

Guidance for providers about reportable events during coronavirus (COVID-19) pandemic

1. The OfS has revised its requirements for reportable events to minimise the regulatory burden on providers during the period of disruption resulting from the coronavirus pandemic and ensure it has the information necessary in the current circumstances.

2. Paragraph 494 of the OfS's regulatory framework¹ defines a reportable event as:

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.

3. This document provides guidance for registered providers about how paragraph 494 should be interpreted until further notice. It includes guidance about:

- Two new narrowly-defined reportable events relating to:
 - i. short-term financial risk
 - ii. cessation or suspension of the delivery of higher education, including the inability to award qualifications or credit
- The removal of requirements to report some existing types of event
- An ongoing requirement to report some existing types of event.

4. If providers identify other very significant events not explicitly identified below they should contact the OfS at regulation@officeforstudents.org.uk to seek guidance. We are taking this different approach in the current circumstances because we recognise that it is difficult to anticipate the issues that may arise and normal judgements about materiality are unlikely to properly recognise the extraordinary circumstances in which providers are operating.

5. Reports should be submitted through the OfS portal in the normal way. Information on the use of the portal and support for use of the portal is included in Annex C of the Notice on new reporting requirements.²

¹ See www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/

² Available at www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid19-pandemic/

New reportable events

Short-term financial risk

6. This reporting requirement does not apply to further education colleges and sixth form colleges that are regulated by the Education and Skills Funding Agency (ESFA). It applies to all other registered providers.
7. Registered providers are normally required to report to the OfS material events with possible financial viability or sustainability implications. The coronavirus pandemic creates conditions in which many providers are likely to experience a material change in their financial position and performance that would normally be reportable to the OfS. It is not possible at the moment for providers to identify the long-term impact of the pandemic and so we are removing the general requirement for a provider to report events with implications for viability or sustainability over a three- or five-year horizon. However, providers who have identified significant financial concerns on a longer time horizon should contact us on regulation@officeforstudents.org.uk to seek guidance.
8. Instead we are putting in place a requirement to report short-term financial risk as defined in paragraphs 10 to 14 below. Collecting this information is necessary to allow us to identify quickly those providers that are likely to experience acute financial challenges in the short term. It will also help us to understand patterns across the sector and the exposure of different types of provider to developing events. This information will allow us to consider with government and other stakeholders, the financial risks being faced by providers.
9. We may revise this requirement as the situation develops. Where we consider there may be financial risks to a provider based on our own modelling we may also initiate discussions with it about this.
- 10. A provider is required to report to the OfS if it considers it to be reasonably likely that its liquidity will drop below 30 days³ at any point during a rolling three month period from the date of the report to the OfS.**
11. If a provider's normal cash management policy is to maintain lower levels of liquidity and a forecast liquidity level below 30 days is a result of active cash management, it only needs to report this to us if it considers that it is reasonably likely that it will not be able to manage this in the usual manner. If a provider would normally fall to 30 days' liquidity but believes it can mitigate this and intends to do so it does not need to report this.
12. In assessing whether its liquidity is reasonably likely to drop below 30 days, a provider must consider the impact of circumstances or events that it believes are reasonably likely to occur in the period. This might include, but is not limited to:
 - A reduction in forecast student recruitment, from UK-based students, EU students, and international students

³ Liquidity is defined as the number of days of average cash expenditure covered by liquidity values, i.e. the ratio of cash and cash equivalents over expenditure excluding depreciation multiplied by a factor of 365 (Liquidity days = (cash and cash equivalents)/(expenditure-depreciation)*365).

- A reduction in forecast income from non-teaching or research activity
 - A reduction in forecast income from the provision of accommodation to students
 - An increase in payment of refunds or compensation to students as a result of changes to course delivery, accommodation, or other services.
13. A provider should report on such short-term financial risk within five days of the date that it concludes that a scenario is reasonably likely to occur or, if that is not possible due to exceptional circumstances beyond the control of the provider, as soon as reasonably practicable thereafter and without undue delay.
14. A report should consist of:
- A brief description of the relevant scenario or scenarios
 - A statement that sets out the date(s) on which the provider considers that liquidity is reasonably likely to drop below 30 days.
15. We recognise the challenges associated with forecasting financial performance in the current environment. Therefore we are not asking providers to submit a full set of updated financial forecasts as part of their report.
16. When a provider reports such short-term financial risk, we will contact it to discuss its report and are likely to ask for further information to help us to understand the issues. We may ask for further information about the longer-term financial implications of these issues at a later date.
17. The financial position of individual providers and of the sector as a whole is likely to continue to change. This means that we may amend or extend these reporting requirements in the future.

Cessation or suspension of delivery of higher education, including the inability to award qualifications or credit

18. This reporting requirement applies to all registered providers.
19. Registered providers are normally required to report to the OfS events or circumstances that materially affect 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, including the B conditions which relate to the quality and standards of courses. They are also normally required to report campus and course closures and other events that trigger an approved student protection plan being implemented.
20. The coronavirus pandemic creates conditions in which many providers are likely to make changes to the way they deliver higher education that would normally be reportable to the OfS. We recognise that there is likely to be significant change and disruption to the delivery of higher education, in particular in relation to teaching and assessment, and so we are removing the general requirement for a provider to report events that would be of interest to us in normal circumstances.
21. Instead we are putting in place a requirement to report significant changes to delivery of higher education as defined in paragraph 23 below. Collecting this information is necessary to allow

us to identify quickly those providers that have stopped delivering higher education teaching or have made significant changes to the way they deliver courses. It will help us to understand patterns across the sector and the impact of developing events on different types of students. This information will allow us to identify where further guidance may be necessary to ensure courses can continue to be delivered and the interests of students protected.

22. We may revise this requirement as the situation develops.

23. A provider is required to report to the OfS if it has taken, or plans to take, any of the following actions

- The provider ceases or suspends delivery of any higher education courses to current students where reasonably equivalent alternative study options are **not** provided.

A provider **does** have to report that it:

- i. is no longer delivering higher education to one or more groups of students
- ii. is ceasing or suspending delivery of one or more modes of study to current students, for example no longer delivering a course on a part-time basis
- iii. is ceasing or suspending delivery of higher education, in whole or in part, to current international students with a visa issued under a Tier 4 licence
- iv. is ceasing or suspending delivery of higher education in such a way that current students who expected to complete their course in the 2019-20 academic year are unable to do so
- v. has lost accreditation by a professional, statutory or regulatory body (PSRB) because of changes to the delivery of higher education made as a result of the coronavirus pandemic.

A provider **does not** have to report that it:

- i. has moved teaching and assessment to an online or other delivery method
 - ii. has temporarily closed a campus or the provider as a whole, as long as teaching continues to be delivered
- The provider is unable to award qualifications or credit for any unit, module or course
 - The provider decides to transfer students between its teaching sites
 - A provider withdraws offers made to applicants due to start a course in or after April 2020.

A provider **does** have to report that it:

- i. no longer intends to accept an intake where offers have already been made.

A provider **does not** have to report that it:

- i. has postponed the planned start date of a course
- ii. has transferred offers to an equivalent course due to start in 2020-21.

24. For courses that are delivered through a sub-contractual arrangement the lead provider should make the report. For courses delivered through a validation arrangement, the provider with a direct contractual relationship with the students should make the report.⁴

25. Reporting on significant changes to the delivery of higher education should include reports on any relevant matters relating to transnational educational activities.

Removal of existing requirements to report some types of event

26. Paragraph 494 of the regulatory framework contains a list of events that are, or are likely to be, reportable. We recognise that this means that governing bodies and leadership teams will have reduced capacity to undertake routine reporting of regulatory matters. We are therefore removing until further notice the general requirement to report the following events:

- The provider becoming aware of legal or court action
- Regulatory investigation and/or sanction by other regulators
- Any new partnerships, including validation or subcontractual arrangements
- Opening a new campus
- Intended campus, department, subject or provider closure
- The implementation of a student protection plan except where this is covered under 'cessation or suspension of delivery of higher education' in paragraph 23 above.

27. If a provider considers that a very significant issue has arisen in relation to any of the types of event listed above, it should contact the OfS at regulation@officeforstudents.org.uk or telephone 0117 931 7305 to seek guidance as outlined above at paragraph 4.

Ongoing requirement to report some types of event

28. A small number of the events listed in paragraph 494 of the regulatory framework continue to be reportable. These are:

- changes of legal status of the provider
- changes of ownership or control of the provider
- the provider resolving to cease to provide all higher education on a permanent basis

⁴ Definitions of 'subcontractual' and 'validation' are set out in the glossary of the OfS's regulatory framework (February 2018), available at: www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

- any material suspected or actual fraud or financial irregularity.

29. In the context of material suspected or actual fraud or financial irregularity, 'material' should be understood to mean:

- any fraud relating to the misuse of public funds
- any other financial fraud exceeding £50,000 in value or 1% of a provider's annual income if that income is less than £5,000,000
- any type of non-financial fraud or attempted fraud regarding which the provider determines to notify its own governing body.

30. These types of event are likely to have significant implications for a provider's registration and so need to be reported. Our experience is that they occur infrequently and so this should not create significant regulatory burden. If a provider needs to report one of these events it should contact the OfS at regulation@officeforstudents.org.uk or telephone 0117 931 7305 to seek guidance. We are taking this different approach in the current circumstances because we recognise that it is difficult to anticipate the issues that may arise and normal judgements about materiality are unlikely to properly recognise the extraordinary circumstances in which providers are operating.

31. In addition, all providers are required to continue to report the following events:

- changes to a provider's accountable officer or the chair of its governing body
- changes to the information published on the OfS Register.

32. We need to keep up-to-date records for providers' senior officers to ensure we are able to send information to the correct individuals. We expect a provider to tell us if its accountable officer is unable to work due to self-isolation or due to other illness. In these circumstances we will seek to approve an interim accountable officer. The requirement to tell the OfS about changes to the Register is a statutory requirement that we are unable to remove. Our experience is that providers report changes to the Register infrequently.

33. Reports should be made within five days of the date that the event is identified or, if that is not possible due to exceptional circumstances beyond the control of the provider, as soon as reasonably practicable thereafter and without undue delay.