



Reducing burden and bureaucracy

Issue

1. The OfS's business plan for 2020-21 includes a programme of work aimed at identifying and reducing regulatory burden on providers to the minimum necessary to deliver our regulatory objectives, in line with commitments made in the regulatory framework. The programme comprised five strands: developing an approach to regulatory impact assessment; quantifying the compliance cost for providers; engaging with providers to understand their concerns about bureaucracy and burden and explore how they could be addressed; developing a key performance measure for regulatory burden; and acting on an overall commitment by the OfS to review and reduce any bureaucracy and disproportionate burden.
2. This paper primarily concerns strand (v): the overall commitment to review and reduce bureaucracy and disproportionate regulatory burden. Our broad approach was shared with the board at its meeting on 2 July 2020, in the context of a discussion about the government's wider commitment to remove unnecessary bureaucracy. This paper provides further details of the OfS proposals, and also reflects discussions that have since taken place with the Department for Education about their proposals to reduce bureaucracy, reflected in the terms of the Higher Education Minister's statutory strategic guidance [letter](#) of 14 September 2020, to which the board must have regard under section 2(3) of the Higher Education and Research Act (2017).

Recommendations

3. This paper summarises the current position and, having regard to [statutory guidance](#), asks the board to:
 - a. comment on the proposals set out in this paper and approve, as appropriate;
 - b. agree that we should deprioritise the implementation of random sampling, as set out in paragraph 10 (ii).

Further information

4. Available from Nicola Dandridge.

Background

5. The OfS's business plan for 2020-21 included a programme of work looking to reduce any bureaucracy imposed on providers that was attributable to the OfS's work and ensure that the regulatory burden imposed was proportionate to our regulatory purposes. The programme comprised five strands:
 - (i) The creation of an approach to regulatory impact assessments (RIAs) that would review any changes we make to our regulation, estimate the burden placed on providers by the changes, and ensure they are justified by the likely benefits. This approach would demonstrate compliance with good practice as described by the Regulators' Code, ensure relevant information is available for government's Business Impact Target reporting, and facilitate a consistent approach to impact assessment across the OfS
 - (ii) Quantification of the cumulative level of administrative costs for providers of complying with our regulation as well as associated regulatory activities of the Designated Data Body and the Designated Quality Body. This exercise proposed to develop a cost model for the regulatory framework, to track changes in the administrative compliance costs for the sector each year, against a 2019/20 baseline;
 - (iii) Engagement with a range of individual providers and sector representative bodies, to better understand their concerns about the burden of complying with our regulation, exploring whether and how the burden could be reduced;
 - (iv) The development of a regulatory burden Key Performance Measure (KPM 26) to measure regulatory burden;
 - (v) An overall and ongoing review of OfS regulatory activity to assess how bureaucracy and burden can be reduced, as promised in paragraph 9 of the regulatory framework ('Once the regulatory framework is established, its implementation will reduce bureaucracy and unnecessary regulatory burden for individual providers and, as a consequence, for the academic and professional staff whose work is essential to successful outcomes for students') and paragraph 41(b) ('Providers that do not pose specific increased risk will be subject to light touch monitoring and should have less regulatory burden once this regulatory framework is established').
6. Strand 1 of the work identified above is currently being taken forward. In the context of our revised business plan for 2020-21, we will assess the regulatory burden for each new initiative and intervention we undertake, to estimate for each the likely change in burden for providers as well as the intended benefits. This assessment of the balance of burden vs benefit, informed by consultation with the sector where necessary, will provide transparent justification for the changes we make.
7. As reported to the board at its meeting on 2 July 2020, as at March 2020 strand 2 above had reached a stage that required collaboration with higher education providers in order to identify the activities associated with our regulation and determine the associated administrative costs. Because of the impact of coronavirus, the work was paused in line with our broader approach to suspending our usual regulatory activity and pausing all ongoing consultations. Following further consideration, we have now decided that we will not resume this work. The resources required to determine total compliance costs across the full range of our regulation are significant, and we, and the providers who would be

involved, are currently having to deal with other urgent priorities. Providers still do not have the capacity to work with us and the value of attempting this exercise, while we are also reintroducing and revising our regulation following the pandemic, seems limited. This decision has a knock-on impact on the development of KPM26 (strand 4), which would have been based on compliance costs. We will now seek other, less resource-intensive ways, to measure burden for this measure.

8. We do nonetheless intend to continue working with individual providers and sector representative bodies to better understand the issues of burden (strand 3) and this work will continue when providers have more time to engage with us on it.
9. This paper is primarily concerned with strand 5, particularly in the context of the separate initiative being taken forward by the DfE as part of a wider commitment by government to remove unnecessary bureaucracy, as reflected in their strategic guidance letter.

Strand 5: Reducing bureaucracy and burden

10. The overview of the bureaucracy and burden of our regulatory activity extends to cover a number of areas of activity, including our regulatory requirements of individual providers, as well as our approach to data collection requirements. The specific areas that we have considered are listed below. In considering these areas, the board will have due regard to the terms of the Minister's strategic guidance letter.

(i) Enhanced monitoring requirements

The approach we took to the initial registration of providers meant that we were able to register a large number of existing providers in a short period. A significant number of these providers were registered on the basis that further action would be required to mitigate areas of increased risk we had identified during our assessment. These concerns were not such that that we considered it necessary to refuse registration or to delay registration while a provider took action, but they did require further consideration and remedial action after registration. Providers have now largely satisfied these enhanced monitoring requirements and, where this is the case, we will have removed them.

There are two notable exceptions to this position. The first is where we have previously imposed enhanced monitoring requirements because we judge there to be an increased risk of a breach of the condition that relates to financial viability and sustainability. In this case, particularly because of the impact of coronavirus, we need to maintain close and ongoing oversight of a provider's financial position and enhanced monitoring requirements remain an appropriate regulatory tool for these circumstances. The second is where we have imposed enhanced monitoring requirements as a result of our approval of the access and participation plans submitted by providers for 2020-21. In this case, because of the shift from annual to five-year plans from 2020-21, we required reports from some providers on their delivery of activity during the first year that we judged crucial to the successful delivery of subsequent years of the plan.

As we move away from the initial registration process and into a more established regulatory environment, we expect our use of enhanced monitoring to mitigate increased risk to reduce significantly. We will, however, continue to ensure that our interventions in any individual case are proportionate to the regulatory risk posed by a provider. This revised approach was notified to providers in our letter to them of 30 July 2020.

(ii) Random sampling

The regulatory framework says that we will implement a 'random sampling' process to provide assurance about the effectiveness of the OfS's general approach to monitoring and to incentivise compliance from all providers (see, in particular, paragraphs 147-152 of the regulatory framework). This process was not designed primarily as a mechanism to reassess risk for an individual provider, but would nevertheless involve significant assessment activity in relation to a provider's continuing compliance with its conditions of registration. It was proposed that the approach should involve the identification of approximately 5% of all registered providers each year for a more extensive assessment of whether they continue to meet the general ongoing conditions of registration.

Having now completed the initial registration process and developed our approach to monitoring and intervention, we are not currently persuaded that implementing random sampling would generate regulatory benefits that would outweigh the burden created for providers. We are not therefore proposing to undertake the detailed planning that would be needed to implement a programme of random sampling at this time. It is possible however that we may want to revisit the benefits of a random sampling approach as our monitoring and intervention activities mature and we learn more about the ability of providers across the sector to comply with our regulatory requirements. We are asking the board to agree that we should deprioritise implementation of this element of the regulatory framework.

(iii) Review of TRAC (T)

The Transparent Approach to Costing (TRAC) is an activity-based costing system adapted to the higher education sector which provides information that assists providers and their funders to understand the costs of their activities. TRAC (T) is particularly focused on the costs of teaching. TRAC operates across all the devolved administrations as well as in England. We propose to work with the sector to review the benefits and impact of the TRAC model. This will include a close working relationship with UKRI which is conducting a parallel review of the research elements of TRAC.

(iv) OfS efficiency savings

Given the financial pressures that providers and students, and indeed all elements of society, are facing in the light of the coronavirus pandemic, we are proposing to reduce our core operating costs charged to providers through their registration fees by 10% in real terms over the next two years. We will seek to ensure that so far as possible these reductions are met by non-replacement of voluntarily departing staff and other non-staff cost reductions. Although we consider it important to commit to this reduction, it will be challenging to deliver given the scale of responsibilities and duties that the OfS holds. The exercise will coincide with the DfE's review of the OfS's registration fees which was due in 2022 but will now be advanced to 2021.

The OfS chair has written to the chair of the QAA and the chair of HESA to ask that those two organisations, as the OfS's designated bodies, deliver an equivalent reduction in the statutory fees they charge to registered providers.

Additional issues identified in the Minister's strategic guidance letter

11. In addition to these areas of regulatory activity, the DfE has also signalled an interest in reducing regulatory burden in two further areas where the OfS has statutory duties – the imposition of the 'transparency condition' which is mandatory for some providers, and the 'student transfer condition' which we impose to allow us to meet the duty for student transfer arrangements:

- Section 9 of the Higher Education and Research Act 2017 (HERA) requires the OfS to ensure that certain providers are subject to a transparency condition which requires governing bodies to provide to the OfS, and publish, information in relation to offers and acceptance of places, completion rates and academic outcomes for students on the basis of their gender, race and socio-economic status. To allow us to comply with this duty, the regulatory framework imposes a general ongoing condition of registration on all providers and we have published guidance setting out our more detailed requirements in relation to the data that we require providers to submit. We propose reviewing whether we are able to collect the data needed to fulfil the section 9 duty from existing established data returns rather than, as now, requiring a separate detailed data return.
 - Section 38 of the Higher Education and Research Act 2017 requires the OfS to monitor the availability and take up of schemes for student transfers within or between providers, and report on the position across the sector. To allow us to comply with this duty, the regulatory framework imposes a general ongoing condition for all registered providers that requires them to report to the OfS, and publish, information about their student transfer arrangements. We collected such information for the first time from providers at the beginning of 2020 and this has allowed us to gain an understanding of the availability of transfer schemes across the sector. Our view is that we are now likely to be able to continue to fulfil our section 38 duty on the basis of analysis of student data routinely submitted by providers and do not currently envisage seeking further information from provider about their transfer arrangements. This would mean that we are able to reduce the direct regulatory burden placed on providers.
12. In the light of the Minister's strategic guidance letter, we propose considering these two areas further and will bring proposals back to the board for discussion and approval at its meeting on 1 December 2020.
 13. The Minister's letter also invites the OfS to undertake a review of the National Student Survey (NSS) and Data Futures.
 14. The DfE's proposals in relation to the NSS were discussed at the OfS board meeting on 2 July 2020, and these proposals are now reflected in the terms of the guidance letter. We have agreed with the DfE that we will conduct a review of the NSS, to be completed by the end of the calendar year, that will consider the scope of the NSS and its consequences. Details are set out in the paper 8.1, which maps out a two-phase process: the first reflecting the scope of the agreement between the OfS chair and the Secretary of State, the second reflecting a broader scope.
 15. The DfE have likewise signalled support for the OfS, working with the Higher Education Statistics Agency, to review the commitment in Data Futures to collect data from all providers on a termly rather than an annual basis, and to consider whether there are ways of securing data in a more proportionate way. This is considered in paper 9.1, which sets out a proposal for conducting this review, as well as seeking the board's approval for the next tranche of funding for the broader Data Futures programme.

Paper publication date

16. We do not intend to publish this paper until after the board meets. We will review this position in October 2020.