the OfS to be supportive of registered providers in their planning for the UK's exit from the EU. EU students, staff and researchers make an important contribution to our HE sector and I hope that shall continue – I am committed to ensuring the continued excellence of the sector, and to the UK being one of the best places in the world for science and innovation.</p> <p>It is our intention (set out in the UK and EU's joint statement on the progress made in the first phase of negotiations on 8 December) that the UK will continue to benefit from all EU programmes, including Erasmus+ and Horizon2020, until the end of the current budget plan in 2020. And as part of our new deep and special partnership with the EU, the UK will seek an agreement that promotes science and innovation across Europe now and in the future.</p>
<b>Developing the OfS</b>	
<b>Financial sustainability</b>	<p>I would like the OfS to establish its approach to financial sustainability of the regulated higher education sector, in preparation for the coming into force on 1 August 2019 of the OfS duty in s.68 of HERA (to monitor and report on financial sustainability). In that development work and its monitoring and reporting on financial sustainability in the meantime, I would like the OfS to work in close collaboration with the Department and UKRI, sharing information as appropriate.</p>
<b>Data and analysis</b>	<p>I would like the OfS to prioritise the development of a highly effective analytical capability so that it can become an intelligent, data-led regulator. During 2018, the OfS will need to develop its relationship and oversight arrangements with the Designated Data Body; publish a Data Strategy and ensure its data requirements are well defined and understood by the sector.</p> <p>I would like the OfS to work closely with DfE this year to agree a system for managing information that effectively supports DfE's policy development, appraisal and evaluation requirements. This includes the sharing of market intelligence on the current and future projections of the HE sector.</p>

## Annex B: Finance Annex

Figures are rounded

All figures in £m	2017-18 as per HEFCE Grant Letter	2018-19 OfS Teaching Grants
Recurrent Teaching Grant	1,457	1,388
Capital Teaching Grant	150	150
<b>TOTAL TEACHING FUNDING</b>	<b>1,607</b>	<b>1,538</b>

### Notes:

- i. The amounts set out above are the OfS' resource and capital budgets. They represent the maximum amount of resource and capital that the OfS may consume in pursuance of the priorities agreed with the Department for the Spending Review period. Figures may not sum due to rounding. If the Department's level of overall funding is decreased due to wider events or in order to cover other unavoidable financial pressures, the Department may, within the framework set by Parliament and the courts, need to make in-year adjustments to allocations to our Partner Bodies in order to meet budget reductions. The funding that is set out in this letter is, as ever, subject to Parliamentary approval through the Estimates process twice a year.
- ii. OfS will receive a separate allocation letter detailing their finalised 2018-19 unrounded resource, capital, administration and AME allocations.
- iii. In 2018-19, the Teaching Grant includes £2 million additional funding transferred from the **Department of Health** for the expansion of medical student places from September 2018.
- iv. The **Institute of Coding** funding is not included above as the award is pending and the funding profile subject to approval.

## **Annex C: Conditions of grant regarding regulated fees**

1. In accordance with the Secretary of State's duty under section 23 of the Higher Education Act 2004, the Secretary of State will impose a condition on grants to the OfS for the period from 1 April 2018 to 31 July 2019, requiring the OfS in turn to impose a condition throughout that period, in accordance with section 24 of that Act, on financial support given to the governing body of a relevant institution.
2. An equivalent condition has been imposed on grant made by the Secretary of State to HEFCE in respect of the Academic Year 2017/18, and will continue to apply in relation to the remainder of that Academic Year. Pursuant to transitional arrangements<sup>1</sup> relating to the implementation of the Higher Education and Research Act 2017, from 1 April 2018 the OfS will carry out the former functions of HEFCE and the Director of Fair Access to Higher Education including relating to the making and enforcing of grants. Accordingly, the condition of grant imposed on relevant institutions for the Academic Year 2017/18 will continue to apply, with references to HEFCE or to the Director having effect as if they were references to the OfS.
3. The condition that the OfS will impose on the governing body of each relevant institution is set out in paragraphs 4 onwards below. That condition must provide, in the event of a failure to comply with the condition, for the imposition of the financial requirements described in paragraphs 11 to 14, including the principles described in paragraphs 13 and 14. Terms defined in Part 3 of the Higher Education Act 2004 have the same meaning when used in this Annex and certain key terms are further described below.

### **Condition to be imposed by the OfS on the governing body of each relevant institution**

4. It is a condition of grant that:
  - a. Where an institution has an approved plan ("the plan") by the Director of Fair Access to Higher Education or by the OfS applying to students studying in the academic year 2018-19, its governing body must secure that in respect of that academic year the fees payable by a qualifying person in connection with his undertaking a qualifying course do not exceed the limit (which must not exceed the higher amount) provided for in the plan for that course and for that academic year, and
  - b. The governing body must comply with the general provisions of the plan.
  - c. Where an institution does not have an approved plan for a student cohort in the academic year 2018-19, its governing body must secure that in respect of that academic year the fees payable by a qualifying person in connection with his undertaking a qualifying course do not exceed the basic amount.

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<sup>1</sup> Subject to Parliamentary scrutiny.

5. Fees has the meaning set out in section 41 of the Higher Education Act 2004 and in the Education (Student Fees) (Exceptions) (England) Regulations 1999<sup>2</sup>, which continue to apply. For students starting pre-registration courses in nursing, midwifery and allied health professions on or after 1 August 2017, institutions should meet, and not charge students for, the costs of Disclosure and Barring Service (DBS) checks, occupational health checks and the provision of uniforms, where these are required for their participation on a course or course placement.
6. Qualifying courses and qualifying persons are prescribed in the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007, as amended<sup>3</sup>.
7. Details of the higher and basic amounts are outlined in paragraphs 8 to 10 below. For these purposes an 'eligible institution' means an institution listed in the Schedule to the Higher Education (Basic Amount) (England) Regulations 2016 and the Schedule to the Higher Education (Higher Amount) (England) Regulations 2016, each as amended<sup>4</sup>.
8. The prescribed amounts for 2018-19 for **students starting their full-time courses before 1 September 2012** reflect provisions in the Higher Education Act 2004 and are subject to overall limits set out in the Student Fees (Amounts) (England) Regulations 2004<sup>5</sup> as amended by Regulation 3 of the Student Fees (Basic and Higher Amounts) (Approved Plans) (England) (Amendment) Regulations 2012<sup>6</sup>. For these courses:
  - a. The basic amount is £1,380 (£680 where Regulation 5 of the Student Fees (Amounts) (England) Regulations 2004 applies).
  - b. The higher amount is £3,465 (£1,725 where Regulation 5 of the Student Fees (Amounts) (England) Regulations 2004 applies).
9. For **students starting full-time courses on or after 1 September 2012**<sup>7</sup>, for an academic year beginning on or after 1 August 2017, the prescribed amounts are subject to overall limits that are set out in regulation 6 of the Higher Education (Basic Amount) (England) Regulations 2016 and regulation 6 of the Higher Education (Higher Amount) (England) Regulations 2016. For these courses, the basic amount is £6,165 for an eligible institution and £6,000 for any other institution and the higher amount is £9,250 for an eligible institution and £9,000 for any other institution, except where any of the following exceptions apply under regulation 7 of both sets of regulations:
  - a. The basic amount is £3,080 for an eligible institution and £3,000 for any other institution and the higher amount is £4,625 for an eligible institution and £4,500 for

<sup>2</sup> Statutory Instrument 1999/2265.

<sup>3</sup> Statutory Instrument 2007/778, which has been amended, at the time of writing, by Statutory Instruments 2007/2263, 2008/1640, 2011/87, 2012/1653 and 2016/584 and further amended (in relation to 'persons granted stateless leave and their family members') for 2018-19 by Statutory Instrument 2018/137.

<sup>4</sup> Statutory Instruments 2016/1205 and 2016/1206 respectively. The Schedules to both instruments, which identify eligible institutions, are due to be updated ahead of Academic Year 2018/19, subject to Parliamentary scrutiny. A list of institutions with a TEF award for 2018/19 has been published on HEFCE's website at <http://www.hefce.ac.uk/tefcomes/#/>.

<sup>5</sup> Statutory Instrument 2004/1932.

<sup>6</sup> Statutory Instrument 2012/433.

<sup>7</sup> Certain students, such as those transferring or on 'end-on' courses, are treated differently and the details are set out in regulation 5 of the Higher Education (Higher Amount) (England) Regulations 2016 and regulation 5 of the Higher Education (Basic Amount) (England) Regulations 2016.



any other institution for the final academic year of a course where that academic year is normally required to be completed after less than 15 weeks' attendance.

b. The basic amount is £920 for an eligible institution and £900 for any other institution and the higher amount is £1,385 for an eligible institution and £1,350 for any other institution for:

i. An Erasmus year<sup>8</sup>.

ii. An academic year of a course provided in conjunction with an overseas institution which is not an Erasmus year:

1) During which any periods of full-time study at the institution in the United Kingdom are in aggregate less than 10 weeks.

Or

2) If in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution in the United Kingdom (disregarding intervening vacations) exceeds 30 weeks.

c. The basic amount is £1,230 for an eligible institution and £1,200 for any other institution and the higher amount is £1,850 for an eligible institution and £1,800 for any other institution for an academic year of a sandwich course (which is not an Erasmus year):

i. During which any periods of full-time study are in aggregate less than 10 weeks.

Or

ii. If in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution (disregarding intervening vacations) exceeds 30 weeks.

10. For **students starting part-time courses on or after 1 September 2012**<sup>9</sup>, for an academic year beginning on or after 1 August 2017, the prescribed amounts are subject to overall limits that are set out in regulation 8 of the Higher Education (Basic Amount) (England) Regulations 2016 and regulation 8 of the Higher Education (Higher Amount) (England) Regulations 2016. For these courses, the basic amount is £4,625 for an eligible institution and £4,500 for any other institution and the higher amount is £6,935 for an eligible institution and £6,750 for any other institution.

### **Financial requirements/penalties**

11. Where there is a failure to comply with the condition set out in paragraph 4.a above, the financial requirement in relation to fees charged which exceed the limit provided for

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<sup>8</sup> 'Erasmus year' is defined in Regulation 4 of Statutory Instrument 2013/1728, which amends the definition given in the Education (Student Support) Regulations 2011 (Statutory Instrument 2011/1986).

<sup>9</sup> Certain students, such as those transferring or on 'end-on' courses, are treated differently and the details are set out in Regulation 5 of the Higher Education (Higher Amount) (England) Regulations 2016 and Regulation 5 of the Higher Education (Basic Amount) (England) Regulations 2016.

in the plan but do not exceed the higher amount, will be that imposed in accordance with section 37(1)(a) of the Higher Education Act 2004 and the Student Fees (Approved Plans) (England) Regulations 2004<sup>10</sup> (“the Approved Plans Regulations”).

12. Where there is a failure to comply with the condition set out in paragraph 4.b above, the financial requirement will be that imposed in accordance with section 37(1)(a) of the Higher Education Act 2004 and the Approved Plans Regulations.

13. Where there is a failure to comply with the condition set out in paragraph 4.a above, and the fees charged exceed the higher amount as well as the amount provided for in the plan, the financial requirement will be that imposed under paragraph 11 and, in addition, the amount determined by the OfS in accordance with the following principles:

a. An amount of the teaching grant from the OfS which in the opinion of the OfS equals 110 per cent of the amount each student on a course has been charged in excess of the relevant higher amount, multiplied by the number of students the OfS believes to have been overcharged.

b. That the amount determined under sub-paragraph a will be repaid by the institution to the OfS, or withheld from grant, and retained until the institution has satisfied the OfS that reasonable efforts have been made to repay the amount charged in excess of the higher amount, either to every qualifying person overcharged, or to the Student Loans Company, as the case may be. Once the OfS is so satisfied by a date it determines, the amount retained by the OfS, or a proportion of that amount, will be repaid or given in grant to the institution.

c. The following further principles also apply:

i. Where it appears to the OfS that an institution does not intend to comply with the higher amount fee cap, an amount up to the maximum of the total teaching grant from OfS for the relevant academic year and any future grant period may be withheld from grant.

ii. Where it appears to the OfS that a breach of the higher amount fee cap is minor or accidental there will be no financial penalty additional to that set out in sub-paragraphs a and b, and

iii. In any other circumstances, an amount in the current grant period which the OfS considers appropriate in view of the severity of the failure to comply with the higher amount fee cap, up to a maximum of £500,000 less any amount already imposed under paragraph 11, to be repaid by the institution to the OfS or withheld from grant.

d. An amount determined under sub-paragraph c will not exceed in any grant period the total amount received from the OfS in that grant period, less any amount withheld under sub-paragraphs a and b and the amount of any financial requirement

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<sup>10</sup> Statutory Instrument 2004/2473, as amended, at the time of writing, by Statutory Instruments 2012/433 and 2012/765.

imposed under paragraphs 11 or 12. An amount determined under sub-paragraph c will not be paid or repaid to the institution.

14. Where there is a failure to comply with the condition under paragraph 4.c, the financial requirement will be the amount determined by the OfS in accordance with the following principles:

a. An amount of the teaching grant from the OfS which in the opinion of the OfS equals 110 per cent of the amount each student on a course has been charged in excess of the basic amount, multiplied by the number of students the OfS believes to have been overcharged.

b. That the amount determined under sub-paragraph a will be repaid by the institution to the OfS or withheld from grant, and retained until the institution has satisfied the OfS that reasonable efforts have been made to repay the amount charged in excess of the basic amount, either to every qualifying person overcharged, or to the Student Loans Company, as the case may be. Once the OfS is so satisfied by a date it determines, the amount retained, or a proportion of that amount, will be returned or given in grant to the institution.

c. The following further principles also apply:

i. Where it appears to the OfS that an institution does not intend to comply with the basic amount fee cap, an amount up to the maximum of the total teaching grant from the OfS for the relevant academic year and any future grant period may be withheld from grant.

ii. Where it appears to the OfS that a breach of the basic amount fee cap is minor or accidental there will be no financial penalty additional to that set out in sub-paragraphs a and b, and

iii. In any other circumstances, an amount in the current grant period which the OfS considers appropriate in view of the severity of the failure to comply with the basic amount fee cap, up to a maximum of £500,000, to be repaid by the institution to the OfS or withheld from grant.

d. An amount determined under sub-paragraph c will not exceed in any grant period the total amount received from the OfS in that grant period, less any amount withheld under sub-paragraphs a and b. An amount determined under sub-paragraph c will not be paid or repaid to the institution.