

Office for
Students



Terms and conditions of funding for 2019-20

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Summary

1. This document sets out terms and conditions of funding that apply for the academic year 1 August 2019 to 31 July 2020. These apply to the recurrent and capital funding the Office for Students (OfS) will distribute to providers that are registered in the Approved (fee cap) part of the OfS Register of higher education providers.
2. Terms and conditions of OfS funding supplement the conditions of registration that apply to providers in the Approved (fee cap) category¹. Where requirements are a condition of registration, we have tried to avoid replicating them as conditions of funding.
3. In February 2019 we invited comment on these terms and conditions in 'Funding for 2019-20: Consultation on terms and conditions and method' (OfS 2019.02)². We received 26 responses. We also held a consultation event in March with representatives of sector bodies.
4. During the consultation:
 - a. Some respondents expressed a concern that the paragraphs relating to earmarked funding could be read as restricting cross-institutional initiatives, in particular as far as student premium funding was concerned. We recognise that activities that support the aims and objectives of providers' access and participation plans or statements may have benefits that extend beyond their target student populations, and we do not intend to limit the use of student premium funding where this is the case. We have slightly amended the wording in paragraph 40 to clarify this.
 - b. Similar concerns were expressed about the paragraphs relating to the nursing, midwifery and allied health supplement. We have amended the wording in paragraph 42 to clarify where this funding stream is also provided to support costs that would otherwise fall to students.
 - c. Concerns were also raised about the use of capital grants. We have amended the wording in paragraphs 46 and 48 to clarify their uses.
5. We have also removed references to qualifying connected institutions, as we do not believe that these are relevant for 2019-20.
6. Further information on the responses to the consultation can be found in 'Funding for 2019-20: Outcomes of consultation on terms, conditions and methods' (OfS 2019.10)³.

¹ See www.officeforstudents.org.uk/advice-and-guidance/regulation/conditions-of-registration/.

² Available at www.officeforstudents.org.uk/publications/funding-for-2019-20-consultation-on-terms-and-conditions-and-method/.

³ Available at www.officeforstudents.org.uk/publications/funding-for-2019-20-outcomes-of-consultation-on-terms-conditions-and-methods/.

Introduction and scope

7. The terms and conditions of funding set out in this document apply for the academic year 1 August 2019 to 31 July 2020. They are made under Section 41 of the Higher Education and Research Act 2017 (HERA). They apply to the higher education providers that the OfS funds; they support the OfS's responsibility to provide annual assurances to Parliament that funds provided are being used for the purposes for which they were given and value for money is being achieved.
8. The OfS funds eligible higher education providers – those registered in the Approved (fee cap) category of the OfS Register⁴ – for certain activities as defined under Section 39(1) of HERA. Being registered as an Approved (fee cap) provider is a prerequisite for a provider to be eligible for OfS funding under Section 39(1) of HERA, and the main requirements that the OfS places on providers arise from the conditions of registration that apply to them as Approved (fee cap) providers. These are set out in the OfS regulatory framework for higher education in England⁵ and in any specific conditions of registration that additionally apply to a provider, as separately notified to it (whether or not such specific conditions are published on the OfS's Register⁶).
9. Terms and conditions of OfS funding are supplementary to any conditions of registration that apply. However, condition of registration G2 requires a provider to comply with any terms and conditions that, under sections 41(1) or 94(2) of HERA, are attached to financial support received from the OfS and UK Research and Innovation (UKRI). A breach of these terms and conditions of OfS funding may therefore be a breach of this condition of registration.
10. All funding allocated to eligible higher education providers by the OfS under Section 39(1) of HERA is subject to the terms and conditions set out in this document and, in accepting funding, the provider is agreeing to them. The OfS will make material revisions to this document only after consulting providers or such representative bodies for providers as it considers appropriate. The OfS may apply additional terms and conditions to individual grants, relating to the use of funds or monitoring arrangements: these will be set out before the first payment of those grants is made, normally when the grant award is first notified to the provider.

Terminology

11. **'Provider'** means an 'English higher education provider' as defined in Section 83 of HERA. 'Eligible higher education provider' means a provider registered in the Approved (fee cap) part of the OfS's Register⁷.

⁴ Under the Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (www.legislation.gov.uk/uksi/2018/1382/made).

⁵ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

⁶ See www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/.

⁷ As defined in the Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (www.legislation.gov.uk/uksi/2018/1382/made). Eligibility criteria for registration of a provider are set out in paragraphs 74 to 91 of the regulatory framework for higher education in England.

12. **‘Funding’, ‘Grant(s)’ and ‘Money’** are used synonymously in this document to mean financial support provided under section 39(1) of HERA by the OfS to the governing body of an eligible higher education provider in respect of expenditure incurred, or to be incurred, by the provider for the purposes of either or both of the following:
- a. The provision of education by the provider.
 - b. The provision of facilities, and the carrying on of other activities, by the provider, which its governing body considers it is necessary or desirable to provide or carry on for the purposes of, or in connection with, education.
13. **‘Recurrent grant’ and ‘recurrent funding’** mean funding allocated on an annual basis in respect of operating expenditure incurred, or to be incurred, by the provider on its ongoing teaching and related activities for an academic year. It is largely calculated by formula, informed by data submitted by providers, and is set out in recurrent grant tables that the OfS will normally first issue in the spring preceding the start of the academic year.
14. **‘Capital funding’ and ‘capital grant’** mean funding allocated in respect of capital expenditure incurred, or to be incurred, by the provider. Capital expenditure means money used to acquire or maintain fixed assets, such as land, buildings and equipment, and which is normally capitalised in the provider’s audited annual accounts. Capital grants must be used for the purposes set out in paragraphs 45 to 50.
15. **‘Academic year’** means the 12-month period 1 August to the following 31 July.
16. **‘Financial year’** means the 12-month period 1 April to the following 31 March.
17. **‘Suspend’ or ‘suspension of’** grant are used to mean that the amount of grant that was due to be paid in a particular time period will not be paid until the provider has met specific conditions, but will be payable (subject to any recalculation and adjustment that may apply) once the OfS confirms to the provider that it has met those conditions. Such conditions may relate to the provider’s registration with the OfS (which could itself be suspended in whole or part), or to specific requirements it places on a provider for its funding purposes.
18. **‘Withdraw’ or ‘withdrawal of’** grant are used to mean that the amount of grant that was due to be paid in a particular time period will not be paid at all. This may apply to all OfS funding for a provider or to a particular element of its OfS grant. It may arise as a result of changes to the status of its registration with the OfS (such as its removal or suspension in whole or part from the OfS’s register), or for another reason arising from the terms and conditions of funding set out in this document or elsewhere.
19. **‘Adjust’ and ‘adjustments to’** grant and other allocations (such as of student numbers) mean that the OfS will recalculate and implement changes to payments or other allocations that it has previously notified to a provider. Adjustments may be positive or negative (including being reduced to zero), and may arise as a result of changes to the data or information used to inform funding calculations (including in relation to any eligibility criteria for funding that may apply⁸), the OfS’s monitoring of funding allocations or for other reasons arising from the terms

⁸ Some OfS grants may have additional criteria or conditions that must be met as a prerequisite for a provider to be eligible for them (that is, additional to the general requirement that the provider is registered in

and conditions under which it provides grant. Where an adjustment involves a reduction to grant, this will normally be implemented by reducing future grant payments. If these are insufficient to allow the OfS to recover grant already paid in a timely way, the OfS may require a direct repayment by the provider.

The terms under which the OfS provides funding

20. The OfS will notify allocations of funding to each eligible higher education provider. The OfS expects to issue grant tables in May 2019, showing the allocations of recurrent funding for the provider for the 2019-20 academic year. Formula-based allocations of capital funding for the 2019-20 financial year will also be announced in spring 2019. Other grants will be notified separately.
21. The OfS may adjust allocations subsequently:
- a. In the light of any data assurance work it carries out with individual providers, any other data amendments that it agrees to accept⁹, and any transfers of students or activity between providers that it agrees to reflect.
 - b. For other reasons arising from the eligibility criteria for, and terms and conditions of, OfS funding set out in this document or notified separately. The OfS may also deny a provider access to future grant funding, including access to specific grants or to discretionary funding.
22. The OfS has determined initial allocations of recurrent and formula capital grants for 2019-20 for some providers using data they have submitted to the Higher Education Students Forecast 2019-20 (HESF19) survey¹⁰. This applies to providers that do not have higher education provision recognised for OfS funding purposes in 2018-19. Where this is the case, the OfS will recalculate and adjust those allocations to reflect a provider's actual student numbers in 2019-20¹¹, using the same funding methods¹², data categorisations and definitions as have applied in determining the initial allocations. Where this recalculation results in a reduction to grant, the OfS will invite the provider to submit an appeal for mitigation, before it confirms the final adjustment that it will implement. However, (as set out in paragraph 37) if the provider

the Approved (fee cap) part of the OfS's register). If the OfS finds, after a grant award has been made, that a provider did not meet such eligibility criteria, it may adjust or withdraw the grant.

⁹ The OfS's data amendments process is set out at www.officeforstudents.org.uk/data-and-analysis/amendments-to-data/.

¹⁰ Available at www.officeforstudents.org.uk/publications/hesf19-higher-education-students-forecast-2019-20/.

¹¹ As previously notified in paragraph 26b of 'Funding for academic year 2019-20: Approach and data collection', OfS 2018.31 (www.officeforstudents.org.uk/publications/funding-for-academic-year-2019-20-approach-and-data-collection/), and in the HESF19 survey.

¹² This may involve changes to rates of grant as a result of implementation of changes to OfS budgets as described in paragraphs 23, 27 and 28; or changes to provider grant rates or weighting factors (such as to recognise the additional costs of operating in London), as a result of recalculation using updated provider data.

does not have any OfS-fundable students in 2019-20, all recurrent and capital funding for that year will be withdrawn, and no appeal for mitigation will be invited.

23. The OfS reserves the right to revise any allocation to take account of changes to the grant available to it from government (see paragraphs 27 and 28).
24. In cases where it requires repayment, the OfS may charge interest, at 2 per cent above the Bank of England base rate, for the period before the provider repays the funding.

Data assurance

25. If the OfS finds (whether through data reconciliations, data audit or any other means) that erroneous data has resulted in providers receiving incorrect funding or student number allocations, then it will adjust these accordingly – subject to the availability of its funds. Where data error has resulted in a funding allocation being too high, it will recover the excess funding from the provider for any year informed by the audited or reconciled data (including any consequential effects on funding for subsequent years) unless there is evidence that a provider has deliberately not complied with the funding rules or has ignored previous Higher Education Funding Council for England (HEFCE) or OfS advice and recommendations. In these exceptional circumstances the OfS may recover funding that relates to a longer period, up to a maximum of seven years (including in relation to years when funding was provided by HEFCE). A provider must repay any funding that the OfS identifies as having been overpaid as a result of such recalculations.
26. If data or information has not been provided, or the OfS considers that it is incomplete, incorrect or otherwise not of a satisfactory quality, then the OfS may, at its sole discretion, use its own assumptions or estimates about the relevant data or information for the provider to determine its eligibility for, and level of, funding. This may include assuming that the provider has no eligible activity to count towards the allocation of a particular element of funding and thus that no such funding should be provided to it.

Changes to the grant available to the OfS

27. The government's strategic guidance letter to the OfS of 27 February 2019¹³ confirmed the teaching funding available for the 2019-20 financial year (April to March). However it did not show any indicative funding for the 2020-21 financial year. The letter also identified the policies and priorities that should underpin the OfS's approach to funding.
28. The OfS's board has agreed 2019-20 academic year budgets in the light of the strategic guidance letter. In doing so, it has had to make an assumption about the funding that might be available for the 2020-21 financial year, because of its four-month overlap with the 2019-20 academic year. Any changes to the grant made available to it by government for financial year 2019-20, or that it has assumed for financial year 2020-21, are likely to affect the funding it is able to distribute to providers in the 2019-20 academic year. If such changes arise, the OfS may adjust any funding allocation to a provider after it has been announced, to ensure that the total funding the OfS allocates remains within the available budget.

¹³ See www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/.

Arrangements for payment

29. The OfS will normally pay recurrent funds to the provider in monthly instalments, in accordance with a funding profile for the whole academic year that will be notified separately. The OfS will normally pay formula-based capital grants for the 2019-20 financial year in monthly instalments during the eight-month overlap with the 2019-20 academic year (that is, between August 2019 and March 2020), according to a funding profile that will also be notified separately.
30. The OfS reserves the right to amend payment profiles during the year, but it will make adverse changes to the profile only in exceptional circumstances and following consultation with the provider.
31. The OfS has a limited budget to distribute between eligible higher education providers. The distribution of grants between providers is determined and announced according to a timetable that the OfS will determine. While providers may apply to join the OfS's Register at any time, upon registration in the Approved (fee cap) category, a provider becomes eligible (subject also to any other specific eligibility criteria that may apply) only for those grants whose distribution has not already been determined by the OfS, even if payment of those grants has not yet been made (in whole or part). This means that:
- a. **Where the OfS determines allocations through a competitive or review process** that involves an assessment against eligibility criteria or the prioritisation of submissions or bids from providers¹⁴, a provider not registered in the Approved (fee cap) part of the OfS's Register at the time that the OfS agrees those allocations is not eligible. Such providers only become eligible in the next competition or review process held after their addition to the Register in the Approved (fee cap) category. This principle also applies where allocations determined by such a process apply for a period of more than one year.
 - b. **Where the OfS otherwise determines allocations by formula**, the OfS may, at its sole discretion, consider whether it has scope to include a provider, newly registered in the Approved (fee cap) category, in any update or recalculation of such allocations where the provider was not so registered when the allocations were first determined. This applies to most elements of recurrent and formula-based capital grants. Factors that the OfS will take into account in deciding whether it has such scope include (but may not be limited to):
 - i. Whether the OfS has sufficient budget available in the year to make an allocation to the provider without this having an adverse effect on allocations for providers already announced.
 - ii. Whether the OfS has sufficient data or information necessary to determine an allocation for the provider, or can secure it in a timely way.
 - iii. The desirability of treating providers in similar circumstances consistently.

¹⁴ Examples include Challenge Competitions (www.officeforstudents.org.uk/advice-and-guidance/funding-for-providers/ofs-challenge-competitions/), the National Collaborative Outreach Programme (www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/national-collaborative-outreach-programme-ncop/) and the targeted allocation for specialist institutions (<https://webarchive.nationalarchives.gov.uk/20170712123151/http://www.hefce.ac.uk/lt/howfund/institution/>).

32. Grant payments (whether profiled or otherwise) will be made only while, and in respect of periods during which, a provider meets all eligibility requirements for them, including that it is in the Approved (fee cap) category on the OfS's Register. A provider will have no entitlement to receive any unpaid balance of a grant previously notified if, at the time payment is due, it is no longer eligible for funding. Thus:
- a. If the OfS suspends a provider from its Register, or suspends some elements of its registration, it may (depending on the nature of that suspension) suspend or withdraw payments of grant, in whole or part, until the suspension from the Register is lifted.
 - b. If a provider ceases to be registered in the Approved (fee cap) category of the OfS Register, then the provider's eligibility for OfS funding and all grant payments to it will cease with immediate effect.

Repayable grants and loans

33. The OfS may make repayable grants or loans to a provider for the purposes set out in paragraph 12. The provider must repay any such financial support to the OfS according to the timetable and circumstances that the OfS will specify when it makes such awards.

Conditions of funding with which providers must comply

34. The OfS will withdraw grant to the provider if it is not used for the purposes intended¹⁵, as set out in paragraphs 35 to 51, or as notified separately.
35. The provider is free to distribute internally at its own discretion all funding from the OfS which is not earmarked or provided for a specific purpose, subject to that funding being used for the activities and facilities eligible for funding under Section 39(1) of HERA (see paragraph 12); and for the primary benefit of the provision of higher education courses and current and prospective students on them. The OfS recognises that its funds may also benefit other areas of activity, for example in contributing to the costs of staff who may work across both further and higher education, or across higher education teaching, research and administrative roles. Any funds that have been earmarked or provided for a specific purpose must be used solely for that purpose.

¹⁵ Under condition of registration E3 the governing body of a provider must ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction. The most recent accounts direction, relating to the academic year 2018-19, was published in 'Regulatory advice 9: Accounts direction. Guidance on preparing and publishing financial statements' (OfS 2018.26). Under the accounts direction, a provider's external auditor must report to the governing body on whether in all material respects:

- funds, from whatever source, administered by the provider for specific purposes have been properly applied to those purposes and managed in accordance with relevant legislation
- where applicable, funds provided by HEFCE, the OfS and Research England have been applied in accordance with the relevant terms and conditions and any other terms and conditions attached to them.

36. When using OfS funding providers must apply proper processes that ensure effective accountability and secure value for money. This requirement also applies where the provider passes on part of its OfS funding to another legally distinct entity (for example, under a subcontractual arrangement) for the provision of education, or related facilities or activities. In these circumstances the provider awarded the funding by the OfS will be held accountable for those funds. That provider must therefore ensure adequate and effective accountability arrangements are in place when it passes on such funding to another entity.
37. If a provider does not have any OfS-fundable students in 2019-20, all recurrent and capital funding for that year will be withdrawn. Unless subsequently revised, 'OfS-fundable students' has the meaning set out in Annex F of the 2018 Higher Education Students Early Statistics (HESES) and Higher Education in Further Education: Students (HEIFES) surveys¹⁶, in each case as applying to countable students in the survey populations who are on courses recognised for OfS funding purposes.

Earmarked funding

38. Some OfS funding is earmarked as being provided for specific purposes and must be used only for those purposes. This applies to some recurrent grants (see paragraphs 39 to 44) capital funding (see paragraphs 45 to 50), funds awarded through competitions, such as the National Collaborative Outreach Programme¹⁷ and OfS Challenge Competitions¹⁸, and to other grants that support national facilities and regulatory activities. The OfS will specify any restriction on the use of funds in advance of the first payment of those funds (usually when the award of funding is notified to a provider). Any such restriction may be **additional to** the terms and conditions specified in this document.

Student premium funding

39. Three formula-based student premium allocations are shown on the 2019-20 recurrent grant Tables A and C:
- premium to support successful student outcomes: full-time
 - premium to support successful student outcomes: part-time
 - disabled students' premium.
40. Student premium funding is earmarked to contribute towards the aims and objectives set out in providers' approved access and participation plans for 2019-20 or (for those without such

¹⁶ HESES is available at www.officeforstudents.org.uk/publications/heses18-higher-education-students-early-statistics-survey-2018-19/. HEIFES is available at www.officeforstudents.org.uk/publications/heifes18-higher-education-in-further-education-students-survey-2018-19/.

¹⁷ See www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/national-collaborative-outreach-programme-ncop/.

¹⁸ See www.officeforstudents.org.uk/advice-and-guidance/funding-for-providers/ofs-challenge-competitions/.

plans) access and participation statements and providers must therefore use student premium grants solely for these purposes. In particular:

- a. The full-time and part-time student premiums are intended to support the costs of activities that contribute to providers' ambitions around student success and progression.
- b. The disabled students' premium is intended to support the costs of activities that will promote inclusion and remove barriers to participation and success for disabled students¹⁹.

Targeted allocation for very high-cost STEM subjects

41. To be eligible for the targeted allocation for very high-cost science, technology, engineering and mathematics (STEM) subjects, shown on the 2019-20 recurrent grant Table F, a provider must be actively recruiting new entrants, in the year for which funding is provided, to the very high-cost disciplines (physics; chemistry; chemical engineering; and minerals, metallurgy and materials engineering) that this funding aims to sustain. The funding is earmarked to support the direct teaching costs of higher education programmes in those subjects and providers must therefore use the funding solely for this purpose. If the OfS finds that a provider was not eligible for funding, including because it has ceased recruiting to the subjects concerned, or that the provider has not used the funding for the purposes intended, the OfS will require the provider to repay all of the allocation attributable to the subject(s) concerned.

Nursing, midwifery and allied health supplement

42. To be eligible for the nursing, midwifery and allied health supplement, shown on the 2019-20 recurrent grant Table E, a provider must be actively recruiting new entrants, in the year for which funding is provided, to pre-registration courses for the professions listed in paragraph 43 that this funding aims to sustain. The funding is earmarked to support the direct teaching costs of such courses, and to cover costs that would otherwise fall to students, such as vaccinations, Disclosure and Barring Service checks, occupational health checks and uniforms. Providers must therefore use the funding solely for these purposes. Pre-registration courses are courses that on successful completion lead to eligibility to apply to join the registers (or the relevant part or parts of the registers) for the professions concerned maintained by:

- a. The Nursing and Midwifery Council (for nursing and midwifery)²⁰.

¹⁹ This includes measures to address the needs of students with, for example, mental health issues or autistic spectrum disorders. Providers should have regard to the report 'Inclusive teaching and learning in higher education as a route to excellence' (www.gov.uk/government/publications/inclusive-teaching-and-learning-in-higher-education), which encourages providers to look at how they can support and offer the best environment for disabled students, considers the requirement to provide 'reasonable adjustments' under the Equality Act 2010, and suggests actions to mitigate risks associated with that.

²⁰ Pre-registration courses are those at English providers listed at www.nmc.org.uk/education/approved-programmes/ by selecting the relevant course type from the drop-down menu headed 'Course'. These course types are, for midwifery: 'Pre-registration midwifery – Three-year programme – 18 Month Programme'; and for the nursing professions:

- 'Pre-registration nursing – Adult'
- 'Pre-registration nursing – Child'
- 'Pre-registration nursing – Learning Disabilities'
- 'Pre-registration nursing – Mental Health'

b. The Health and Care Professions Council (for other professions)²¹.

43. For the purposes of the nursing, midwifery and allied health supplement, the professions are:

a. For both undergraduate and postgraduate courses:

- adult, mental health, child, learning disability and other (unclassified) nursing
- therapeutic radiography
- diagnostic radiography
- podiatry and chiropody
- orthoptics
- prosthetics and orthotics
- speech and language therapy.

b. For postgraduate courses only:

- midwifery
- dietetics
- occupational therapy
- physiotherapy.

44. If the OfS finds that a provider was not eligible for funding, including because it has ceased recruiting to pre-registration courses for the professions concerned, or that a provider has not used the funding for the purposes intended, the OfS will require the provider to repay all of the allocation attributable to the course(s) concerned.

Capital funding

45. Capital funding (as defined in paragraph 14) is provided on a financial year basis and must be used for the purposes intended, set out below. The OfS is not permitted to make payments to providers in advance of need and thus providers must use capital grants in full by the end of the financial year (by March) for which they are provided. OfS funding must not be used for advance payments to contractors, or other financing arrangements (such as bonds) where payments precede production of goods or delivery of services.

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- 'Dual Award – pre-registration nursing' (for each of the six possible combinations of two of the four specialisms listed above).

²¹ Pre-registration courses are those at English providers listed at www.hcpc-uk.org/education/programmes/register/ by selecting the relevant profession from the drop-down menu under 'Search by profession'.

46. Allocations of capital funding are provided to enhance the learning experience of higher education students at providers, by helping raise the quality of their learning and teaching facilities. Providers must use capital grants for this purpose, in particular to contribute towards:
- a. Investment in equipment used in learning, teaching and e-learning, including information technology (IT)-related equipment.
 - b. Acquisition or replacement of premises or infrastructure for learning and teaching.
 - c. Refurbishment of existing teaching spaces, including through IT-related enhancements, such as improvements to internal IT networks or supporting infrastructure.
47. OfS capital funding must be used for projects that focus on higher education teaching, and may be subject to audit. The OfS recognises, however, that it may be neither feasible nor desirable to create ring-fenced boundaries between higher and further education, or teaching and research facilities. For example, equipment purchased using OfS capital funds may be used by both higher and further education students or for both teaching and research purposes.
48. OfS capital grants may be used to contribute towards the costs of a capital project in combination with funding from other sources. However, there must be no double-counting in attributing the same amounts of capital expenditure:
- a. To both OfS grants and income provided by any other UK or EU public funds.
 - b. To both OfS formula-based capital grants and any other OfS capital grants for specific projects.
49. Providers should use capital funding in ways that will improve environmental sustainability, for example, in reducing carbon emissions.
50. All providers that are in receipt of OfS capital funding for financial year 2019-20 must report on their use of that funding. Details about reporting requirements will be notified separately. If the OfS is not satisfied that a provider has used the funds in accordance with the requirements in paragraphs 45 to 49, or as notified separately, it will reclaim some or all of the funding provided.

State aid

51. Providers must ensure compliance with state aid²² law in their own uses of OfS funding. In the event of any breach of state aid law, providers must repay all or some funding, together with interest, if required by the OfS to do so. The OfS may also be required to withhold funding or aspects of funding to any provider which is subject to a state aid enquiry or which has an outstanding recovery notice against it.

²² Government guidance on state aid is available at www.gov.uk/guidance/state-aid. Information on the Competition and Markets Authority's role in operating the UK state aid regime is available at www.gov.uk/government/collections/emas-role-after-brexit.

Exchequer interest

52. There is an Exchequer interest that has built up over time in providers in receipt of HEFCE and OfS capital funding. All providers that receive OfS capital funding from the 2019-20 financial year, and any providers that, as higher education institutions²³, have received HEFCE or OfS capital funding during the period 1 August 2006 to 31 March 2019, must comply with the following conditions in relation to such capital funding received during those periods.
53. If either of the following events occurs, they will trigger immediate liability for the provider to repay to the OfS the full amount of the Exchequer interest balance. The provider will recognise the OfS as an unsecured creditor until such repayment is made. If a liability to make repayment arises, the OfS may agree to accept repayment of some other sum, or to delay repayment, at its absolute discretion, and such agreement may be on such terms and conditions as the OfS thinks fit.
- a. The first trigger event will be if the provider becomes insolvent, including going into liquidation or administration, or if it dissolves or transfers its undertaking to some other body, or if it experiences any analogous event.
 - b. The second trigger event is if the provider ceases to be an eligible higher education provider for OfS funding purposes (that is, is no longer in the Approved (fee cap) category of the OfS Register).
54. If either of the triggers is activated, the OfS will calculate, and share with the provider, the Exchequer interest balance. It has the right, but not the obligation, to request repayment of the Exchequer interest balance: the OfS has discretion to waive the requirement for repayment. In making this decision, the OfS will consider the extent of any continuing public benefit arising from the use of previous OfS or HEFCE capital grants.

Terms and conditions of OfS or HEFCE funding applying for earlier years

55. The OfS and UKRI have each assumed responsibilities from the previous regulatory system. In relation to financial and academic years up to 2017-18 inclusive, terms and conditions of grant previously specified by HEFCE and agreements made by the Director of Fair Access to Higher Education continue to apply. The OfS and Research England will, individually or together as they consider appropriate, continue to monitor compliance with HEFCE terms and conditions of grant and take action against providers that are found to be in breach of them. In addition, terms and conditions of OfS funding for the period 1 April 2018 to 31 July 2019²⁴ continue to

²³ As defined in Section 65 of the Further and Higher Education Act 1992 (www.legislation.gov.uk/ukpga/1992/13/section/65/2010-05-05?timeline=true).

²⁴ These are set out, as applicable, in 'Terms and conditions of funding for higher education institutions' (OfS 2018.15, available at www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-higher-education-institutions/) and 'Terms and conditions of funding for further education and sixth form colleges' (OfS 2018.16, available at www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-further-education-and-sixth-form-colleges/).

apply: the OfS will continue to monitor compliance with them and take action against providers that are found to be in breach.

56. Action that the OfS may take against providers that are found to be in breach of previous HEFCE or OfS terms and conditions of grant for financial and academic years up to 2018-19 include (but are not limited to):
- a. Recalculating and adjusting grants previously announced where these are found to have been informed by incorrect data from providers. Where HEFCE grants are concerned, the OfS and Research England will agree which of them will take action for any breaches, but following the general principles that:
 - i. The OfS will take action in relation to recurrent and capital grants that relate primarily to teaching activities and taught students.
 - ii. Research England will take action in relation to recurrent and capital grants that relate primarily to research and knowledge exchange activities and research students.
 - b. Taking action (including imposing financial requirements on a provider) if non-compliance is found with regulated fee limits in relation to students recruited in any year up to 2018-19 or with any access agreement(s) with the Director of Fair Access to Higher Education or the OfS.

Definitions and abbreviations

Governing body	The university council, board of governors or other body ultimately responsible for the management and administration of a higher education provider's revenue and property, and the conduct of its affairs.
HEFCE	Higher Education Funding Council for England
HEIFES	Higher Education in Further Education: Students (survey)
HERA	Higher Education and Research Act 2017
HESES	Higher Education Students Early Statistics (survey)
HESF	Higher Education Students Forecast (survey)
IT	Information technology

Must denotes mandatory requirements, and **should** (applied to providers) denotes the OfS's view of good practice.



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