

Consultation

**Office for
Students**

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in white.

OfS

Consultation on quality and standards conditions

This consultation runs from **20 July 2021**
to **27 September 2021**.

Reference OfS 2021.24

Enquiries to regulation@officeforstudents.org.uk

Publication date 20 July 2021

Consultation on quality and standards conditions

The Office for Students is consulting on its approach to regulating quality and standards in higher education. Since 2018, our focus has been on assessing providers seeking registration and we are proposing to develop our approach now that most providers are registered. Our interventions are designed to protect students' and taxpayers' investment in higher education by ensuring that courses are high quality and standards maintained. We would like to hear your views on the proposals in this consultation.

Timing of consultation	Start: 20 July 2021 End: 27 September 2021
Who should respond?	Anyone with an interest in the regulation of the higher education sector.
How to respond	Please respond by noon on 27 September 2021 . Use the online response form available at https://survey.officeforstudents.org.uk/s/qualityandstandardsconditions/
Enquiries	Email regulation@officeforstudents.org.uk Alternatively, call our regulation helpline on 0117 931 7305.

The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Our four regulatory objectives

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

Contents

About this consultation	5
Who should respond to this consultation?	6
How to respond	6
Consultation principles	6
How we will treat your response	6
Next steps	7
Introduction	8
The reasons for this consultation	9
About this consultation	9
Reasons for this consultation	9
Our proposals	11
What are we proposing?	11
Proposal 1: impose three general ongoing conditions of registration relating to the quality of a provider's courses.....	12
Proposal 2: impose one general ongoing condition of registration relating to the standards of a provider's courses.....	22
Proposal 3: impose two initial conditions of registration, one relating to the quality of, and one relating to the standards applied to, a provider's course.....	26
Proposal 4a: commission the designated quality body to provide evidence about compliance with the initial conditions for a provider seeking registration	29
Proposal 4b: operate a flexible risk-based approach to evidence gathering and investigation for registered providers	30
Proposal 4c: take account of a provider's compliance history in relation to the quality and standards conditions for the purpose of determining eligibility for other benefits of OfS registration	33
Proposal 5: the OfS will use its role as the body responsible for External Quality Assurance for integrated higher and degree apprenticeships to inform its judgements about condition B4.....	38
Proposed implementation	41
Annex A: Proposed ongoing conditions for quality and amendments to the OfS's regulatory framework	42
Annex B: Proposed ongoing condition for standards and amendments to the OfS's regulatory framework	68
Annex C: Proposed initial conditions for quality and standards and amendments to the OfS's regulatory framework	73
Annex D: Sector-recognised standards	79
Annex E: Consideration of alternative proposals	97
Make no changes to our current approach	97
Adopt an approach that involves scheduled cyclical reviews of all providers	97
Adopt a rules-based approach	98
Annex F: Matters to which we have had regard in reaching our proposals	100
The OfS's general duties.....	100
The public sector equality duty.....	103

Guidance issued by the Secretary of State 104
The Regulators' Code 105
Annex G: Consultation questions..... 107
Annex H: Section 2 of the Higher Education and Research Act 2017 109

About this consultation

In response to the coronavirus (COVID-19) pandemic, we paused some of our regulatory requirements while higher education providers adapted rapidly to the environment. We now plan a phased resumption. However, we do not intend to reinstate our requirements exactly as before. Instead, we will draw on our experience of the last three years and target our work to ensure that it is focused where it is most needed. This revised approach will reflect the commitment we made in the regulatory framework that providers that do not pose specific increased risk should have less regulatory burden, now that the regulatory framework is established.

We undertook a preliminary consultation on a range of quality and standards issues during the winter of 2020-21.¹ The current consultation takes forward some aspects of that consultation and makes more detailed proposals about new regulatory requirements. We expect to take forward other aspects of the earlier consultation in due course, and this will include proposals in relation to our approach to the regulation of student outcomes.

This consultation sets out the background to our proposals, the reasons we are proposing to make changes and what we expect those changes to achieve. It constitutes our consultation for the purposes of sections 5(5) and 75(8) of the Higher Education and Research Act 2017 (HERA). In formulating our proposals, we have had regard to:

- The responses to the first consultation we conducted during the winter of 2020-21 – our analysis of those responses relevant to the current proposals is in www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/
- Our general duties under section 2 of the Higher Education and Research Act 2017 (HERA)
- The public sector equality duty
- Statutory guidance issued by the Secretary of State
- The Regulators' Code
- The consultation questions are listed in full in [Annex G](#).

For more information about our approach to regulation, including our requirements for quality and standards, see the regulatory framework at www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

¹ See www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

Who should respond to this consultation?

We welcome responses from anyone with an interest in the regulation of English higher education.

We are particularly (but not only) interested in hearing from **students (particularly those from underrepresented groups) and their representatives, and higher education providers that are registered or applying for registration**. These are the groups that may be most affected by our proposals. We welcome the views of all types and sizes of provider.

How to respond

The consultation closes at **noon on 27 September 2021**.

Please submit your response by completing the online form at <https://survey.officeforstudents.org.uk/s/qualityandstandardsconditions/>

If you require this document in an **alternative format**, or need assistance with the online form, please contact regulation@officeforstudents.org.uk. **Please note:** this email address should **not** be used for submitting your consultation response.

Consultation principles

We are running this consultation in accordance with the government's consultation principles².

At the OfS we are committed to taking equality and diversity into account in everything we do. We have a legal obligation to show due regard to the public sector equality duty.

How we will treat your response

We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details. If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy³).

² See www.gov.uk/government/publications/consultation-principles-guidance.

³ Available at www.officeforstudents.org.uk/ofs-privacy/.

We may need to disclose or publish information that you provide in the performance of our functions, or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

Next steps

Subject to the representations received as a result of this consultation, we intend to make a decision on whether and how to implement the proposals in later in 2021.

Introduction

1. The OfS's primary aim is to ensure that English higher education is delivering positive outcomes for students – past, present and future. Our regulatory objectives reflect the things that matter most to students: high quality courses, successful outcomes, and the ongoing value of their qualifications. We use the tools in the regulatory framework to mitigate the risk that these regulatory outcomes are not delivered in practice for students from all backgrounds.
2. There is no national curriculum for higher education; the regulator does not determine the detailed content of courses or examinations, or decide how many qualifications should be awarded with which grades. The strength and international reputation of the English higher education system is built on the autonomy of institutions to decide these things for themselves. As long as courses remain high quality, outcomes good, and standards rigorous, the OfS will not intervene. But when courses fall below our minimum requirements, or we are concerned that they may do so, we need to be able to act to protect the interests of students (including those from underrepresented groups⁴) and taxpayers, and the reputation of the sector. Visible, active regulation in areas that require improvement demonstrates that these issues are taken seriously.
3. Our approach to the regulation of quality and standards is predominantly principles-based. For example, students' academic experience must be 'high quality', but we do not think it is for us to set out a prescriptive list of things that should or should not be taught. This is why, in some important areas, we expect to need to draw on the judgement of academic experts as we decide whether our minimum requirements are satisfied.
4. Our principles-based approach allows us to set minimum requirements that are applicable to all providers, and all types of course. In this way, we create a minimum baseline of protection for all students and for taxpayers. Beyond this minimum, we encourage choice for students and innovation by autonomous providers free to pursue excellence as they see fit. The proposals in this consultation are consistent with this established regulatory approach. We have, however, listened to points made in response to the phase one consultation that providers want further information about how our principles-based regulation is intended to work in practice and we have

⁴ We use the term 'students from underrepresented groups' throughout this consultation. It includes all groups of potential or current students where the OfS can identify gaps in equality of opportunity in different parts of the student lifecycle. In determining the groups falling within this definition, the OfS has given due regard to students who share particular characteristics that are protected under the Equality Act 2010, as well as students who are otherwise underrepresented or disadvantaged. When referring to underrepresented groups, the OfS considers this to include, among others, students from deprived areas, areas of lower higher education participation, or both; some black, Asian and minority ethnic students; mature students; and disabled students (whether or not they are in receipt of Disabled Students' Allowance). There are some student groups with protected characteristics under the Equality Act 2010 where the OfS has been prevented from determining whether they are underrepresented at different points of the student lifecycle, because either: data is collected at a national level but there are gaps in disclosure and absence of comprehensive data (for example in relation to religion or belief, sexual orientation and gender reassignment); or data is not collected at a national level (for example in relation to marriage and civil partnership, and pregnancy and maternity).

designed the proposals in the phase two consultation to be more precise and more explicit about our requirements.

The reasons for this consultation

About this consultation

5. This consultation builds on the phase one consultation we launched at the end of 2020 and which sought views on the principles and definitions that we proposed should underpin our approach to the regulation of quality and standards.⁵ The current consultation – the phase two consultation – takes into account the responses to the phase one consultation and sets out in more detail how we propose those principles and definitions would apply in practice.
6. As we considered the responses to the phase one consultation, we noted that respondents often provided a lot of information about the aspects of the proposals that related to student outcomes, and less information about other aspects of the proposals. We continue to take the view that the outcomes delivered for students are an integral part of an assessment of the quality of a higher education course and we will bring forward detailed proposals about our future approach to regulating student outcomes in the autumn. The current consultation focuses on those aspects of quality that are more qualitative and our intention in consulting on this separately is to allow providers and others an opportunity to engage with these important proposals. In the current consultation, therefore, we use the term ‘quality’ to mean these qualitative aspects of quality,⁶ and the proposals in the current consultation are designed to ensure that our requirements in this area are clear, rigorous, and allow us to take action with confidence where this is necessary.
7. Our analysis of the phase one consultation responses that are relevant to the current consultation, together with our policy response to the main points made by respondents, is published on our website.⁷

Reasons for this consultation

8. The OfS’s current approach to regulating quality and standards (which is delivered through our ‘B conditions’) was set out in paragraphs 10-17 in the phase one consultation document and is not reproduced here.

⁵ See www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

⁶ Where we refer to the ‘B conditions’ in this document, this should be taken to exclude current condition B3 (student outcomes) and any proposed quantitative condition which regulates student outcomes (unless the context suggests otherwise). ‘B conditions’ also excludes condition B6 (Teaching Excellence and Student Outcomes Framework participation), as consideration of this condition is outside of the scope of this consultation.

⁷ See www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/.

9. Since April 2018, we have used this approach to make assessments of providers seeking registration in relation to the initial B conditions as part of the registration process. We refused registration to a number of providers because we did not consider that they satisfied our quality requirements. We also imposed post-registration requirements where we considered the risk of a future breach of one or more of the B conditions was increased. Subsequently, we have reviewed the action plans produced by these providers and considered the outcomes of reviews for some of them by the designated quality body.⁸ We have also considered cases where our analysis suggests that there is evidence of unexplained grade inflation in the classification of undergraduate degrees.
10. This regulatory activity has informed our understanding of the way in which our quality and standards requirements are defined, how they work in practice, the protection they provide to students, and the challenges some providers have experienced in understanding and meeting them. We have drawn on this experience in forming our views about the appropriate next steps for our approach to regulating quality and standards.
11. Our experience of regulating over the past three years also suggests we need to do more to make clear the significant latitude available to providers in a principles- and risk-based regulatory environment. The proposals in this consultation mean that the highest quality providers should normally expect to meet our minimum baseline requirements comfortably, and should not need to expend significant effort to demonstrate that requirements are satisfied. This approach allows us to focus regulatory attention where it is needed and to minimise regulatory burden that is not adding sufficient value for providers or students.
12. We have considered responses to our phase one consultation and agree with the points some respondents made, in particular about the need for more explanation and clarity about our requirements and for there to be flexibility in the regulatory system to facilitate diversity of courses and providers. We did not generally find consultation responses arguing for the retention of the current B conditions. We did, however, find evidence in a number of responses that confirms our view that providers and others do not understand our current requirements and approach, including the relationship between the current B conditions and the UK Quality Code for Higher Education (the Quality Code), and the different responsibilities of the OfS and the designated quality body.
13. Taken together, these points have led us to conclude that we should proceed with a phase two consultation that contains proposals for revisions to the B conditions and to the guidance that accompanies these.

⁸ The designated quality body is an organisation designated by the Secretary of State under paragraph 3 of schedule 4 of HERA. The Quality Assurance Agency for Higher Education is currently the designated quality body.

Our proposals

What are we proposing?

14. We consider that the regulatory requirements we set for quality and standards need to be expressed clearly and comprehensively to allow providers to understand their obligations and the approach the OfS is likely to take to regulating these important issues. We also consider that the OfS needs to be able to regulate with confidence where it considers that courses are not of sufficient quality or where standards are not maintained. This is important to ensure that higher education in England is high quality and that students and taxpayers continue to have confidence in the credibility of degrees awarded.
15. The government's policy priorities for increased flexible learning and for growth in higher technical qualifications prompted questions from respondents to the phase one consultation about the extent to which the proposed definitions were suitable for this type of higher education provision and whether it should be within the scope of the OfS's approach. Our view is that such provision is within scope of the current B conditions, but the consultation responses underline the need for this to be clear. We consider that such provision should also be within the scope of the proposed revised B conditions and this is reflected in the current drafting of those proposed conditions. We have explained this more fully in our proposals below.
16. In this consultation we propose to maintain the subject matter covered by the existing B conditions, but revise those conditions to ensure our requirements are clearly expressed in a way that would allow us to take action where this is necessary. The proposals would result in:
 - a. Proposal 1: for registered providers, three ongoing conditions of registration relating to quality and covering:
 - i. Academic experience
 - ii. Resources, support and student engagement
 - iii. Assessment and awards.
 - b. Proposal 2: for registered providers, one revised ongoing condition of registration relating to standards that extends the definition of 'sector-recognised standards' to allow the regulation of undergraduate degree classifications.
 - c. Proposal 3: for providers seeking registration, two new initial conditions of registration that set evidence requirements in a way that is clearer and easier for high quality new providers to meet.
 - d. Proposal 4: revised guidance for each of these conditions that includes our approach to gathering evidence, assessment and compliance.

17. The proposed wording for the revised conditions of registration, as well as the associated guidance in the regulatory framework, is set out at Annexes A, B and C to this consultation.
18. We are also including in this consultation proposals for the way in which the OfS would operate its responsibilities for conducting External Quality Assurance (EQA) for registered providers delivering integrated higher and degree apprenticeships and how that activity would inform our judgements about aspects of the quality of apprenticeships (proposal 5).
19. We consider that the proposals in this consultation are a necessary and proportionate means to:
 - a. Ensure that all students are protected from providers delivering courses below a minimum baseline level of quality, or granting awards or qualifications that do not meet sector-recognised standards. All students, including those from underrepresented groups and with protected characteristics, should have this protection regardless of what or where or how they study.
 - b. Provide clarity to providers, students and others about the regulatory requirements in place for quality and standards and ensure that there is public confidence, in the UK and internationally, in higher education awards and qualifications and the quality of courses that lead to them.
 - c. Ensure that the OfS can identify compliance concerns about quality and standards, and intervene rapidly to investigate and, if necessary, take action to resolve them.
20. An explanation of the reasons for, and the effect of, our proposals, as well as how they address our regulatory concerns, is set out below.
21. In developing these proposals, we have considered alternative options for securing our objectives. These options, and the reasons why we do not propose to take them forward, are addressed in the sections that follow, in our analysis of consultation responses and in Annex E.

Proposal 1: impose three general ongoing conditions of registration relating to the quality of a provider's courses

Proposals that apply to all three conditions

22. We propose to impose the general ongoing conditions B1, B2 and B4 contained in Annex A on all registered providers. This proposal builds on the definition of 'quality' that was subject to consultation in phase one.⁹ We have given careful consideration to responses to the phase one consultation as we have developed the proposed revised

⁹ See phase one consultation, paragraphs 29-54 and Table 1 of Annex A, available at www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

conditions. The draft conditions in Annex A reflect our consideration of the points made in consultation responses which is set out in our analysis of consultation responses.¹⁰

23. The proposed conditions relate to the following subject matter:
- a. Academic experience. This condition would require a registered provider to ensure that courses deliver a high quality academic experience for students. It includes requirements for the content, structure and delivery of a course as proposed in the definition of quality included in the phase one consultation.
 - b. Resources, support and student engagement. This condition would require a registered provider to ensure that the students registered on a course receive the resources and support necessary to have a high quality academic experience and succeed on, and beyond, their course. It includes requirements relating to human, physical and digital resources as was proposed in the definition of quality included in the phase one consultation. It also sets out a minimum requirement for student engagement.
 - c. Assessment and awards. This condition would require a registered provider to ensure that assessment of students is rigorous and consistent, and the awards and qualifications granted to students are credible and hold their value over time. It provides more detailed information about the matters that would be within scope than was included in the definition of quality in the phase one consultation, in response to requests for further detail about this.
24. In response to feedback on the phase one consultation, we are not proposing a separate condition relating to access and admissions, and have instead addressed some of those issues in proposed condition B2 – see paragraphs 48-52 below.
25. Each of the proposed conditions is expressed as an over-arching principle, with explanation of the matters that fall within the scope of that principle set out through definitions of key terms. These conditions would replace the current conditions B1, B2 and B4 and cover broadly the same subject matter. The main change from the current conditions is that the proposals include more detail about the matters that would fall within the scope of each condition and how these would be interpreted.
26. The revised drafting is intended to ensure that minimum ongoing requirements for quality are expressed comprehensively and clearly. This should benefit providers because they will have greater certainty about the matters that are in scope, and students because they can be clear about the aspects of a provider's activities that fall within the scope of the OfS's regulation. In addition, regulating quality is one of the most important things the OfS does and we need to be able to do so rigorously and with confidence that we can take action in areas of non-compliance. Clarity about our requirements makes it easier for us to do so.

¹⁰ See www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/.

27. A number of respondents to the phase one consultation made points about the potential regulatory burden of the proposals, in particular that the proposals would introduce greater complexity and that further information was required to understand how burden would be reduced in practice. Some respondents suggested that clarifying that the scope of regulation extends to all higher education courses and students would increase burden and that this would disproportionately affect smaller providers, including pathway providers and further education colleges. We consider that increased clarity about our requirements will reduce regulatory burden for all providers.
28. We also consider that our proposed approach would give all types of providers flexibility to align their internal quality arrangements with our regulatory requirements in ways that are efficient and effective. Because we do not mandate any particular approach, each provider is able to decide how to develop its courses and organise its internal processes and governance arrangements in a way that best fits its size and context.
29. The guidance that accompanies the conditions reflects the fact that these conditions are not being proposed as initial conditions – see proposal 3 for our proposed approach to initial conditions. The guidance also provides more information about the approach we propose to take to gathering evidence and considering compliance issues and, in particular, the need for expert academic advice in areas relating to the curriculum and pedagogy – see proposal 4 below.
30. These conditions would apply to all registered providers. All of a provider’s higher education courses, and the students on those courses, would be within the scope of the conditions, irrespective of where or how courses are delivered or who delivers them. It includes:
- a. Any higher education course (whether that course is recognised for OfS funding purposes or not), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules at any level, and apprenticeships¹¹ are included within the scope of these conditions.
 - b. All of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. For example, the conditions would apply where a registered provider is responsible (only) for granting awards to students registered with and taught by another provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
31. The reason for this approach is to ensure that all students benefit from regulatory protection where a registered provider is involved in their higher education course, regardless of the type of course they choose, or who delivers that course. This is consistent with ensuring both quality and equality of opportunity. We have considered in particular the points made in response to the phase one consultation about:

¹¹ Some respondents to the phase one consultation asked for more information about the OfS’s role in the regulation of apprenticeships and that has been included in the analysis document.

- a. Whether modular and flexible courses should be within the scope of our regulation of quality and standards.
 - b. Whether courses which are not funded by the OfS are within our regulatory remit and whether inclusion of these courses in the scope of our regulation increases regulatory burden.
 - c. Whether the inclusion of partnership arrangements would disincentivise partnership arrangements, lead to dual regulation and increased burden.
32. The OfS is permitted to regulate modular and flexible courses under HERA, and the current B conditions apply to these courses.¹² We consider that such courses should also be within scope of proposed conditions B1, B2 and B4 (as well as the other proposed B conditions, B5, B7 and B8) and this is reflected in the current drafting.¹³ This is for the reasons explained in paragraphs 34 and 35 below. We note that some respondents commented that modular and flexible courses should not be within scope of the revised B conditions. Our response to those points is set out in paragraphs 138-140 of our analysis of consultation responses.
33. The OfS is empowered to regulate the quality and standards of ‘higher education courses’ as defined in HERA.¹⁴ This definition is not linked to our funding power. This means that we are able to regulate the quality and standards of a higher education course whether or not we are able to, or choose to, fund that particular course. As with the current B conditions, we consider that proposed B1, B2 and B4 (as well as the other proposed B conditions, B5, B7 and B8) should cover courses regardless of whether or not the OfS funds them, and this is reflected in the drafting. Our funding activities are determined by policy decisions about the purposes to which a limited amount of funding should be directed and our need to have regard for government priorities. Our role in relation to the regulation of quality and standards is to provide protection to all students. For example, providers in the Approved registration category are not eligible for OfS funding and it would not be right to decide on that basis that their students should not have the protection of our quality and standards conditions. We recognise that any form of regulation brings with it a regulatory burden, but our view is that it would not be in the interests of students for courses that we happen not to fund to be outside the scope of the minimum requirements we impose for quality and standards.
34. We recognise that higher education providers deliver a diverse range of courses. However, we do not consider that, as a matter of principle, different groups of students should be subject to different minimum regulatory requirements for quality and standards as a result of the type of course they study, in the same way that we do not consider that different groups of students should be subject to different requirements as a result of their prior educational attainment or other personal characteristics. To do so

¹² See the definition of ‘higher education course’ in section 83 of HERA and Schedule 6 of the Education Reform Act 1988.

¹³ See proposed definition of ‘higher education course’ at Annexes A-C.

¹⁴ Sections 13(1)(a) and 83 of HERA.

would suggest that lower baseline requirements for quality and standards should apply for students because of the type of course they choose to study.

35. Our view is that it is necessary to apply the same requirements to all providers to ensure that all students benefit from regulatory protection and that taxpayers' investment in higher education funds the provision of high quality courses. There was no disagreement with this principle in relation to the quality of courses or standards of awards in responses to the phase one consultation. We would not set lower regulatory requirements for providers that recruit students from underrepresented groups, or with protected characteristics. This is important because all students are entitled to the same minimum quality. We do, however, take the view that if a provider chooses to recruit students from underrepresented groups and those students require particular resources or support to succeed, that must be provided – see the explanation of the effect of proposed condition B2 below.
36. In relation to partnership arrangements, respondents suggested that holding a lead partner to account for the quality and standards of courses delivered by its delivery partners, regardless of the nature of the contractual relationship between partners, would disincentivise future partnership arrangements and lead to dual regulation. We would not wish to unnecessarily curtail competition between providers, impose unnecessary regulatory burden or limit choice for students, but we consider that these should not take precedence over ensuring a minimum level of protection for students.
37. Our proposals create incentives for lead providers to ensure that their current and prospective delivery partners meet our requirements for quality and standards on an ongoing basis. We take the view that it is not appropriate for a lead provider to seek to generate income, or gain other benefits, through partnership arrangements while abrogating responsibility for the quality of those courses and the standard of awards. As with any intervention, we are required to act proportionately and so would take into account the context of a particular partnership arrangement in our regulatory decisions. For a lead provider with degree awarding powers, concerns about quality and standards of any award granted in the provider's name would be relevant to decisions we make about the variation or revocation of those powers. This means that such a provider must be responsible for the quality and standards of courses delivered by its partners.
38. Similarly, we have considered points made in relation to courses delivered to students outside the UK, whether through partnership arrangements or not – see paragraphs 154-158 in the analysis of consultation responses. Our reasoning for including such courses within the scope of conditions B1, B2 and B4 (as well as the other proposed B conditions B5, B7 and B8) is as set out above – we take the view that a provider's commercial or other interests cannot override the need to provide regulatory protection to students studying outside the UK, and that such students should have the same rigorous education as UK-based students.
39. Subject to the outcome of this consultation, we envisage amending definitions of 'provider' in the regulatory framework to reflect final decisions on the proposed scope

and application of the B conditions to providers that are directly and indirectly involved in provision of higher education, both in the UK and beyond.

40. Some respondents to the phase one consultation had interpreted the proposed definition for quality as being prescriptive. We consider that we have taken a principles-based approach to proposed conditions B1, B2 and B4 which gives providers significant autonomy to determine how to comply (for example, condition B1 would require a course to be 'up-to-date', allowing the provider to meet this requirement however it chooses). We are taking a principles-based approach to setting minimum requirements for quality because we do not wish to push providers to adopt a particular approach to the way they design and deliver higher education courses, as this would inhibit innovation. We do not consider a more rules-based, prescriptive, approach to be in the interests of students or of providers themselves, not least because we understand the importance of institutional autonomy in relation to quality.
41. Other respondents asked for more detailed information about how such principles would apply in practice. This is why we have included in each condition (including conditions B5, B7 and B8, which are discussed below) definitions of key terms. We have also provided in the guidance for each condition non-exhaustive lists of examples to demonstrate how we would approach the interpretation of that condition.
42. Some respondents commented that the proposed definitions should not include input measures¹⁵ and should instead exclusively focus on outcomes. A focus on input measures was seen by some respondents as infringing providers' autonomy and as detrimental to innovation in approaches to teaching and learning. We agree that the outcomes achieved for students are important and that is part of our approach. But we also think it is necessary to regulate the quality of the courses that lead to those outcomes, and the resources and support students need to succeed. This is because students and taxpayers are investing in an academic experience as well as an outcome and we would not consider it sufficient for good outcomes to be achieved if the experience that led to them is not of a minimum quality. We have therefore decided to retain requirement for inputs in the proposed revised conditions.
43. The guidance that accompanies each proposed condition has been simplified so that it no longer refers to non-regulatory guidance published by other organisations, namely the Quality Code. A provider is free to choose to follow the guidance in the Quality Code where that guidance does not, in the OfS's view, conflict with the requirements of the proposed conditions, but it does not need to do so to remain compliant with the conditions. A substantial number of comments were made in response to the phase one consultation about the role of the Quality Code. Our response to these comments and the reasoning for our decision not to include references to the Quality Code in the conditions or guidance is set out in paragraphs 203-227 in our analysis of consultation responses. Subject to the outcome of this consultation, we envisage removing the

¹⁵ These are a provider's inputs into its courses, for example, the learning resources provided.

definition of 'UK Quality Code' from the glossary of the regulatory framework to reflect final decisions on the proposed scope and application of the B conditions.

44. In relation to each condition, more information about the proposed condition, the effect of the proposal, and the reasoning for our approach is set out below. We have set out our response to the main points made by respondents to the phase one consultation and the reasoning for the policy position we have taken on those points. The relevant paragraphs are 12-126 and that detailed reasoning is not reproduced here.

Condition B1 – academic experience

45. Condition B1 would require a registered provider to ensure that students receive a high quality academic experience, including by ensuring that courses are up-to-date and provide sufficient challenge, that course structure is coherent, and that courses are effectively delivered, for example, ensuring an appropriate balance between different learning activities. It therefore explicitly brings within its scope the features of a higher education course that the OfS's considers essential for a high quality academic experience.
46. These requirements for a high quality academic experience apply in respect of each higher education course provided by a registered provider (see paragraphs 30 to 38 above), regardless of the type of students recruited to a particular course, and represent a set of minimum regulatory requirements that would apply to all students in all contexts. Setting an absolute requirement in this way serves to ensure that all students, regardless of their background or mode, level or location of study, study on high quality courses that equip them to succeed during and after their studies. It also ensures that the academic rigour and reputation of the English higher education sector are maintained.
47. The proposed condition and guidance (see [Annex A](#)) contain definitions of key terms, and examples of the matters that would fall within those definitions. We would draw particular attention to the effect of the following:
 - a. The condition is drafted to ensure that it will continue to be relevant as academic disciplines and pedagogy develop. Such 'future-proofing' is contained in the definition of 'up-to-date' which requires a provider to ensure that a course appropriately reflects developments in teaching and learning. This would include developments in digital teaching and learning. The reasoning for this is that we take the view that a high quality course must continue to contain up-to-date content that is delivered in an up-to-date way to students.
 - b. The condition is drafted to apply to all types of course and we have carefully tested whether the terms and definitions used in the proposed condition are relevant for modules and whether they would work for the development of flexible provision. We consider that requirements for a course to be up-to-date, provide educational challenge, develop relevant skills, and effective delivery are as relevant to a module or micro-credential as to a larger course of study.

- c. The condition is drafted to apply to each provider regardless of whether it is responsible for the day-to-day delivery of the course to students. This is because we do not wish to incentivise contractual arrangements between providers that seek to limit regulatory liability to one of the partners.
- d. The condition would mean that each higher education course, as appropriate to the subject matter of the course, would require students to develop relevant skills. In response to feedback from the phase one consultation, we have defined 'relevant skills' using the same categories used in the degree classification descriptors we are proposing to adopt as part of condition B5 (see proposal 2). Respondents considered that consistency in the way we describe and categorise different types of skills would be helpful, and we have adopted this approach. It is important to note, however, that proposed condition B1 would apply to a much wider range of courses than the classification descriptors which focus specifically on Level 6 (bachelors' degree with honours) qualifications.

Condition B2 – resources, support and student engagement

- 48. Condition B2 would require a registered provider to ensure that the students registered on a course receive the resources and support to ensure a high quality academic experience for those students, and their success on, and beyond, their course. It requires a provider to understand the capabilities, potential and needs of the particular cohort of students registered on a course and to ensure that students have the resources and support they need to succeed. It follows that a provider that chooses to provide courses to students less well-prepared for higher education, perhaps because they have lower levels of prior attainment, would need to ensure sufficient resources and support, even if this may require investment that would not be necessary for a provider that has well-prepared students. The condition does not restrict recruitment of any type of student provided resources and support are consistent with the capability and needs of those students.
- 49. A small number of responses to the phase one consultation had interpreted our proposals as imposing additional requirements on a provider to identify the support needs of individual students at the point of admission. This was not the intention and we have therefore not referred to admissions within the proposed condition. Our reasoning for this is set out in paragraphs 46-55 in the analysis of consultation responses.
- 50. The requirements in proposed condition B2 mean that a provider is expected to ensure that there is coherence between the way a course it provides is designed and delivered to provide a high quality academic experience (as regulated through proposed condition B1), the recruitment strategy and the students registered on that course, and the resources and support those students need to succeed. For example, a provider may wish to deliver a course that requires substantial self-directed learning from students, but if the students likely to be registered are not equipped to succeed in that learning environment, the provider will need either to provide the resources and support those students need, or to change the approach to the delivery of the course.

51. The condition also contains a minimum requirement for student engagement that requires a provider to ensure that opportunities for students to contribute to the future development and delivery of their course are built into the course practices, to ensure those students have a high quality academic experience and succeed in and beyond the course. There were a number of consultation responses that argued that we should go further and be more prescriptive in this area, including by making explicit requirements for the role of student representatives and consultation with students. In response we have included in the proposed guidance for the condition information about our expectations for student involvement in a provider's governance arrangements. More generally, we have taken the view that our role is to regulate minimum requirements that are applicable to all providers and all courses and, in an increasingly diverse sector, it would not be appropriate to set expectations that may not be appropriate for all contexts. For example, a student who chooses a short professionally-oriented course may have different views about the need for student engagement activities than a student beginning a three-year campus-based undergraduate course, and providers need to be able to respond to both views.
52. The proposed condition and guidance (see [Annex A](#)) contain definitions of key terms, and examples of the matters that would fall within those definitions. We would draw particular attention to the effect of the following:
- a. The condition applies in respect of each higher education course provided by a registered provider (see paragraphs 30 to 38 above), including modules or micro-credential courses and courses provided in partnership with other providers.
 - b. A provider is expected to fund the provision of resources, without additional charge beyond the course fee, where the students registered on the course are not reasonably able to provide resources themselves, and where the availability of those resources is necessary to ensure a high quality academic experience for students and for those students to succeed in and beyond higher education. A provider may determine the approach it takes to making such resources available to students, for example, on the basis of a loan of resources for the duration of the course.
 - c. The condition puts in place requirements for resources and support for 'digital learning' (in addition to requiring resources and support for learning in person). This means that, where all or part of a course is delivered digitally, the resources and support needed for students to succeed in that environment need to be put in place. This does not create a requirement that a course must be delivered digitally, but ensures that students are able to succeed where that is the case.
 - d. 'Support' does not extend to non-academic support such as the provision of counselling services, or financial support such as bursaries that may be covered by a provider's access and participation plan. The reason for scoping the condition in this way is that we are clear that the OfS can and should regulate minimum requirements for academic support, because this is directly relevant to the quality of a course and the likely success of students. We have not, to date, taken the

view that we should set and enforce requirements for support of other types; if we were to consider this necessary in future we would consult separately.

- e. The condition puts in place a requirement that the staff team that designs and delivers a course should be collectively sufficient in number, appropriately qualified and deployed effectively to deliver in practice. In reaching judgements about whether this requirement is satisfied, our focus is likely to be on the staff team as a whole, rather than on individuals within that team. We take the view that a 'staff team' includes individuals employed by a provider or otherwise deployed to teach on a course, for example including but not limited to visiting lecturers, or research students who undertake teaching activity alongside their research.

Condition B4 – assessment and awards

53. Condition B4 would require a registered provider to ensure that students are assessed effectively, there is rigour and consistency in assessment practices and that the awards and qualifications granted to students are credible and hold their value.
54. These requirements apply in respect of each higher education course provided by a registered provider (see paragraphs 30 to 38 above), regardless of the type of students registered on a particular course, and represent a set of minimum regulatory requirements that would apply to all students in all contexts. Setting an absolute requirement in this way serves to ensure that all providers adopt effective, rigorous and consistent assessment practices and that the awards and qualifications granted as a result are a reliable indicator of the achievement of students. We consider this necessary to protect the reputation of the English higher education sector and students' and taxpayers' investment in higher education. It follows that the use of assessment practices that have the effect of reducing academic rigour for some or all students in some or all parts of a course would not be permitted. The proposed condition does not affect a provider's duty under the Equality Act 2010 to make reasonable adjustments for students with a disability in respect of matters that do not relate to academic and other competence standards.
55. The condition does not prescribe particular forms of, or approaches to, assessment and we would expect providers to innovate in their assessment practices, for example in relation to digital assessment, provided that such innovations are consistent with the requirements in the condition designed to maintain rigour. We would expect assessment of apprenticeships to be consistent with IfATE's requirements – see proposal 5 below.
56. The proposed condition and guidance (see [Annex A](#)) contain definitions of key terms, and examples of the matters that would fall within those definitions. We would draw particular attention to the effect of the following:
 - a. The condition applies in respect any type of award or qualification granted in respect of a higher education course, including degrees (including foundation degrees), diplomas, certificates, and awards of credit.

- b. The condition puts in place a requirement for academic regulations to be designed to ensure that awards and qualifications are credible. In this context, the term ‘academic regulations’ is defined broadly to include the provider’s requirements governing how students’ work is assessed, how student academic discipline is addressed, the requirements for awards and the way in which classifications are calculated.
- c. The condition requires a provider to design assessments to minimise academic misconduct and facilitate its detection. This includes presenting work for assessment that is not the work of the student being assessed and includes, but is not limited to, the use of services offered by an essay mill.
- d. The condition puts in place a requirement for awards and qualifications granted to students to be credible at the point of being granted and when compared to those granted previously. The definition of ‘credible’ means that the OfS will judge whether awards and qualifications reflect students’ knowledge and skills and in doing so, may take into account a range of factors that include an assessment of the credibility of awards over time. This is an important component of our approach to tackling unwarranted grade inflation, where the same student achievement is rewarded with higher classifications over time.

Question 1a: Do you agree or disagree with the proposed introduction of ongoing condition B1 and associated changes to the OfS’s regulatory framework as set out in Annex A?

Question 1b: Please give the reasons for your answer to Question 1a.

Question 1c: Do you have any alternative suggestions to the proposal in Question 1a?

Question 2a: Do you agree or disagree with the proposed introduction of ongoing condition B2 and associated changes to the OfS’s regulatory framework as set out in Annex A?

Question 2b: Please give the reasons for your answer to Question 2a.

Question 2c: Do you have any alternative suggestions to the proposal in Question 2a?

Question 3a: Do you agree or disagree with the proposed introduction of ongoing condition B4 and associated changes to the OfS’s regulatory framework as set out in Annex A?

Question 3b: Please give the reasons for your answer to Question 3a.

Question 3c: Do you have any alternative suggestions to the proposal in Question 3a?

Proposal 2: impose one general ongoing condition of registration relating to the standards of a provider’s courses

57. We propose to impose the general ongoing condition B5 contained in [Annex B](#) on all registered providers. This would replace current condition B5. New condition B5 would require a provider to ensure that standards set for its courses comply with certain

‘sector-recognised standards’, namely ‘threshold standards’¹⁶ currently referred to in the OfS’s regulatory framework and new degree classification descriptors for bachelors’ degrees with honours. The condition would also require providers to ensure that awards are only granted to students who meet these standards.

58. This proposal takes forward the definition of ‘standards’ that was subject to consultation in phase one and takes into account the feedback from respondents to that consultation.¹⁷ We have set out our response to the points made by respondents to the phase one consultation and the reasoning for the policy position we have taken on those points. The relevant paragraphs are 98-114 and that detailed reasoning is not reproduced here.
59. This proposal extends the definition of ‘sector-recognised standards’ currently included in the regulatory framework to include standards for the classifications for Level 6 (bachelors’ degree with honours) qualifications. This would allow the OfS to regulate the classifications awarded to students completing undergraduate degrees. Because these standards have been developed by the sector and we are adopting them unchanged, proposed condition B5 is necessarily more rules-based than the approach we are proposing for the conditions relating to quality.
60. The subject matter of the proposed condition means that a provider would need to ensure that:
 - a. The standards set for its students, for example the volume and level of study required for an award, and the achievement required of students for an award and a classification, are consistent with sector-recognised standards.
 - b. The standards achieved in practice by students, as demonstrated in their assessed work, are consistent with sector-recognised standards.
61. The scope of proposed condition B5, in terms of the courses and providers to which it would apply, would be the same as for proposed conditions B1, B2 and B4 as set out and explained in paragraphs 30-38 above. This means that the condition applies in respect of each higher education course provided by a registered provider, including modules or micro-credential courses and courses provided in partnership with other providers, and regardless of whether the provider is involved in granting awards for the course.
62. We take the view that it is necessary to apply the same requirements to all courses and all providers to ensure that all students benefit from regulatory protection and that

¹⁶ A ‘threshold standard’ is the minimum acceptable level of achievement that a student has to demonstrate to be eligible for an award.

¹⁷ See Consultation on regulating quality and standards in higher education: Analysis of responses, paragraphs 98-114 www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/.

taxpayers' investment in higher education funds the provision of courses that maintain standards and lead to reliable awards and qualifications.

63. The guidance that accompanies the condition reflects the fact that this condition is not being proposed as an initial condition – see paragraphs 74-84 below for our proposed approach to initial conditions. The guidance also provides more information about the approach we propose to take to gathering evidence and considering compliance issues and, in particular, the requirement for us to seek expert advice from the designated quality body in areas relating to standards – see proposal 4 below.

Sector-recognised standards

64. HERA permits the OfS to impose a condition of registration that relates to the standards applied to higher education, including requiring particular standards to be applied. Section 13 of HERA says that where there are one or more 'sector-recognised standards', the condition regarding standards may relate only to the standards applied in respect of matters for which there are sector-recognised standards. The sector-recognised standards that we propose to use for the purpose of condition B5 (and initial condition B8 – see below) are those set out in Annex D.
65. Section 13(3) of HERA defines 'sector-recognised standards' as standards which have been determined by persons representing a broad range of registered higher education providers, and which command the confidence of registered higher education providers. We consider the standards contained in Annex D to constitute 'sector-recognised standards' for this purpose because:
- a. The standards contained in Part A of Annex D are taken from the version of 'The Frameworks for Higher Education Qualifications of UK Degree Awarding Bodies' published in October 2014¹⁸ (FHEQ). The FHEQ was created by the Quality Assurance Agency for Higher Education, a body which represents a range of higher education providers, following public consultation. Standards contained in the FHEQ were adopted into the OfS's regulatory framework as 'sector-recognised standards' as a result of consultation on the regulatory framework in 2017 and have been used as we have made decisions about compliance with the relevant conditions of registration.
 - b. The standards contained in Part B of Annex D are taken from the document published by the UK Standing Committee for Quality Assessment (UKSCQA) in June 2019.¹⁹ The UKSCQA is a sector-led body which represents a range of higher education providers. It approved the standards document following public consultation, concluding that the standards constituted 'sector-recognised standards' for the purposes of section 13(3) of HERA.

¹⁸ See <https://www.qaa.ac.uk/docs/qaa/quality-code/qualifications-frameworks.pdf>

¹⁹ See ukscqa.org.uk/2019/10/10/higher-education-sector-announces-new-initiatives-to-protect-value-of-uk-degrees/

66. The phase one consultation responses confirmed that the sector-recognised standards currently used for condition B5 and that relate to 'threshold standards' are widely recognised to be appropriate for use in the OfS's regulation – these are the standards in Part A of [Annex D](#). Responses were significantly less positive about the proposal to use the degree classification descriptors – the standards in Part B of [Annex D](#) – for regulatory purposes. Respondents' comments included that these descriptors were too new, did not meet the definition of 'sector-recognised standards' and would infringe providers' autonomy. We have carefully considered these points as set out in paragraphs 105-112 in the analysis of consultation responses.
67. We consider that the classification descriptors are appropriate for use in our regulation because they were developed by a sector-led group on behalf of the sector, subject to full consultation that tested the content of the standards and their status as 'sector-recognised standards', and have been available in draft or final form to providers since November 2018.
68. We have decided to continue to include the descriptors in the proposal for condition B5 because the view we set out in our phase one consultation still holds. The current sector-recognised standards included in the regulatory framework relate only to the minimum requirements a student needs to meet to be awarded a particular qualification. In other words, they describe the achievement of a student who is awarded a bare pass degree. They do not set out the minimum requirements for the classes of degrees awarded to undergraduate students; for example, they do not describe the achievement of a student who is awarded a first class degree.
69. The effect of adopting the classification descriptors for undergraduate degrees as part of condition B5 would be that we would be able to take regulatory action where classifications awarded to undergraduate students are not consistent with these standards. This means we would be able to regulate to ensure that students and other stakeholders could be confident in the value of undergraduate qualifications. It would also provide us with an additional regulatory tool to respond to concerns about grade inflation, which has been the subject of public concern, by allowing an assessment to be made about whether the classes of bachelors' degrees awarded by a provider meet, in theory and in practice, sector-recognised standards.
70. We recognise that seeking to regulate degree classification standards in the way proposed may represent an intrusion on providers' autonomy, including because degree awarding bodies have historically exercised their ability to set standards and award degrees independently. However, we consider that the need to protect standards is likely to outweigh considerations of institutional autonomy. Our interventions would be focused on cases where there is evidence that standards are not consistent with sector-recognised standards and so would be a proportionate response to a legitimate regulatory concern.
71. In drawing together these two sets of standards into a single document we have made some amendments to the explanatory text. This is to ensure the two parts fit together in a coherent way and that the explanation of the standards is consistent and clear for

users of the document. We do not consider that we have made any changes to the standards themselves.

72. Proposed condition B5 would apply to any awards granted in respect of a higher education course (including awards for apprenticeships and research courses and awards of credit), regardless of whether or not the award is granted by a degree awarding body.
73. Subject to the outcome of this consultation, we envisage amending definition of 'standards' in the glossary of the regulatory framework to reflect final decisions on the proposed scope and application of the B conditions.

Question 4a: Do you agree or disagree with the proposed introduction of ongoing condition B5 and associated changes to the OfS's regulatory framework as set out in Annex B?

Question 4b: Please give the reasons for your answer to Question 4a.

Question 4c: Do you have any alternative suggestions to the proposal in Question 4a?

Proposal 3: impose two initial conditions of registration, one relating to the quality of, and one relating to the standards applied to, a provider's course.

74. We propose to impose the initial conditions B7 and B8 contained in [Annex C](#) for all providers seeking registration with the OfS. This takes forward the proposal contained in the phase one consultation and takes into account the feedback from respondents to that consultation.²⁰
75. The proposed initial conditions are expressed differently from the ongoing requirements for quality and standards, to ensure that our regulatory approach appropriately reflects the context for a provider that may not yet have delivered higher education. During the initial registration process conducted shortly after the OfS was created most of the providers seeking registration were established higher education providers. The applications we now receive are more likely to be from providers without a track record of delivering higher education, or providers that are new to the regulated sector. Our experience is that such providers have found it difficult to identify evidence of compliance with the current B conditions, for example it can be difficult for a provider to demonstrate that students are provided with the support they need to succeed (as required by current condition B2) when it has no students. In addition, review teams deployed by the designated quality body have experienced challenges in formulating forward-looking 'in prospect' judgements for providers that are not yet delivering higher education and this presents challenges for the OfS in reaching judgements about whether initial conditions are satisfied.

²⁰ See www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/.

76. The proposed initial conditions therefore focus on the extent to which a provider (whether or not it has previously delivered higher education) will be able to comply with the ongoing conditions once it is registered, and are designed to test the credibility of its plans to do so. They relate to the following subject matter:
- a. Quality. This condition would require a provider to have a credible plan that, if implemented, would allow it to satisfy ongoing conditions B1, B2 and B4 from the date of its registration. The provider would also need to demonstrate that its plan would be properly resourced.
 - b. Standards. This condition would require a provider to demonstrate, in a credible manner, that the courses it plans to provide once it is registered are consistent with the sector-recognised standards set out in Annex D. In practice, this means that the provider would need to be in a position to satisfy condition B5 from the date of its registration.
77. The guidance that accompanies the conditions reflects the status of these conditions as initial conditions only. The guidance also provides more information about the approach we propose to take to gathering evidence and assessing a provider's compliance with the conditions – see proposal 4 below.
78. We are making this proposal because the view we set out in our phase one consultation still holds. We consider that the outcomes-focused formulation used in the current B conditions has presented challenges for new providers with no track record of delivering higher education. The responses to the phase one consultation were broadly supportive of this proposal and we are therefore proceeding with the proposal in this consultation. We have, however, reflected on the points made in response to the phase one consultation as we have developed our proposals.
79. Some respondents commented that the requirements for registration should not be less demanding for new providers, and that all new providers should be subject to review by the designated quality body.
80. The draft conditions in Annex C reflect these points and our consideration of the other points made in consultation responses as set out in the analysis of consultation responses.
81. Our proposals would have the effect of assisting providers seeking registration to understand our requirements and provide the evidence necessary to demonstrate that these have been satisfied. This will help, in particular, providers without a track record of delivering higher education to meet the requirements for registration in a more straightforward way. This will also have a positive impact on students considering study at such a provider because it will have satisfied a clear regulatory test of its future plans.
82. Taking a different approach to setting initial regulatory requirements for providers seeking registration will ensure our approach works more effectively for providers that have not previously delivered higher education. We expect the vast majority of future applications for registration to be from providers that are new to the regulated higher

education sector. This means that our approach to setting initial conditions needs to work effectively for these providers, providing clarity about our expectations and allowing us to assess evidence that a provider will be able to deliver high quality courses and protect standards, whether or not it currently delivers higher education courses. This approach would reduce the regulatory barriers for new providers seeking to access the regulated sector and therefore expand choice for students.

83. Some providers seeking registration will have a track record of delivering higher education. The effect of this proposal in those circumstances is that a provider would be able to use evidence drawn from its current or previous delivery to demonstrate the credibility of its plans to satisfy the ongoing conditions of registration. We have considered whether it is necessary to require all providers, including those with a track record, to produce a plan to inform our assessment of proposed initial condition B7. We have concluded that this is a proportionate way to ensure we are able to confirm that each provider will be able to satisfy the relevant ongoing conditions once it is registered. It is in the interests of students and taxpayers that we are able to do so. We envisage that the content of a provider's plan would be informed by its context and, therefore, that evidence from current or previous delivery of higher education would be relevant.
84. Subject to the outcome of this consultation, we envisage amending the regulatory framework to reflect that fact that the introduction of these initial conditions would change the current position that all initial conditions are also ongoing conditions. We also envisage amending the published guidance for providers seeking registration²¹ so that it refers to the two new initial conditions and sets out evidence requirements and an assessment approach consistent with those conditions – see paragraphs 138-140 below for further information about our proposed approach to the implementation of our proposals.

Question 5a: Do you agree or disagree with the proposed introduction of initial condition B7 and associated changes to the OfS's regulatory framework as set out in Annex C?

Question 5b: Please give the reasons for your answer to Question 5a.

Question 5c: Do you have any alternative suggestions to the proposal in Question 5a?

Question 6a: Do you agree or disagree with the proposed introduction of initial condition B8 and associated changes to the OfS's regulatory framework as set out in Annex C?

Question 6b: Please give the reasons for your answer to Question 6a.

Question 6c: Do you have any alternative suggestions to the proposal in Question 6a?

²¹ See Regulatory advice 2: Registration of current providers for 2019-20 www.officeforstudents.org.uk/publications/regulatory-advice-2-registration-of-current-providers-for-2019-20/ and Regulatory advice 3: Registration of new providers in 2019-20 www.officeforstudents.org.uk/publications/regulatory-advice-3-registration-of-new-providers-in-2019-20/.

Proposal 4a: commission the designated quality body to provide evidence about compliance with the initial conditions for a provider seeking registration

85. The guidance that accompanies each of the proposed initial conditions in [Annex C](#) sets out the approach we propose to take to assessing compliance with those conditions for the purposes of registration. We propose to commission the designated quality body to gather evidence in the following circumstances:
- a. For every provider seeking registration we would commission a standards review to provide evidence to inform our judgement about whether initial condition B8 is satisfied. We are required to seek advice from the designated quality body before making a judgement about a condition relating to standards and this ensures we have access to expert academic advice in this area.
 - b. Some providers apply to be authorised for New degree awarding powers (New DAPs) at the same time as applying for registration. In these circumstances, we would be able to ask the designated quality body to provide separate information that would allow the OfS to determine whether initial condition B8 is satisfied at the same time as the New DAPs test for the provider. This would streamline the process and reduce the burden of overlapping scrutiny for providers.
 - c. Where we determine it necessary to commission a quality review to provide evidence to inform our judgement about whether initial condition B7 is satisfied. We would expect to commission a quality review in most circumstances, but may decide not to do so, for example where a registered provider seeks registration in a different category, or where there are changes to a provider's legal form that result in a new registration application. The OfS is required by HERA to treat such cases as a new registration application and to decide whether each of the initial conditions of registration are satisfied. In such cases, the OfS may consider whether the evidence it already holds about a provider's history of compliance with the ongoing conditions for quality is sufficient and may decide not to commission review activity from the designated quality body.
86. Commissioning the designated quality body in this way means that we would have access to expert academic judgement as part of our decision-making process where we considered that necessary. We expect this to particularly be the case in areas relating to the curriculum and pedagogy. Review activity would require a provider to submit information to the designated quality body, and to cooperate with a visit from a review team which will include meetings with relevant staff and students. If, following this consultation, we decide to proceed with this proposal, the designated quality body is likely to consult on the approach it would take to conducting this review activity.
87. The reason for this is that we wish to ensure that all providers seeking registration are able to meet our requirements for quality and standards so that the interests of students

and taxpayers are protected from the date a provider is registered. Commissioning the designated quality body to gather evidence in this way, including with a visit to a provider, ensures a thorough and rigorous assessment of each provider that draws on the evidence-based judgements of academic experts.

88. In registration cases where the OfS considers the risk of non-compliance to be low, for example because a provider had previously been registered and had a positive compliance record, we would be able to adopt a more flexible approach that did not involve commissioning the designated quality body to provide evidence about initial condition B7. We would always need to seek the designated quality body's views before making a decision about compliance with initial condition B8.
89. The reason for this is that, in our experience, it is sometimes necessary for a registered provider to make a fresh application for registration. This is the case, for example, if a provider wishes to change registration category, or where a merger or acquisition results in a new legal entity. In these cases, the evidence we hold about a provider's previous compliance history may be sufficient to allow us to decide that initial condition B7 is satisfied. We consider it may appropriate to reduce regulatory burden in these circumstances by not routinely seeking evidence from the designated quality body if we consider the risk of non-compliance to be low.
90. Whether or not we have commissioned the designated quality body to provide evidence in relation to a provider, in our proposed approach we reserve the right to gather evidence ourselves or to ask another appropriate body or individual to do so. This proposed approach ensures that we would retain the flexibility to draw on a range of evidence for our decisions and would also allow us to make decisions more quickly for a provider that is not likely to represent increased risk.

Question 7a: Do you agree or disagree with the approach to information gathering and assessment proposed in paragraphs 85-90 above and as set out in the proposed guidance for initial conditions B7 and B8 in Annex C?

Question 7b: Please give the reasons for your answer to Question 7a.

Question 7c: Do you have any alternative suggestions to the proposal in Question 7a?

Proposal 4b: operate a flexible risk-based approach to evidence gathering and investigation for registered providers

91. The guidance that accompanies each of the proposed ongoing conditions in Annexes A and B sets out the approach we propose to take to assessing compliance with those conditions on an ongoing basis. We propose a flexible, targeted approach to investigation.
92. To make decisions about compliance for some of the subject matter of the proposed conditions we are likely to need to have access to the reasoned and evidence-based

judgements of academic experts, including with expertise in a particular subject area. For example, we would expect to draw on such expertise to inform a decision that a provider does not comply with the requirement in condition B1 for the content of its courses to be up-to-date, or that sector-recognised standards are not met as required by condition B5. The consequence of this is that the approach we take to gathering evidence needs to give us access to such expert academic judgement where we consider that necessary. At the same time, we need to be able to adopt a flexible approach to ensure we are able to respond to the circumstances of an individual case.

93. Where our general monitoring activity²² produces evidence that suggests there may be compliance concerns for an individual provider, we would be likely to adopt one of the following approaches:
- a. Engage with the provider to ensure it is aware of the issues.
 - b. Gather further evidence, from the provider or from elsewhere, to clarify whether a breach of one or more conditions is likely.
 - c. Use our investigatory powers in cases where engagement increases our concerns, or where the evidence suggests that a breach of one or more conditions is likely.
94. Responses to the phase one consultation included points about the need for the OfS to engage with a provider about any emerging issues of concern, and to use less intrusive means of resolving issues. This is the approach we have adopted during the pandemic and we expect to continue to work in this way if we consider that the use of our formal powers is not likely to be necessary or proportionate. Where we consider that the use of our formal powers may be necessary, it is important that we are clear with a provider about this to ensure that it is able to respond appropriately.
95. Where engagement or further evidence-gathering is not possible or appropriate, or has not resolved the issue, we may use our formal powers to gather information, including as part of an investigation. We may gather more evidence for an investigation ourselves, or may ask the designated quality body, or another appropriate body or individual, to gather evidence to inform our investigation.
96. For any investigation, we will set out the issues that are of concern. In the first instance, evidence-gathering would focus on these particular issues, rather than involving a broad-based review of quality or standards matters. This means that regulatory activity is targeted on the basis of risk and the burden of responding to regulatory action for a

²² See regulatory framework, paragraphs 128-160, available at www.officeforstudents.org.uk/media/1406/ofs2018_01.pdf.

provider is minimised. It would also mean that the OfS's resources are focused on the cases that represent the most risk to students.

97. We would expect to commission the designated quality body to gather evidence for an investigation in the following circumstances:
 - a. For any case where we have opened an investigation because of compliance concerns about condition B5 in relation to standards. We are required to seek advice from the designated quality body before making a judgement about a condition relating to standards and this ensures we have access to expert academic advice in this area.
 - b. Where we have opened an investigation because of compliance concerns about one or more of conditions B1, B2 or B4, and we take the view that the expertise of the designated quality body is likely to be necessary for us to reach a view about compliance.
98. Commissioning the designated quality body in this way means that we would have access to its expertise as part of our decision-making process where we considered that necessary. We would normally expect the designated quality body to undertake a visit to the provider and hold meetings with its staff and students.
99. The likelihood of an investigatory visit to a provider when we have concerns is designed to incentivise all providers to focus attention on ensuring ongoing compliance. Our proposals would see an increasingly risk-based approach to the regulation of quality and standards, with attention focused on those issues and providers that represent greatest risk to students, with these providers incentivised to improve their performance. Conversely, the highest quality providers would experience minimal regulatory burden in relation to our regulation of the B conditions as a result of these proposals. Our view is that adopting this approach to intervention would provide an appropriate balance between minimising regulatory burden for providers that present least regulatory risk, and ensuring that we are able to intervene rapidly in a targeted way in areas of most risk.
100. Where we decide that there is, or has been, a breach of any of the B conditions, we will consider the use of the full range of our enforcement powers, including to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. We would expect to use the most significant of those powers for a serious or persistent breach of one or more of the B conditions. This would have the effect of ensuring that a provider acts to remedy a breach quickly so that students are not exposed to quality or standards below the OfS's regulatory baseline. For a breach of one or more of the B conditions we will, in particular, consider whether any authorisation for degree awarding powers already held by a provider should be varied or revoked.

101. Using our enforcement powers in these circumstances, and publishing information²³ about such cases to draw attention to a provider that requires improvement, will incentivise compliance from other providers and provide public confidence that the OfS is willing to actively regulate low quality provision.
102. We will follow any statutory consultation process as we take enforcement action. We are not consulting on the approach to the use of our enforcement powers and the circumstances in which we may use them in relation to non-compliance with our quality and standards requirements – the position remains as set out in the regulatory framework.

Question 8a: Do you agree or disagree with the approach to information gathering as part of an investigation proposed in paragraphs 91-98 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?

Question 8b: Please give the reasons for your answer to Question 8a.

Question 8c: Do you have any alternative suggestions to the proposal in Question 8a?

Proposal 4c: take account of a provider's compliance history in relation to the quality and standards conditions for the purpose of determining eligibility for other benefits of OfS registration

103. The guidance that accompanies each of the proposed conditions in Annexes A and B sets out the possible consequences of non-compliance for eligibility for other benefits of OfS registration.
104. Where we decide that there is, or has been, a breach of B1, B2, B4 or B5,²⁴ or there is an increased risk of a future breach, we propose to take this into account in considering a provider's eligibility for other benefits of OfS registration. This is the case whether or not we have used our enforcement powers in relation to a breach, or imposed requirements to mitigate increased risk of a future breach. We propose to take a provider's compliance history in relation to these conditions into account in the ways set out below.

The TEF

105. We plan to consult on a new TEF framework in autumn 2021. In that consultation we are currently minded to set out proposals for the way in which a provider's current and previous compliance with the B conditions would be taken into account in determining eligibility to apply for a TEF award. The reason for this is that we may not consider it

²³ Subject to the outcomes of our consultation on publication of information about higher education providers. The consultation is available at www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers/.

²⁴ We intend to consult further on this issue in relation to condition B3 in our consultation on regulating student outcomes in autumn 2021.

appropriate for a provider to obtain a TEF award that signals ‘teaching excellence’ if it has breached, or is at increased risk of breaching, our minimum requirements for quality or standards. We consider that granting such an award in those circumstances could have the potential to mislead students and others about the OfS’s view of the quality and standards of a provider’s courses and the provider’s compliance history.

106. In addition, in our future consultation, we are currently minded to set out proposals for the way in which a provider’s current and previous compliance with the B conditions would affect any existing TEF award. The reason for this is that we may not consider it appropriate for a provider to retain a TEF award that signals ‘teaching excellence’ if it breaches, or is at increased risk of breaching, our minimum requirements for quality or standards. Retaining such an award in those circumstances could mislead students and others about the OfS’s view of the quality and standards of a provider’s courses.
107. The details and effect of these proposals for the TEF will be set out in the autumn TEF consultation. We are signalling these likely future consultation proposals in the current consultation because we consider it important that respondents understand the possible future consequences of non-compliance with the proposed quality and standards conditions.

Degree awarding powers

108. Where the OfS makes a final decision that there is, or has been, a breach²⁵ of one or more of the B conditions²⁶, or a breach of another relevant condition²⁷, we will take that into account in the following ways:
- a. We will consider using our power to suspend the aspects of the provider’s registration that relate to the authorisation of degree awarding powers (DAPs). We would be likely to suspend the provider’s eligibility to be authorised for new²⁸ or extended degree awarding powers. In any decision to impose a suspension we would explain the steps the provider is required to take in order for the suspension to be lifted.
 - b. Where the conduct that led to the finding of a breach is ongoing, we would be likely to decide that the provider is not suitable to be authorised for new or extended degree awarding powers (DAPs).
 - c. Where the conduct that led to the finding of a breach is not ongoing, we would be likely to decide to investigate further to determine whether that conduct has recurred such

²⁵ By ‘breach’ we mean here that the OfS has made a formal finding that one or more conditions has been breached and has set that out to the provider in a final decision.

²⁶ For the current consultation we mean B1, B2, B4 and B5, and we will consult further on this issue in relation to condition B3 in the autumn consultation on regulating student outcomes.

²⁷ The regulatory framework refers to conditions relating to financial viability and sustainability, and management and governance in this context.

²⁸ In this context ‘new’ means powers that the provider has not previously held, whether or not it seeks to hold those powers on a probationary basis.

that we would consider there to be a new breach or an increased risk of a future breach.

- d. Where we have previously identified an increased risk of a future breach, we would be likely to decide to investigate further to determine whether our concerns have been resolved or whether there is a new breach.
109. We would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject. We would have regard to the intervention factors set out in paragraph 167 of the regulatory framework and consider, in particular, the proportionality of taking this approach.
 110. Where we consider, exceptionally, that it is in the interests of students for a new or extended authorisation to be made, for example, because a provider's existing time-limited authorisation is due to expire, we would consider authorising a limited extension of the provider's existing powers to allow it time to take the steps necessary for the suspension to be lifted, or to resolve the issues that resulted in the finding of the breach.
 111. The reason for this approach is that a provider that has breached our minimum regulatory requirements for quality and standards would, in our view, be unlikely to be able to exercise its own degree awarding powers securely. If we were to authorise DAPs in these circumstances we would be exposing students to the risk that the provider would not be able to retain those powers, and so would not be able to award the qualifications for which students had registered. That situation would also damage the reputation of the English higher education sector.
 112. Where a provider needs to make a fresh application for registration, for example, because it wishes to change registration category, or where a merger or acquisition takes place, we will take the following approach:
 - a. Where the provider seeking registration is either the same entity, or is a new entity operating the same higher education business as the previous entity, we will take into account the compliance history of the previously-registered provider.
 - b. Where the provider seeking registration is a new entity that is not operating the same higher education business as the previous entity, we will treat that provider as a new provider for DAPs purposes. This will mean that the previous provider's track record²⁹ cannot be transferred to the new entity.
 113. This approach is designed to ensure that a provider cannot take advantage of a previous entity's track record for DAPs purposes without also being responsible for that previous entity's compliance history.

²⁹ A provider that has been delivering higher education for less than three years does not have a sufficient track record to apply for Full DAPs authorisation. It may instead apply for authorisation on a probationary basis.

114. Similarly, where a provider with DAPs merges with one or more other providers, we will take into account the compliance history of each provider as we determine whether the new entity should be authorised for DAPs.
115. This proposal in relation to degree awarding powers does not affect our ability to take enforcement action, for example to vary a provider's authorisation to restrict its ability to award degrees, or to revoke a provider's existing authorisation. Nothing in this proposal fetters our discretion to take such enforcement action on the basis set out in HERA. A provider's compliance history in relation to the B conditions is likely to be relevant evidence in decisions about any such enforcement action.
116. Subject to the outcome of this consultation, we envisage amending the sections of the regulatory framework that relate to DAPs, and other guidance documents,³⁰ to reflect final decisions on this proposal to take account of a provider's compliance history in relation to the conditions for quality and standards.

University title

117. Where the OfS makes a final decision that there is, or has been, a breach³¹ of one or more of the B conditions³², or a breach of another relevant condition³³, we will take that into account in the following ways:
- a. We will consider using our power to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title. We would be likely to suspend the provider's eligibility to be authorised for university or university college title. In any decision to impose a suspension we would explain the steps the provider is required to take in order for the suspension to be lifted.
 - b. Where the conduct that led to the finding of a breach is ongoing, we would be likely to decide that the provider is not suitable to be authorised for university or university college title.
 - c. Where the conduct that led to the finding of a breach is not ongoing, we would be likely to decide to investigate further to determine whether that conduct has recurred such that we would consider there to be a new breach or an increased risk of a future breach.

³⁰ We anticipate making changes to Regulatory advice 12: How to apply for degree awarding powers and Regulatory advice 17: Variation and revocation of degree awarding powers.

³¹ By 'breach' we mean here that the OfS has made a formal finding that one or more conditions has been breached and has set that out to the provider in a final decision.

³² For the current consultation we mean B1, B2, B4 and B5, and we will consult further on this issue in relation to condition B3 in the autumn consultation on regulating student outcomes.

³³ The regulatory framework refers to conditions relating to financial viability and sustainability, and management and governance in this context.

- d. Where we have previously identified an increased risk of a future breach, we would be likely to decide to investigate further to determine whether our concerns have been resolved or whether there is a new breach.
118. We would have regard to the intervention factors set out in paragraph 167 of the regulatory framework and consider, in particular, the proportionality of taking this approach.
119. The reason for this approach is that a provider that is not satisfying our minimum regulatory requirements for quality and standards would, in our view, be unlikely to be able to exercise its own degree awarding powers securely. The secure exercise of DAPs is central to the award of university title and therefore in such cases we would not wish to authorise the use of university or university college title. That situation would also damage the reputation of the English higher education sector.
120. Where a provider needs to make a fresh application for registration, for example, because it wishes to change registration category, or where a merger or acquisition takes place, we will take the following approach:
- a. Where the provider seeking registration is either the same entity, or is a new entity operating the same higher education business as the previous entity, we will take into account the compliance history of the previously-registered provider.
 - b. Where the provider seeking registration is a new entity that is not operating the same higher education business as the previous entity, we will treat that provider as a new provider for university, or university college, title purposes. This will mean that the previous provider's track record³⁴ cannot be transferred to the new entity.
121. This approach is designed to ensure that a provider cannot take advantage of a previous entity's track record for university, or university college, title purposes without also being responsible for that previous entity's compliance history.
122. Similarly, where a provider with university, or university college, title merges with one or more other providers, we will take into account the compliance history of each provider as we determine whether the new entity should be authorised for university, or university college title.
123. This proposal in relation to university and university college title does not affect our ability to take enforcement action, for example to revoke a provider's existing authorisation for university title. Nothing in this proposal fetters our discretion to take such enforcement action on the basis set out in HERA. A provider's compliance history in relation to the B conditions is likely to be relevant evidence in decisions about any such enforcement action.

³⁴ To be eligible to apply for university, or university college, title, a provider must have authorisation to grant taught awards (other than foundation degree only DAPs) or research awards on an indefinite basis.

124. Subject to the outcome of this consultation, we envisage amending the sections of the regulatory framework that relate to university title, and other guidance documents,³⁵ to reflect final decisions on this proposal to take account of a provider's compliance history in relation to the conditions for quality and standards.

OfS public grant funding

125. We may decide to take account of a provider's current and previous compliance with the B conditions in determining allocations of some types of OfS public grant funding. The reason for this is that we may not consider it appropriate for a provider to receive public funding if it has breached, or is at increased risk of breaching, our minimum requirements for quality or standards. Allocating funding in those circumstances would mean that taxpayers' money was being allocated to providers that were not providing high quality higher education courses, or were not maintaining standards.

126. The details and effect of these proposals to take account of a provider's compliance history in relation to eligibility for funding would be set out in any future funding consultation. We are signalling these possible future consultation proposals for funding in the current consultation because we consider it important that respondents understand the possible future consequences of non-compliance with the proposed quality and standards conditions.

Question 9a: Do you agree or disagree with the approach to taking account of a provider's compliance history for the purpose of determining eligibility for other benefits of OfS registration proposed in paragraphs 103-126 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?

Question 9b: Please give the reasons for your answer to Question 9a.

Question 9c: Do you have any alternative suggestions to the proposal in Question 9a?

Proposal 5: the OfS will use its role as the body responsible for External Quality Assurance for integrated higher and degree apprenticeships to inform its judgements about condition B4.

127. The OfS is the body responsible for External Quality Assurance (EQA) of End Point Assessment Organisations (EPAO). All apprentices undertake an end-point assessment at the end of their apprenticeship to confirm they have achieved occupational competence. EPAOs are responsible for undertaking end-point assessments.

128. An integrated degree apprenticeship is where a degree qualification is included in the apprenticeship and assessment relating to the degree is fully integrated with the end-

³⁵ We anticipate making changes to Regulatory advice 13: How to apply for university college and university title.

point assessment. In these circumstances the provider delivering the degree within the apprenticeship also acts as the EPAO and undertakes the end-point assessment.

129. A non-integrated degree apprenticeship is where a degree qualification is included in the apprenticeship but assessment relating to the degree is conducted separately and is not integrated with the end-point assessment. The degree qualification must be achieved prior to the apprentice passing through the end-point assessment gateway. In these circumstances the provider delivering the degree as part of the apprenticeship is responsible for the assessment related to the award of the degree; however, an independent EPAO would be responsible for undertaking the end-point assessment of the apprentice.
130. EQA monitors the delivery of end-point assessment to ensure that it is fair, consistent and robust across different apprenticeship standards and between different EPAOs.
131. IfATE is responsible for the oversight and requirements of EQA. It consulted on a simplified approach from February to May 2020 which proposed that the OfS would be responsible for EQA for OfS registered providers that deliver integrated higher and degree apprenticeships (and are therefore responsible for delivering the end-point assessment themselves rather than through an independent EPAO).
132. The quality of assessment and awards is within the scope of proposed condition B4 which would require a registered provider to ensure that students are assessed effectively and that each assessment is reliable and valid. In relation to integrated higher and degree apprenticeships, this means end-point assessments are also within the scope of proposed condition B4. IfATE has set out, in its EQA framework³⁶, what constitutes effective, reliable and valid end-point assessment for these apprenticeships.
133. This means that a judgement about whether condition B4 is satisfied in relation to a provider's integrated higher and degree apprenticeships would take account of the requirements of the IfATE's framework that relate to the effectiveness, reliability and validity of assessment.
134. The designated quality body will undertake EQA on behalf of the OfS according to the IfATE's EQA framework. We propose that where a registered provider delivers one or more integrated higher or degree apprenticeships, meaning that it also acts as the EPAO and undertakes end-point assessment of apprentices itself, the OfS would:
 - a. Commission the designated quality body to assess the end-point assessments undertaken by a provider according to the IfATE's framework for EQA and to use this assessment to:
 - i. Provide evidence about the provider's compliance with proposed condition B4 in relation to integrated higher and degree apprenticeships.

³⁶ See www.instituteforapprenticeships.org/media/4424/eqa-framework-august-2020.pdf [PDF].

- ii. Provide evidence about the provider's assessment practices used in its integrated higher and degree apprenticeships in relation to the aspects of the IfATE's framework for EQA that relate to the quality of higher education that are not covered by proposed condition B4.
 - b. Consider and address any compliance issues arising in relation to condition B4 in the normal way.
 - c. Publish information regarding the assessment of each apprenticeship standard, setting out the findings of the designated quality body in relation to the aspects of the IfATE's framework for EQA that relate to the quality of higher education that are not covered by proposed condition B4.
 - d. Share information with the IfATE in relation to individual providers and the wider operation of EPA within integrated higher and degree apprenticeships.
135. The effect of this proposal is that there would be regular assessment of some aspects of quality for a provider that undertakes end-point assessments for apprentices because it delivers one or more integrated higher or degree apprenticeships. Such assessment would allow the provider to continue to meet the requirements of the IfATE's framework and therefore continue to be eligible to deliver EPAs and remain on the Education and Skills Funding Agency's (ESFA's) Register of End-Point Assessment Organisations.
136. Evidence of compliance concerns in relation to a provider's conditions of registration gathered through this process would be considered in the normal way. This could result in engagement with the provider to seek improvement, or the use of the OfS's enforcement powers where we consider that appropriate.
137. The reasoning for this proposal is that the proposed approach would implement the approach consulted on by the IfATE in accordance with its published framework for EQA. It would also allow the assessment of condition B4 for integrated degree and higher apprenticeship provision without the requirement for additional review or assessment by the OfS or the designated quality body. This means that providers would already be familiar with these requirements and would not need to engage with different parallel requirements.

Question 10a: Do you agree or disagree that the OfS should use its role as EQA provider to inform assessments of condition B4?

Question 10b: Please give the reasons for your answer to Question 10a.

Question 10c: Do you have any alternative suggestions to the proposal in Question 10a?

Proposed implementation

138. The OfS is mindful of the context within which higher education providers are currently operating, because of the continuing effect of the coronavirus pandemic. The OfS has made clear its commitment to reducing regulatory burden and supporting providers in the interests of students during this period.³⁷
139. Nonetheless, given the benefits to students arising from more effective regulation of quality and standards, it is important not to delay seeking views on our proposals.
140. Subject to the representations received as a result of this consultation, we intend to make a decision on whether to impose the conditions in Annexes A, B and C and revise the regulatory framework, as set out in these proposals, in autumn 2021. The new ongoing conditions would come into effect for registered providers on the date of publication of that decision. The new initial conditions of registration would come into effect for any provider submitting an application for registration on or after the date of publication of that decision.

Question 11: Do you have any comments about the proposed implementation of the proposals in this consultation?

Question 12: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or for any particular types of student?

Question 13: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Question 14: Do you have any other comments about the proposals?

³⁷ See our letter of 25 March 2020: www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/.

Annex A: Proposed ongoing conditions for quality and amendments to the OfS's regulatory framework

Condition B1: Academic experience

Scope

B1.1 This condition applies to the quality of higher education provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

Requirement

B1.2 Without prejudice to the scope of B1.1, the provider must ensure that the students registered on each **higher education course** receive a high quality academic experience.

B1.3 For the purposes of this condition, a high quality academic experience includes but is not limited to ensuring all of the following:

- a. each **higher education course** is **up-to-date**;
- b. each **higher education course** provides **educational challenge**;
- c. each **higher education course** is **coherent**;
- d. each **higher education course** is **effectively delivered**; and
- e. each **higher education course**, as appropriate to the subject matter of the course, requires students to develop **relevant skills**.

Definitions

B1.4 For the purposes of this condition B1:

- a. "**appropriately informed**" will be assessed by reference to:
 - i. the time period within which any of the developments described in the definition of **up-to-date** have been in existence;
 - ii. the importance of any of the developments described in the definition of **up-to-date** to the subject matter of the **higher education course**; and
 - iii. the time period by which it is planned that such developments described in the definition of **up-to-date** will be brought into the **higher education course** content.
- b. "**coherent**" means a **higher education course** which ensures:
 - i. there is an appropriate balance between breadth and depth of content;
 - ii. subjects and skills are taught in an appropriate order and, where necessary, build on each other throughout the course; and

- iii. key concepts are introduced at the appropriate point in the course content.
- c. “**educational challenge**” means a challenge that is no less than the minimum level of rigour and difficulty reasonably expected of the **higher education course**, in the context of the subject matter of the course.
- d. “**effectively delivered**”, in relation to a **higher education course**, means the manner in which it is taught, supervised and assessed (both in person and remotely) including, but not limited to, ensuring:
 - i. an appropriate balance between lectures, seminars, group work and practical study, as relevant to the content of the course; and
 - ii. an appropriate balance between directed and independent study or research, as relevant to the level of the course.
- e. “**higher education course**” is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.
- f. “**relevant skills**” means:
 - i. knowledge and understanding relevant to the subject matter and level of the **higher education course**; and
 - ii. other skills relevant to the subject matter and level of the **higher education course** including, but not limited to, cognitive skills, practical skills, transferable skills and professional competences.
- g. “**up-to-date**” means representative of current thinking and practices in the subject matter to which the **higher education course** relates, including being **appropriately informed** by recent:
 - i. subject matter developments;
 - ii. research, industrial and professional developments; and
 - iii. developments in teaching and learning, including learning resources.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B1.1

1. The reference to higher education provided “in any manner or form” includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
2. The reference to higher education provided “by, or on behalf of, a provider” includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
3. The reference to “including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider” means that a provider is required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.
4. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider delivering courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.
5. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B1.3

6. The subject matter of this condition includes matters that relate to the curriculum and pedagogy for higher education courses. The OfS would expect to draw on expert academic judgement, including from subject experts, before reaching a view that the condition was not satisfied in relation to such matters.

Condition B1.4

7. The requirement of condition B1 is expressed as a principle that can be satisfied in different ways. To assist providers in understanding how the OfS may interpret this principles-based requirement in practice, the following paragraphs provide a small number of illustrative examples. These examples are not exhaustive.

8. In relation to “up-to-date” and “appropriately informed”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

- a. The subject matter of a course is not representative of current thinking and practices. For example, course content, including topics and reading lists, that is not informed by research and scholarship, or does not reflect professional developments, such as the adoption of the latest professional or industry standards, would be likely to be of concern.
- b. The pedagogy of a course is not representative of current thinking and practices. For example, a course delivered wholly or in part online that does not use pedagogy appropriate to digital delivery, would be likely to be of concern.
- c. The length of the period during which aspects of the course have not been updated. For example, a course that has not been updated for a number of years such that its content or pedagogy do not reflect current rigorous academic thinking in that subject area, or more generally, would be likely to be of concern. This may depend on the subject matter of a course, for example, for an accounting course, tax modules are likely to require frequent updating, whereas management accounting modules may need less frequent updating.
- d. The scale and nature of the changes needed to ensure the course is up-to-date. For example, a course that requires significant changes to ensure its content or pedagogy reflect current rigorous academic thinking in that subject area, or more generally, would be likely to be of concern. Similarly, a course with an out-of-date core component would be likely to be of concern.
- e. The impact on students and others of an out-of-date course. For example, a course that does not contain content that is required by a professional, statutory or regulatory body (PSRB), whether or not that course has recently been updated, would be likely to be of concern. The OfS would be particularly concerned about a course that was not up-to-date where this could reasonably be viewed as creating a risk to the public, for example a course that provided graduates with the recognition to practice medicine or to teach in schools.
- f. Whether a provider has plans to make changes to a course to ensure it is up-to-date. For example, plans to make changes to a course that post-date the OfS’s interest in that course are less likely to reduce concerns.

9. In relation to “educational challenge”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

- a. An integrated masters' course with a final year of study that does not provide sufficient rigour and difficulty, for example because students at different stages of the course are taught together in a way that does not recognise the different challenge needed, would be likely to be of concern.
- b. An undergraduate degree course with an integrated foundation year, where the foundation year does not provide sufficient rigour and difficulty such that students are not prepared for successful study in the undergraduate course, would be likely to be of concern.
- c. A research degree course that is focused on a narrowly defined research question that provides limited scope for original ideas would be likely to be of concern.

10. In relation to “coherent”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

- a. The content of a course is too narrow. For example, a three-year undergraduate degree that does not provide sufficient opportunity for students to study optional subjects beyond a mandatory core, either because the course was designed without such options, or because options are not in practice available, would be likely to be of concern.
- b. The content of a course is too broad. For example, a 20 credit module that contains too much material for students to demonstrate the depth of understanding expected for the course, would be likely to be of concern.
- c. Students are not secure in foundational topics. Students do not learn key, foundation concepts before moving onto more difficult topics, for example, a course that requires competence in mathematics does not teach these concepts before or alongside the topics they underpin would be likely to be of concern.
- d. Practical or practice-based components are not taught in an appropriate order. For example, laboratory practical sessions are delivered in a disconnected way from related theory.
- e. Skills are not taught at the right time. For example, appropriate research skills courses not being available for research students before they begin their research programme, would be likely to be of concern.
- f. Modules are not available to students at the appropriate time to construct a coherent pathway. For example, joint degree students not able to access relevant modules at the appropriate time, would be likely to be of concern.

11. In relation to “effectively delivered”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

- a. The range of learning activities is too narrow. For example, a course that is predominantly taught through large-scale lectures and does not provide opportunities for small group teaching would be likely to be of concern.
 - b. The research environment does not support students' learning. For example, a postgraduate research course without regular and effective supervision sessions, or without opportunities for structured engagement with other researchers, would be likely to be of concern.
 - c. Professional or practice-based elements are not integrated with academic elements. For example, an apprenticeship that does not require academic reflection on work-based learning would be likely to be of concern.
 - d. Assessment is not designed into the course. For example, assessment activities not being scheduled to consolidate students' learning, or feedback not sufficient or timely to support learning, would be likely to be of concern.
12. In relation to "relevant skills", the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:
- a. A course that does not require students to develop and demonstrate intellectual skills, such as evaluating evidence, mobilising an argument, solving problems, consistent with the subject and level of the course, would be likely to be of concern.
 - b. A course designed to lead to a particular profession that does not require students to develop and demonstrate the skills necessary for success in that profession would be likely to be of concern.
 - c. A course in which students are not required to develop and consistently demonstrate technical proficiency in the use of written English, where the OfS, employers and taxpayers would reasonably expect such proficiency, would be likely to be of concern.

Evidence gathering, assessment and enforcement

13. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.
14. Where monitoring activity produces evidence that suggests there may be compliance concerns for an individual provider, the OfS would be likely to adopt one of the following approaches:
- a. Engage with a provider to ensure it is aware of the issues.
 - b. Gather further evidence, from a provider or from elsewhere, to clarify whether a breach of one or more conditions is likely.

- c. Use its investigatory powers in cases where engagement increases its concerns, or where the evidence suggests that a breach of one or more conditions is likely.
15. Where the OfS considers it necessary to use its investigatory powers it may conduct an investigation itself, or may ask the designated quality body, or another appropriate body or individual, to gather further evidence. For any investigation, the OfS will set out the issues that are of concern. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.
16. Having gathered further evidence as necessary, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition, it will write to the provider to set out the reasons for its provisional decision and set out the evidence it has used to reach this view. The provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.
17. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.
18. Where the OfS considers there to be an increased risk of a breach, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events.
19. Where there is, or has been, a breach of this condition, or where the OfS considers there to be an increased risk of a breach, the OfS may take this into account in the following ways:
- a. The eligibility requirements for participation in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining eligibility for the TEF.
 - b. Changes to, or removal of, an existing TEF award. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF award.
 - c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:

- i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.
- ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for new or extended DAPs.
- iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
- iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

- d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for university or university college title.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
 - iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.

- e. The criteria for allocation of OfS public grant funding. The OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Condition B2: Resources, support and student engagement

Scope

B2.1 This condition applies to the quality of higher education provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

Requirement

B2.2 Without prejudice to the principle set out in condition B1 and the scope of B2.1, the provider must ensure:

- a. each **cohort of students** registered on each **higher education course** receives **resources** and **support** to ensure:
 - i. a high quality academic experience for those students; and
 - ii. those students succeeding in and beyond higher education; and
- b. effective **engagement** with each **cohort of students** to ensure:
 - i. a high quality academic experience for those students; and
 - ii. those students succeeding in and beyond higher education.

Definitions

B2.3 For the purposes of this condition B2:

- a. “**academic misconduct**” means any action or attempted action that may result in a student obtaining an unfair academic advantage in relation to an **assessment**, including but not limited to plagiarism, unauthorised collaboration and the possession of unauthorised materials during an **assessment**.
- b. “**appropriately qualified**” means staff have and maintain:
 - i. expert knowledge of the subject they design and/or deliver;
 - ii. teaching qualifications or training, and teaching experience, appropriate for the content and level of the relevant **higher education course**; and
 - iii. the required knowledge and skills as to the effective delivery of their **higher education course**.
- c. “**assessment**” means any component of a course used to assess student achievement towards a **relevant award**, including an examination and a test.
- d. “**cohort of students**” means the group of students registered on to the **higher education course** in question and is to be interpreted by reference to the particular academic needs of those students based on prior academic attainment and capability.

- e. “**engagement**” means routinely building into the course delivery opportunities for students to contribute to the future development of the **higher education course** in a way that maintains the academic rigour of that course, including, but not limited to, through membership of the provider’s committees, including the governing body, opportunities to provide survey responses, and participation in activities to develop the course and the way it is delivered.
- f. “**higher education course**” is to be interpreted:
- i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.
- g. “**physical and digital learning resources**” includes, as appropriate to the content and delivery of the **higher education course**, but is not limited to:
- i. physical locations, for example teaching rooms, libraries and laboratories;
 - ii. physical and digital learning resources, for example books, computers and software;
 - iii. the resources needed for digital learning and teaching, for example, hardware and software, and technical infrastructure; and
 - iv. other specialist resources, for example specialist equipment, software and research tools.
- h. “**relevant award**” means:
- i. a **research award**;
 - ii. a **taught award**; and/or
 - iii. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.
- i. “**research award**” and “**taught award**” have the meanings given in section 42(3) of the Higher Education and Research Act 2017.
- j. “**resources**” includes but is not limited to:

- i. the staff team that designs and delivers a **higher education course** being collectively **sufficient in number, appropriately qualified** and deployed effectively to deliver in practice; and
 - ii. **physical and digital learning resources** that are adequate and deployed effectively to meet the needs of the **cohort of students**.
- k. “**sufficient in number**” will be assessed by reference to the principle that the larger the cohort size of students, the greater the number of staff and amount of staff time should be available to students, and means, in the context of the staff team:
- i. there is sufficient financial resource to recruit enough staff;
 - ii. the provider allocates appropriate financial resource to ensuring staff are equipped to teach courses;
 - iii. **higher education courses** have an adequate number of staff, and amount of staff time, to provide students with the academic experience advertised; and
 - iv. the impact on students of changes in staffing is minimised/minimal.
- l. “**support**” means the effective deployment of assistance, as appropriate to the content of the **higher education course** and the **cohort of students**, including but not limited to:
- i. academic support relating to the content of the **higher education course**;
 - ii. support needed to underpin successful physical and digital learning and teaching;
 - iii. support relating to avoiding **academic misconduct**; and
 - iv. careers support,
- but for the avoidance of doubt, does not include other categories of non-academic support.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B2.1

20. The reference to higher education provided “in any manner or form” includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
21. The reference to higher education provided “by, or on behalf of, a provider” includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
22. The reference to “including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider” means that a provider is required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.
23. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider delivering courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.
24. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B2.3

25. The requirement of condition B2 is expressed as a principle that can be satisfied in different ways. To assist providers in understanding how the OfS may interpret this principles-based requirement in practice, the following paragraphs provide a small number of illustrative examples. These examples are not exhaustive; nor are they provided as rules that, if followed, would constitute compliance with the condition.
26. “Cohort of students” includes students registered on postgraduate research courses, whether or not those courses are designed for students to study and progress as ‘a cohort’.

27. "Academic misconduct" includes presenting work for assessment that is not the work of the student being assessed and includes but is not limited to the use of services offered by an essay mill.
28. Where the condition contains requirements that relate to the staff team for a course, the OfS's focus is likely to be on the staff team as a whole, rather than on individuals within that team. The staff team includes individuals employed by a provider or otherwise deployed to teach on a course.
29. The following is an illustrative non-exhaustive list of examples that would not be likely to satisfy these requirements:
- a. A staff team comprised solely of inexperienced teachers is not likely to be appropriately qualified.
 - b. A staff team with narrow collective expertise in a subject area is not likely to be appropriately qualified if the range of options available to students extend beyond that collective expertise.
 - c. A staff team in which none of the individuals hold a teaching qualification or have been trained to undertake teaching is not likely to be appropriately qualified.
 - d. A staff team that is over-reliant on visiting teachers to deliver large or significant elements of a course is not likely to be appropriately qualified.
 - e. A staff team that does not conduct research at the forefront of relevant discipline(s) is not likely to be appropriately qualified to provide supervision to research students.
30. Where the condition contains requirements that relate to learning resources a provider is expected to fund the provision of these resources, without additional charge beyond the course fee, where the students registered on the course are not reasonably able to provide resources themselves, and where the availability of such resources is necessary to ensure a high quality academic experience for students; and those students succeeding in and beyond higher education. A provider may determine the approach it takes to making such resources available to students, for example, by loaning resources to students for the duration of the course.
31. In relation to "physical and digital learning resources" the following is an illustrative non-exhaustive list of matters relating to 'physical learning resources' that would fall within the definition:
- a. Appropriate laboratory and technical resources for STEM subjects.
 - b. Appropriate studio, performance, and technical resources for creative subjects.

32. In relation to “physical and digital learning resources” the following is an illustrative non-exhaustive list of matters relating to ‘digital learning resources’ that would fall within the definition:

- a. Appropriate hardware. Students have the hardware that allows them to effectively access all course content. Hardware is of the specification required to ensure that the student is not disadvantaged in relation to their peers.
- b. Appropriate software. Students have the software they need to effectively access all aspects of course content.
- c. Robust technical infrastructure. Technical infrastructure and systems work seamlessly and are repaired promptly when needed.
- d. Reliable access to the internet. Students have reliable and consistent access to an internet connection. Reliability and bandwidth of the internet connection are at a sufficient level to ensure that a student is not disadvantaged in relation to their peers.
- e. A trained teacher or instructor. Students have a trained teacher or instructor who is equipped to deliver high quality digital teaching and learning.
- f. An appropriate study place. Students have consistent access to a quiet space that is appropriate for studying.

33. In relation to “support” the following is an illustrative non-exhaustive list of matters that would fall within this definition:

- a. Academic support includes support to help students with course content or on placements, to identify and address skills gaps, and make decisions about future study choices.
- b. Support needed to underpin successful physical and digital learning and teaching includes support to help students make best use of digital learning.
- c. Support relating to avoiding academic misconduct includes support for essay planning and accurate referencing, and advice about the consequences of academic misconduct.
- d. Careers support includes the information, advice and guidance students need to identify their capabilities and the way in which these may be suited to particular careers, and to articulate these in a way likely to result in successful job applications.

34. “Support” does not include other categories of non-academic support, for example, the provision of welfare and counselling services for students.

35. In relation to “engagement” the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

- a. Membership of the provider's committees. An absence of student membership of a provider's governing body may be of concern, depending on the size and corporate structure of the provider. An absence of student membership of a provider's committees responsible for academic governance and learning and teaching would be likely to be of concern. An absence of student membership of learning and teaching committees, or course-level committees, in a subject area, or department, would be likely to be of concern.
- b. Student feedback. Students not given opportunities to provide feedback on their course and the way it is delivered would be likely to be of concern.
- c. Maintaining academic rigour. Changes, as a result of student feedback provided through any mechanism, to the content of a course, or the way the course is delivered or assessed that, in the reasonable view of the OfS do not maintain the academic rigour of the course would be likely to be of concern.

Evidence gathering, assessment and enforcement

36. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.
37. Where monitoring activity produces evidence that suggests there may be compliance concerns for an individual provider, the OfS would be likely to adopt one of the following approaches:
 - a. Engage with a provider to ensure it is aware of the issues.
 - b. Gather further evidence, from a provider or from elsewhere, to clarify whether a breach of one or more conditions is likely.
 - c. Use its investigatory powers in cases where engagement increases its concerns, or where the evidence suggests that a breach of one or more conditions is likely.
38. Where the OfS considers it necessary to use its investigatory powers it may conduct an investigation itself, or may ask the designated quality body, or another appropriate body or individual, to gather further evidence. For any investigation, the OfS will set out the issues that are of concern. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.
39. Having gathered further evidence as necessary, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition it will write to the provider to set out the reasons for its provisional decision and set out the evidence it has used to reach this view. The provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.

40. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.
41. Where the OfS considers there to be an increased risk of a breach, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events.
42. Where there is, or has been, a breach of this condition, or where the OfS considers there to be an increased risk of a breach, the OfS may take this into account in the following ways:
- a. The eligibility requirements for participation in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining eligibility for the TEF.
 - b. Changes to, or removal of, an existing TEF award. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF award.
 - c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for new or extended DAPs.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
 - iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

- d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for university or university college title.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
 - iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.
- e. The criteria for allocation of OfS public grant funding. The OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Condition B4: Assessment and awards

Scope

B4.1 This condition applies to the quality of higher education provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

Requirement

B4.2 Without prejudice to the scope of B4.1, the provider must ensure that:

- a. students are **assessed effectively**;
- b. Each **assessment** is **valid** and **reliable**;
- c. **academic regulations** are designed to ensure that **relevant awards** are **credible**; and
- d. **relevant awards** granted to students are **credible** at the point of being granted and when compared to those granted previously.

Definitions

B4.3 For the purposes of this condition B4:

- a. “**academic misconduct**” means any action or attempted action that may result in a student obtaining an unfair academic advantage in relation to an **assessment**, including but not limited to plagiarism, unauthorised collaboration and the possession of unauthorised materials during an **assessment**.
- b. “**academic regulations**” means regulations adopted by the provider, which govern its **higher education courses**, including but not limited to:
 - i. the assessment of students’ work;
 - ii. student discipline relating to academic matters;
 - iii. the requirements for **relevant awards**; and
 - iv. the method used to determine classifications, including but not limited to:
 - A. the requirements for an award; and
 - B. the algorithms used to calculate the classification of awards.
- c. “**assessed effectively**” means assessed in a challenging and appropriately comprehensive way, by reference to the subject matter of the **higher education course**, and includes but is not limited to:
 - i. providing stretch and rigour consistent with the level of the course;
 - ii. testing **relevant skills**;
 - iii. requiring technical proficiency in the use of the English language; and

- iv. **assessments** being designed in a way that minimises the opportunities for **academic misconduct** and facilitates the detection of such misconduct where it does occur.
- d. “**assessment**” means any component of a course used to assess student achievement towards a **relevant award**, including an examination and a test.
- e. “**credible**” means that, in the reasonable opinion of the OfS, **relevant awards** reflect students’ knowledge and skills, and for this purpose the OfS may take into account factors which include, but are not limited to:
 - i. the number of **relevant awards** granted, and the classifications attached to them, and the way in which this number and/or the classifications change over time and compare with other providers;
 - ii. whether students are **assessed effectively** and whether **assessments** are **valid** and **reliable**;
 - iii. any actions the provider has taken that would result in an increased number of **relevant awards**, and/or changes in the classifications attached to them, whether or not the achievement of students has increased, for example, changes to assessment practices or **academic regulations**; and
 - iv. the provider’s explanation and evidence in support of the reasons for any changes in the classifications over time or differences with other providers.
- f. “**higher education course**” is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.
- g. “**relevant award**” means:
 - i. a **research award**;
 - ii. a **taught award**; and/or
 - iii. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.
- h. “**relevant skills**” means:

- i. knowledge and understanding relevant to the subject matter and level of the **higher education course**; and
 - ii. other skills relevant to the subject matter and level of the **higher education course** including, but not limited to, cognitive skills, practical skills, transferable skills and professional competences.
- i. “**reliable**” means that an **assessment**, in practice, requires students to demonstrate knowledge and skills in a manner which is consistent as between the students registered on a **higher education course** and over time, as appropriate in the context of developments in the content and delivery of the **higher education course**.
 - j. “**research award**” and “**taught award**” have the meanings given in section 42(3) of the Higher Education and Research Act 2017.
 - k. “**valid**” means that an **assessment** in fact takes place in a way that results in students demonstrating knowledge and skills in the way intended by design of the assessment.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B4.1

43. The reference to higher education provided “in any manner or form” includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
44. The reference to higher education provided “by, or on behalf of, a provider” includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
45. The reference to “including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider”

means that a provider is required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.

46. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider delivering courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.
47. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B4.3

48. The requirement of condition B4 is expressed as a principle that can be satisfied in different ways. To assist providers in understanding how the OfS may interpret this principles-based requirement in practice, the following paragraphs provide a small number of illustrative examples. These examples are not exhaustive; nor are they provided as rules that, if followed, would constitute compliance with the condition.
49. “Academic misconduct” includes presenting work for assessment that is not the work of the student being assessed and includes but is not limited to the use of services offered by an essay mill.
50. In relation to “assessed effectively”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:
 - a. An undergraduate degree course in which students at different stages of the course are taught together on a module and assessed in the same way, but without differentiation in the marking criteria, would be likely to be of concern.
 - b. A course that assesses a limited range of subject matter, or knowledge and skills would be likely to be of concern.
 - c. An integrated higher or degree apprenticeship end-point assessment that does not meet the requirements of external quality assurance monitoring, for example because it is not delivered in line with the published EPA plan, would be likely to be of concern.
 - d. An absence of feedback on students’ performance before a final essay or exam, or feedback not returned in time for students to learn from it before the next assessment, would be likely to be of concern.

- e. Marking criteria for assessments that do not penalise a lack of proficiency in the use of written English in an assessment for which the OfS, employers and taxpayers, would reasonably expect such proficiency, would be likely to be of concern.
- f. Assessments designed in a way that allows students to gain marks for work that is not their own would be likely to be of concern.
- g. A provider not taking reasonable steps to detect and prevent plagiarism, advertising by essay mills, or other forms of academic misconduct by students, would be likely to be of concern.
- h. Selection of examiners for research students in a way that does not preserve academic rigour would be likely to be of concern.

51. In relation to “valid” and “reliable”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

- a. An assessment that tests in practice the things it was designed to assess. For example, an assessment that focuses only the material taught at the end of a long course is, on its own, is unlikely to provide a valid assessment of that course.
- b. An assessment that results in differences in the marks awarded to students demonstrating the same achievement. For example, different marks awarded to projects or dissertations where students have worked on different topics but have demonstrated the same level of achievement suggest that the assessment design may not be reliable.

52. In relation to “credible”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition, and to identifying circumstances in which it is likely to be concerned about the credibility of a provider’s qualifications:

- a. An increase in the number or proportion of first class or 2i degrees awarded over time. For example, where a provider is unable to provide evidence to account for an increase in the proportion of first or 2i classifications it has awarded.
- b. Changes to academic regulations. For example, where a provider has changed its degree classification algorithm, or other aspects of its academic regulations, such that students are likely to receive a higher classification than previous students without an increase in their level of achievement.
- c. Students are not penalised for poor technical proficiency in written English. For example, for assessments that would reasonably be expected to take the form of written work in English and for which the OfS, employers and

taxpayers, would reasonably expect such proficiency, the provider's assessment policy and practices do not penalise poor spelling, punctuation or grammar, such that students are awarded marks that do not reflect a reasonable view of their performance of these skills.

- d. Research degrees awarded to recognise a student's contribution to the output of their research group rather than their individual contribution to knowledge.

53. Where a provider has an evidenced explanation of the reasons for an increase in awards or the classifications of awards, the OfS is more likely to place weight on this evidence if it pre-dates the OfS's interest and demonstrates that the provider has routinely satisfied itself that its approach has not resulted in increased awards or classifications, regardless of whether or not the achievement of students has increased. An absence of rigorous evidence and evaluation in advance of changes a provider makes, or has made, to its academic regulations or assessment practices, is likely to cause concern.

Evidence gathering, assessment and enforcement

54. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.

55. Where monitoring activity produces evidence that suggests there may be compliance concerns for an individual provider, the OfS would be likely to adopt one of the following approaches:

- a. Engage with a provider to ensure it is aware of the issues.
- b. Gather further evidence, from a provider or from elsewhere, to clarify whether a breach of one or more conditions is likely.
- c. Use its investigatory powers in cases where engagement increases its concerns, or where the evidence suggests that a breach of one or more conditions is likely.

56. Where the OfS considers it necessary to use its investigatory powers it may conduct an investigation itself, or may ask the designated quality body, or another appropriate body or individual, to gather further evidence. For any investigation, the OfS will set out the issues that are of concern. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.

57. As part of its approach to assessing compliance with this condition, the OfS is likely to need access to students' assessed work, including for students who are no longer registered on a course. Providers are therefore expected to retain appropriate records of students' assessed work for such regulatory purposes. In the absence of such records, the OfS may consider making negative inferences about compliance and/or may take targeted regulatory action to address the risk that it is unable to monitor compliance and regulate effectively.

58. Having gathered further evidence as necessary, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition it will write to the provider to set out the reasons for its provisional decision and set out the evidence it has used to reach this view. The provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.
59. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.
60. Where the OfS considers there to be an increased risk of a breach, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events.
61. Where there is, or has been, a breach of this condition, or where the OfS considers there to be an increased risk of a breach, the OfS may take this into account in the following ways:
- a. The eligibility requirements for participation in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining eligibility for the TEF.
 - b. Changes to, or removal of, an existing TEF award. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF award.
 - c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for new or extended DAPs.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine

whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.

- iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

- d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for university or university college title.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
 - iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.
- e. The criteria for allocation of OfS public grant funding. The OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Annex B: Proposed ongoing condition for standards and amendments to the OfS's regulatory framework

Condition B5: Sector-recognised standards

Scope

B5.1 This condition relates to the standards applied to higher education provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

Requirement

B5.2 Without prejudice to the scope of B5.1, the provider must ensure that, in respect of any **relevant awards** granted to students who complete a **higher education course** provided by, or on behalf of, the provider (whether or not the provider is the awarding body):

- a. any standards set are consistent with any applicable **sector-recognised standards**; and
- b. awards are only granted to students whose knowledge and skills are consistent with any applicable **sector-recognised standards**.

Definitions

B5.3 For the purposes of this condition B5:

- a. "**higher education course**" is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.
- b. "**relevant award**" means:
 - iv. a **research award**;
 - v. a **taught award**; and/or

- vi. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.
- c. “**research award**” and “**taught award**” have the meanings given in section 42(3) of the Higher Education and Research Act 2017.
- d. “**sector-recognised standards**” means the standards contained in the document of that title published by the OfS from time to time.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B5.1

1. The reference to higher education provided “in any manner or form” includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
2. The reference to higher education provided “by, or on behalf of, a provider” includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
3. The reference to “including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider” means that a provider is required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.

4. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider delivering courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses
5. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B5.2

6. “Relevant award” includes, but is not limited to, the awards made by a provider in relation to an apprenticeship.

Evidence gathering, assessment and enforcement

7. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.
8. Where monitoring activity produces evidence that suggests there may be compliance concerns for an individual provider, the OfS would be likely to adopt one of the following approaches:
 - a. Engage with a provider to ensure it is aware of the issues.
 - b. Gather further evidence, from a provider or from elsewhere, to clarify whether a breach of one or more conditions is likely.
 - c. Use its investigatory powers in cases where engagement increases its concerns, or where the evidence suggests that a breach of one or more conditions is likely.
9. Where the OfS considers it necessary to use its investigatory powers it will ask the designated quality body to gather further evidence. For any investigation, the OfS will set out the issues that are of concern. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.
10. As part of its approach to assessing compliance with this condition, the OfS and the designated quality body are likely to need access to students’ assessed work, including for students who are no longer registered on a course. Providers are therefore expected to retain appropriate records of students’ assessed work for such regulatory purposes. In the absence of such records, the OfS may consider making negative inferences about compliance and/or may take targeted regulatory action to address the risk that it is unable to monitor compliance and regulate effectively.

11. Having received evidence from the designated quality body, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition it will write to the provider to set out the reasons for its provisional decision and set out the evidence it has used to reach this view. The provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.
12. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.
13. Where the OfS considers there to be an increased risk of a breach, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events.
14. Where there is, or has been, a breach of this condition, or where the OfS considers there to be an increased risk of a breach, the OfS may take this into account in the following ways:
 - a. The eligibility requirements for participation in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining eligibility for the TEF.
 - b. Changes to, or removal of, an existing TEF award. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF award.
 - c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for new or extended DAPs.

- iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
- iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

- d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for university or university college title.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
 - iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.
- e. The criteria for allocation of OfS public grant funding. The OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Annex C: Proposed initial conditions for quality and standards and amendments to the OfS’s regulatory framework

Condition B7: Initial condition relating to quality

Scope

B7.1 This condition applies to the quality of higher education to be provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider).

Requirement

B7.2 Without prejudice to the scope of B7.1, the provider must:

- a. have **credible** plans that would enable the provider, if registered, to comply with conditions B1, B2 and B4 from the date of registration; and
- b. have the **capacity and resources** necessary to deliver, in practice, those plans.

Definitions

B7.3 For the purposes of this condition B7:

- a. “**capacity and resources**” includes, but is not limited to:
 - i. the financial resources of the provider;
 - ii. the number, expertise and experience of the staff employed, and to be employed, by the provider; and
 - iii. the provider’s management and governance arrangements.
- b. “**credible**” includes, but is not limited to, evidence of the provider’s past performance delivering higher education.

Summary

Applies to: all providers seeking registration.

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Guidance

Condition B7.1

1. This condition applies to the courses that the provider plans to provide when it is registered.
2. The reference to higher education provided “in any manner or form” includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
3. The reference to higher education provided “by, or on behalf of, a provider” includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
4. The reference to “including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider” means that a provider is required to comply with the provisions of this condition where it would be the awarding body for a course, whether or not that provider would have any other role in the design or delivery of that course. In practice, this may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B7.2

5. Where a provider seeking registration has previously delivered, or is currently delivering, higher education courses, the “plans” required under this condition may include evidence relating to the provider’s experience of delivery of those courses. The OfS will have regard to that evidence in determining whether the condition is satisfied.
6. Where a registered provider is seeking registration in a different category of registration, this requires the OfS to deregister the provider and make a new registration decision by deciding whether each of the initial conditions is satisfied. In these circumstances “date of registration” means the date of the new registration.

Condition B7.3

7. The OfS is likely to draw on evidence submitted by the provider as part of its application for registration to make a judgement about whether a provider has the “capacity and resources” necessary to deliver, in practice, its plans. For example, evidence submitted in relation to a provider’s financial viability and sustainability, or its management and governance arrangements are likely to be relevant.

Assessing compliance

8. The OfS will assess compliance with this initial condition for all providers seeking registration. It will normally commission the designated quality body to conduct a quality review to provide evidence to the OfS to inform the OfS's decision about whether the condition is satisfied. An assessment by the designated quality body will involve the submission of specified evidence to the designated quality body and will normally involve a visit to the provider and interviews with relevant staff and students.
9. The OfS reserves the right to gather evidence itself or to ask another appropriate body or individual to gather evidence and, in these circumstances, would not commission the designated quality body to undertake review activity. For example, where a registered provider seeks registration in a different category, the OfS may consider whether the evidence it already holds about a provider's history of compliance with the ongoing conditions for quality is sufficient to reach a judgement about whether initial condition B7 is satisfied. In these circumstances the OfS may decide not to commission review activity from the designated quality body.
10. Where a provider, or another legal entity that the OfS considers to be operating substantially the same higher education business, has previously been registered, a history of non-compliance with ongoing conditions B1, B2 or B4 is likely to result in a judgement that initial condition B7 is not satisfied.
11. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a breach of one or more of the general ongoing conditions for quality (conditions B1, B2 and B4), it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events, or to have an additional review by the designated quality body.

Condition B8: Initial condition relating to standards

Scope

B8.1 This condition relates to the standards to be applied to higher education to be provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider).

Requirement

B8.2 Without prejudice to the scope of B8.1, the provider must demonstrate, in a **credible** manner, that any standards to be set and/or applied in respect of any **relevant awards** granted to students who complete a **higher education course** provided by, or on behalf of, the provider (if registered), whether or not the provider is the awarding body, are consistent with any applicable **sector-recognised standards**.

Definitions

B8.3 For the purposes of this condition B8:

- a. “**credible**” includes, but is not limited to, evidence of the provider’s past performance delivering higher education.
- b. “**higher education course**” is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.
- c. “**relevant award**” means:
 - i. a **research award**;
 - ii. a **taught award**; and/or
 - iii. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.

- d. “**research award**” and “**taught award**” have the meanings given in section 42(3) of the Higher Education and Research Act 2017.
- e. “**sector-recognised standards**” means the standards contained in the document of that title published by the OfS from time to time, and which apply as at the date of the provider’s application for registration.

Summary

Applies to: all providers seeking registration.

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Guidance

Condition B8.1

12. This condition applies to the courses that the provider plans to provide when it is registered.
13. The reference to higher education provided “in any manner or form” includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
14. The reference to higher education provided “by, or on behalf of, a provider” includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
15. The reference to “including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider” means that a provider is required to comply with the provisions of this condition where it would be the awarding body for a course, whether or not that provider would have any other role in the design or delivery of that course. In practice, this may result in more

than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B8.2

16. Where a provider seeking registration has previously delivered, or is currently delivering, higher education courses, the OfS may have regard to evidence relating to the standards set for those courses, and achieved by students receiving those awards in practice, in determining whether initial condition B8 is satisfied.
17. Where a registered provider is seeking registration in a different category of registration, this requires the OfS to deregister the provider and make a new registration decision by deciding whether each of the initial conditions is satisfied. In these circumstances, the OfS's assessment of this condition will relate to the courses the provider plans to provide from the date of the new registration.

Assessing compliance

18. The OfS will assess compliance with this initial condition for all providers seeking registration. It will commission the designated quality body to conduct a standards review to provide evidence to the OfS to inform the OfS's decision about whether the condition is satisfied. An assessment by the designated quality body will involve the submission of specified evidence to the designated quality body and may involve a visit to the provider and interviews with relevant staff and students.
19. The purpose of a standards review is for the designated quality body to scrutinise the courses that the provider will deliver when it is registered, whether or not they are currently delivered, and reach a judgement about whether the standards set in those courses are consistent with sector-recognised standards.
20. Where a provider has applied to be authorised for New DAPs at the same time as its application for registration, the OfS will commission a New DAPs test from the designated quality body and may ask the designated quality body to include in its advice separate information that would allow the OfS to determine whether initial condition B8 is satisfied.
21. Having received evidence from the designated quality body, the OfS will reach a view about whether the initial condition is satisfied. Where a provider, or another legal entity operating substantially the same higher education business, has previously been registered, a history of non-compliance with ongoing condition B5 is likely to result in a judgement that initial condition B8 is not satisfied.
22. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a breach of the general ongoing condition for standards (condition B5), it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events, or to have an additional review by the designated quality body.

Annex D: Sector-recognised standards

Sector-recognised standards

1. This document contains the sector-recognised standards that are in force through general ongoing condition B5 (sector-recognised standards) and initial condition B8 (initial condition relating to standards). Further information about these conditions can be found in the regulatory framework.³⁸

Part A: Threshold standards for qualifications at all levels³⁹

A.1: Examples of the typical higher education qualifications at each level

Conventions for qualification titles

2. Public understanding of the achievements represented by higher education qualifications requires transparent and consistent use of qualification titles. The title of any qualification, therefore, should accurately reflect the level of students' achievement, and the volume, nature and field(s) of study undertaken. Qualification titles should not be misleading.
3. To ensure that qualification titles accurately convey information about the level of the qualification:
 - the titles 'honours' (for example, bachelors' degree with honours), 'master' (for example, Master of Arts) and 'doctor' (for example, Doctor of Philosophy) are used only for qualifications that meet, in full, the expectations of the qualification descriptors at level 6, level 7 and level 8 respectively (but see note to the masters' degree qualification descriptor).
 - titles with the stem 'graduate' (for example, 'graduate diploma') are used for qualifications from courses that typically require graduate entry, or its equivalent, and that meet relevant parts of the qualification descriptors at level 6.
 - titles with the stem 'postgraduate' (for example, 'postgraduate diploma') are restricted to qualifications that meet relevant parts of the qualification descriptor at level 7.

Qualifications at each level

4. The levels for higher education courses are numbered 4-8, and follow levels 1-3 which relate to levels of study below higher education, and which are set out in the Regulated Qualifications Framework (RQF).
5. Table 1 below lists typical higher education qualifications for each level.

³⁸ See www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/

³⁹ The content of this Part is drawn from 'The Frameworks for Higher Education Qualifications of UK Degree Awarding Bodies' published in October 2014. See <https://www.qaa.ac.uk/docs/qaa/quality-code/qualifications-frameworks.pdf>

Typical higher education qualifications within each level	Level
Doctoral degrees (e.g. PhD/DPhil, EdD, DBA, DClinPsy) ^a	8
Masters' degrees (e.g. MPhil, MLitt, MRes, MA, MSc)	7
Integrated masters' degrees (e.g. MEng, MChem, MPhys, MPharm) ^b	
Primary qualifications (or first degrees) in medicine, dentistry and veterinary science (e.g. MB ChB, MB BS, BM BS ^c ; BDS; BVSc, BVMS) ^d	
Postgraduate diplomas	
Postgraduate Certificate in Education (PGCE) ^e /Postgraduate Diploma in Education (PGDE)	
Postgraduate certificates	
Bachelors' degrees with honours (e.g. BA/BSc Hons)	
Bachelors' degrees ^f	
Professional Graduate Certificate in Education (PGCE) ^e	
Graduate diplomas	
Graduate certificates	
Foundation degrees (e.g. FdA, FdSc)	5
Diplomas of Higher Education (DipHE)	
Higher National Diplomas (HND) ^g	
Higher National Certificates (HNC) ^g	
Certificates of Higher Education (CertHE)	

Notes to Table 1

- ^a Professional doctorate programmes include some taught elements in addition to the research dissertation. Practice varies but typically professional doctorates include postgraduate study equivalent to a minimum of three full-time calendar years with study at level 7 representing no more than one-third of this.
- ^b Integrated masters' degree programmes typically include study equivalent to at least four full-time academic years in England, of which study equivalent to at least one full-time academic year is at level 7 (i.e. at the level of the qualification). Thus study at bachelors' level is integrated with study at masters' level and the programmes are designed to meet the qualification descriptor in full at level 6 and level 7.
- ^c These are all abbreviated forms for the degrees of Bachelor of Medicine/Bachelor of Surgery.
- ^d Primary qualifications in medicine, dentistry and veterinary science typically include study equivalent to at least four full-time academic years in England, of which study equivalent to at least one full-time academic year is at level 7 (i.e. at the level of the qualification). Thus

study at bachelors' level is integrated with study at masters' level and the programmes are designed to meet the qualification descriptor in full at level 6 and level 7. For historical reasons the qualifications retain the title 'Bachelor'.

- e The title Postgraduate Certificate in Education is reserved for those PGCE qualifications that are set at level 7 and align with the qualification descriptor for level 7. The title Professional Graduate Certificates in Education is used for those PGCE qualifications that are set at level 6 and align with the qualification descriptor at level 6.
- f A bachelors' degree without honours includes an Ordinary degree or a Pass degree which consist of a smaller volume of credit and so meet the qualification descriptor in part at level 6.
- g HNDs and HNCs may either be awarded by degree awarding bodies under a licence from Pearson (which allows them to devise, deliver and award Higher National qualifications themselves), or they may be awarded directly by Pearson. The majority of these qualifications are awarded by Pearson.

A.2: Typical volumes of credit for qualifications at each level

6. The award of higher education qualifications is based on the demonstrated achievement of outcomes rather than years of study. Higher education providers are not required to adopt a credit system to define the volume of learning expected of students, although many providers do express their courses by reference to credit. The credit system used in England equates 'credit' with 'learning time', with 10 notional learning hours equating to 1 credit. This means that the volume of study for a course expressed in credit provides an indication of the approximate learning time for a student.
7. Volume of study can therefore be used as an indicator of the range and depth of students' learning and can, as a consequence, distinguish between types of qualifications at the same level. For example, the title 'diploma' generally indicates a smaller volume of learning than a 'degree' but a larger volume than a 'certificate'. A range of diplomas and certificates are offered by higher education providers.
8. Table 2 below sets out the typical credit values associated with courses leading to common higher education qualifications. The values shown in column 3 are the minimum that are typically associated with a qualification (with any minimum or maximum at a specified level shown in parentheses).

Typical higher education qualifications within each level	Level	Typical credit values
PhD/DPhil	8	Not typically credit rated
Professional doctorates (if credit rated) (e.g. EdD, DBA, DClinPsy)		540 (360 at level 8)
Research masters' degrees (e.g. MRes, MPhil)	7	Not typically credit rated
Taught masters' degrees (e.g. MA, MSc)		180 (150 at level 7)
Integrated masters' degrees (e.g. MEng, MChem, MPhys, MPharm)		480 (120 at level 7)

Typical higher education qualifications within each level	Level	Typical credit values
Primary (or first) qualifications in medicine (e.g. BM BS), dentistry (e.g. BDS) and veterinary science (e.g. BVSc)		Not typically credit rated
Postgraduate diplomas		120 (90 at level 7)
Postgraduate Certificate in Education (PGCE)		60 (40 at level 7)
Postgraduate certificates		60 (40 at level 7)
Bachelors' degrees with honours (e.g. BA/BSc Hons)	6	360 (90 at level 6)
Bachelors' degrees		300 (60 at level 6)
Postgraduate Graduate Certificate in Education (PGCE)		60 (40 at level 6)
Graduate diplomas		80 (80 at level 6)
Graduate certificates		40 (40 at level 6)
Foundation degrees (e.g. FdA, FdSc)	5	240 (90 at level 5)
Diplomas of Higher Education (DipHE)		240 (90 at level 5)
Higher National Diplomas (HND)		240 (90 at level 5)
Higher National Certificates (HNC)	4	120 (60 at level 4)
Certificates of Higher Education (CertHE)		120 (90 at level 4)

A.3: Qualification descriptors

9. Qualification descriptors set out the generic outcomes and attributes expected for the award of a particular type of qualification (for example a bachelors' degree with honours). They describe the minimum acceptable level of achievement that a student has to demonstrate to be eligible for an award. They are 'generic' because they describe the outcomes and attributes expected from any subject of study, rather than from any particular subject, and so are applicable across subjects and modes of study.
10. The qualification descriptors set out below describe the threshold academic standard for those qualification types in terms of the levels of knowledge and understanding and the types of abilities that holders of the relevant qualification are expected to have.
11. The qualification descriptors are in two parts. The first part is a statement of outcomes, achievement of which is assessed and which a student should be able to demonstrate for the award of the qualification. This is a statement of the threshold academic standard for the qualification. This part is of particular relevance to providers in designing, approving, assessing and reviewing academic programmes. The second part of the descriptor is a statement of the wider abilities that a typical student would be expected to have developed. It assists providers to understand the general capabilities expected of holders of the qualification.

12. Each qualification descriptor sets out the outcomes for the typical or main qualification type at each level. At most levels there is more than one type of qualification that may be achieved (for example postgraduate diplomas and certificates in addition to master's degrees at level 7). Within each level, the various types of qualifications involve different volumes of learning (for example master's degrees entail more learning than postgraduate certificates). As a consequence, there are differences in the range and nature of outcomes and attributes expected of students. Not all of the qualification types at each level therefore meet all of the expectations of the qualification descriptor. Where a qualification type has a smaller volume of learning than the main qualification type, the qualification descriptor for the degree is used as a reference point and the sub-degree qualification is expected to meet the descriptor in part. This is also the approach taken for individual modules, where credit is awarded for completion of a smaller volume of learning than the main qualification type.

A.3.1 Descriptor for a higher education qualification at level 4: Certificate of Higher Education

13. The descriptor provided for this level is for any Certificate of Higher Education, which should meet the descriptor in full. This qualification descriptor should also be used as a reference point for other qualifications aligned with level 4.

14. Certificates of Higher Education are awarded to students who have demonstrated:

- knowledge of the underlying concepts and principles associated with their area(s) of study, and an ability to evaluate and interpret these within the context of that area of study
- an ability to present, evaluate and interpret qualitative and quantitative data, in order to develop lines of argument and make sound judgements in accordance with basic theories and concepts of their subject(s) of study.

15. Typically, holders of the qualification will be able to:

- evaluate the appropriateness of different approaches to solving problems related to their area(s) of study and/or work
- communicate the results of their study/work accurately and reliably, and with structured and coherent arguments
- undertake further training and develop new skills within a structured and managed environment.

16. And holders will have:

- the qualities and transferable skills necessary for employment requiring the exercise of some personal responsibility.

17. Holders of a Certificate of Higher Education will have a sound knowledge of the basic concepts of a subject, and will have learned how to take different approaches to solving

problems. They will be able to communicate accurately and will have the qualities needed for employment requiring the exercise of some personal responsibility. The Certificate of Higher Education may be a first step towards obtaining higher level qualifications.

A.3.2 Descriptor for a higher education qualification at level 5: Foundation degree

18. The descriptor provided for this level is for any foundation degree which should meet the descriptor in full. This qualification descriptor should also be used as a reference point for other qualifications at level 5, including Diplomas of Higher Education and Higher National Diplomas.

19. Foundation degrees are awarded to students who have demonstrated:

- knowledge and critical understanding of the well-established principles of their area(s) of study, and of the way in which those principles have developed
- ability to apply underlying concepts and principles outside the context in which they were first studied, including, where appropriate, the application of those principles in an employment context
- knowledge of the main methods of enquiry in the subject(s) relevant to the named award, and ability to evaluate critically the appropriateness of different approaches to solving problems in the field of study
- an understanding of the limits of their knowledge, and how this influences analyses and interpretations based on that knowledge.

20. Typically, holders of the qualification will be able to:

- use a range of established techniques to initiate and undertake critical analysis of information, and to propose solutions to problems arising from that analysis
- effectively communicate information, arguments and analysis in a variety of forms to specialist and non-specialist audiences and deploy key techniques of the discipline effectively
- undertake further training, develop existing skills and acquire new competences that will enable them to assume significant responsibility within organisations.

21. And holders will have:

- the qualities and transferable skills necessary for employment requiring the exercise of personal responsibility and decision-making

22. The foundation degree is an example of a qualification that meets, in full, the expectations of the qualification descriptor.

23. Holders of qualifications at this level will have developed a sound understanding of the principles in their field of study, and will have learned to apply those principles more widely. Through this, they will have learned to evaluate the appropriateness of different approaches to solving problems. Their studies may well have had a vocational orientation, for example HNDs, enabling them to perform effectively in their chosen field. Holders of qualifications at this level will have the qualities necessary for employment in situations requiring the exercise of personal responsibility and decision-making.

A.3.3 Descriptor for a higher education qualification at level 6: Bachelors' degree with honours

24. The descriptor provided for this level is for any bachelors' degree with honours which should meet the descriptor in full. This qualification descriptor should also be used as a reference point for other qualifications at level 6, including bachelors' degrees, and graduate diplomas.

25. Bachelors' degrees with honours are awarded to students who have demonstrated:

- a systematic understanding of key aspects of their field of study, including acquisition of coherent and detailed knowledge, at least some of which is at, or informed by, the forefront of defined aspects of a discipline
- an ability to deploy accurately established techniques of analysis and enquiry within a discipline
- conceptual understanding that enables the student:
 - to devise and sustain arguments, and/or to solve problems, using ideas and techniques, some of which are at the forefront of a discipline
 - to describe and comment upon particular aspects of current research, or equivalent advanced scholarship, in the discipline
- an appreciation of the uncertainty, ambiguity and limits of knowledge
- the ability to manage their own learning, and to make use of scholarly reviews and primary sources (for example, refereed research articles and/or original materials appropriate to the discipline).

26. Typically, holders of the qualification will be able to:

- apply the methods and techniques that they have learned to review, consolidate, extend and apply their knowledge and understanding, and to initiate and carry out projects
- critically evaluate arguments, assumptions, abstract concepts and data (that may be incomplete), to make judgements, and to frame appropriate questions to achieve a solution - or identify a range of solutions - to a problem

- communicate information, ideas, problems and solutions to both specialist and non-specialist audiences.

27. And holders will have:

- the qualities and transferable skills necessary for employment requiring:
 - the exercise of initiative and personal responsibility
 - decision-making in complex and unpredictable contexts
 - the learning ability needed to undertake appropriate further training of a professional or equivalent nature.

28. Holders of a bachelor's degree with honours will have developed an understanding of a complex body of knowledge, some of it at the current boundaries of an academic discipline. Through this, the holder will have developed analytical techniques and problem-solving skills that can be applied in many types of employment. The holder of such a qualification will be able to evaluate evidence, arguments and assumptions, to reach sound judgements and to communicate them effectively.

29. Holders of a bachelor's degree with honours should have the qualities needed for employment in situations requiring the exercise of personal responsibility, and decision-making in complex and unpredictable circumstances.

A.3.4 Descriptor for a higher education qualification at level 7: Masters' degree

30. The descriptor provided for this level is for any masters' degree which should meet the descriptor in full. This qualification descriptor should also be used as a reference point for other qualifications at level 7, including postgraduate certificates and postgraduate diplomas.

31. Masters' degrees are awarded to students who have demonstrated:

- a systematic understanding of knowledge, and a critical awareness of current problems and/or new insights, much of which is at, or informed by, the forefront of their academic discipline, field of study or area of professional practice
- a comprehensive understanding of techniques applicable to their own research or advanced scholarship
- originality in the application of knowledge, together with a practical understanding of how established techniques of research and enquiry are used to create and interpret knowledge in the discipline
- conceptual understanding that enables the student:
 - to evaluate critically current research and advanced scholarship in the discipline

- to evaluate methodologies and develop critiques of them and, where appropriate, to propose new hypotheses.

32. Typically, holders of the qualification will be able to:

- deal with complex issues both systematically and creatively, make sound judgements in the absence of complete data, and communicate their conclusions clearly to specialist and non-specialist audiences
- demonstrate self-direction and originality in tackling and solving problems, and act autonomously in planning and implementing tasks at a professional or equivalent level
- continue to advance their knowledge and understanding, and to develop new skills to a high level.

33. And holders will have:

- the qualities and transferable skills necessary for employment requiring:
 - the exercise of initiative and personal responsibility
 - decision-making in complex and unpredictable situations
 - the independent learning ability required for continuing professional development.

34. Much of the study undertaken for master's degrees is at, or informed by, the forefront of an academic or professional discipline. Successful students show originality in the application of knowledge, and they understand how the boundaries of knowledge are advanced through research. They are able to deal with complex issues both systematically and creatively, and they show originality in tackling and solving problems. They have the qualities needed for employment in circumstances requiring sound judgement, personal responsibility and initiative in complex and unpredictable professional environments.

A.3.5 Descriptor for a higher education qualification at level 8: Doctoral degree

35. The descriptor provided for this level is for any doctoral degree which should meet the descriptor in full. This qualification descriptor should also be used as a reference point for other level 8 qualifications.

36. Doctoral degrees are awarded to students who have demonstrated:

- the creation and interpretation of new knowledge, through original research or other advanced scholarship, of a quality to satisfy peer review, extend the forefront of the discipline, and merit publication
- a systematic acquisition and understanding of a substantial body of knowledge which is at the forefront of an academic discipline or area of professional practice

- the general ability to conceptualise, design and implement a project for the generation of new knowledge, applications or understanding at the forefront of the discipline, and to adjust the project design in the light of unforeseen problems
- a detailed understanding of applicable techniques for research and advanced academic enquiry.

37. Typically, holders of the qualification will be able to:

- make informed judgements on complex issues in specialist fields, often in the absence of complete data, and be able to communicate their ideas and conclusions clearly and effectively to specialist and non-specialist audiences
- continue to undertake pure and/or applied research and development at an advanced level, contributing substantially to the development of new techniques, ideas or approaches.

38. And holders will have:

- the qualities and transferable skills necessary for employment requiring the exercise of personal responsibility and largely autonomous initiative in complex and unpredictable situations, in professional or equivalent environments.

39. Doctoral degrees are awarded for the creation and interpretation, construction and/or exposition of knowledge which extends the forefront of a discipline, usually through original research.

40. Holders of doctoral degrees are able to conceptualise, design and implement projects for the generation of significant new knowledge and/or understanding. Holders of doctoral degrees have the qualities needed for employment that require both the ability to make informed judgements on complex issues in specialist fields and an innovative approach to tackling and solving problems.

Part B: Classification descriptors for Level 6 bachelors' degrees⁴⁰

41. Classification descriptors set out the generic outcomes and attributes expected for the award of a bachelors' degree with a particular classification. They build on the threshold standards set out above in the descriptor for a bachelors' degree with honours (see A.3.3) and describe the minimum acceptable level of achievement that a student has to demonstrate to be eligible for a particular classification. They are 'generic' because they describe the outcomes and attributes expected from any subject of study for that classification, rather than from any particular subject, and so are applicable across subjects and modes of study.
42. The classification descriptors also describe the outcomes and attributes that would demonstrate that a student has not met the expected standard for the award of an honours degree.
43. The classification descriptors set out below describe the standard for each classification in terms of the levels of knowledge and understanding and the types of abilities that holders of the relevant classification are expected to have. A graduate can be expected to have demonstrated the skills and attributes attached to their respective classification, as set out in Table 3.

Table 3: Typical skills and attributes for each classification for level 6 bachelors' honours

Not successful	Third-class honours (3rd)	Lower second-class honours (2.2)	Upper second-class honours (2.1)	First-class honours (1st)
<p>The student did not achieve the required course learning outcomes and:</p> <p>did not consistently demonstrate sufficient knowledge and understanding, cognitive, practical and transferable skills</p> <p>did not consistently demonstrate adequate initiative and personal responsibility</p>	<p>The student achieved all their required course learning outcomes and:</p> <p>demonstrated knowledge and understanding, cognitive, practical and transferable skills</p> <p>demonstrated initiative and exercised personal responsibility</p>	<p>The student achieved all their required course learning outcomes and:</p> <p>demonstrated strong knowledge and understanding, cognitive, practical and transferable skills</p> <p>demonstrated initiative and personal responsibility</p>	<p>The student achieved all their required course learning outcomes and:</p> <p>demonstrated thorough knowledge and understanding, cognitive, practical and transferable skills</p> <p>demonstrated good initiative and personal responsibility</p>	<p>The student achieved all their required course learning outcomes and:</p> <p>consistently demonstrated advanced knowledge and understanding, cognitive, practical and transferable skills</p> <p>consistently demonstrated exceptional initiative and</p>

⁴⁰ The content of this Part is drawn from the degree classification descriptions for bachelors' degrees adopted by the UKSCQA in June 2019. See ukscqa.org.uk/2019/10/10/higher-education-sector-announces-new-initiatives-to-protect-value-of-uk-degrees/

did not consistently demonstrate ability to reflect on their work	demonstrated some ability to reflect on their work	demonstrated an ability to reflect on their work	demonstrated an ability to reflect critically on their work	personal responsibility consistently demonstrated ability to reflect critically and independently on their work
did not consistently demonstrate problem-solving skills	demonstrated problem-solving skills	demonstrated strong problem-solving skills	demonstrated thorough problem-solving skills	consistently demonstrated exceptional problem-solving skills

44. Bachelors' degree courses vary in their content and the way students are assessed. A higher education provider may therefore give the different areas of the classification outcomes in Table 4 different weight for different subjects and courses. For example, numeracy and digital skills may not be as applicable to some arts courses as creativity skills, while the reverse may be the case for some STEM courses.
45. The outcomes in table 4 express a holistic view of the outcomes a graduate would be expected to demonstrate for each classification. It presents a detailed articulation of how the typical skills and attributes acquired by graduates set out in Table 3 above apply across the following different areas:
- Knowledge and understanding
 - Cognitive skills
 - Practical skills
 - Transferable skills
 - Professional competences (where appropriate)
46. 'Knowledge and understanding' is defined as a systematic extensive and comparative understanding of key aspects of the field of study, including coherent and detailed knowledge of the subject and critical understanding of theories and concepts, at least some of which is at, or informed by, the forefront of defined aspects of a discipline.
47. 'Cognitive skills' is defined as a conceptual understanding of a level that is necessary to devise and sustain arguments, and/or to solve problems and comment on research and scholarship in the discipline, with an appreciation of the uncertainty, ambiguity and limits of knowledge.
48. 'Practical skills' is defined as an ability to manage one's individual learning and to deploy accurately established techniques of analysis and enquiry within a discipline or as necessary for the discipline.

49. 'Transferable skills' is defined as personal and enabling skills appropriate to the discipline, including the ability to communicate information, ideas, problems and solutions to both specialist and non-specialist audiences, the exercise of initiative and personal responsibility and decision-making in complex and unpredictable contexts.
50. 'Professional competences' (to the extent that they are expressed by the course learning outcomes) covers specific professional requirements and the learning ability needed to undertake appropriate further training of a professional or equivalent nature. Where the award of a qualification requires an assessment of professional competencies, no award will be made if a student does not meet them.

Table 4

Knowledge and understanding

Not successful	3rd (pass or threshold)	2.2	2.1	1st
The student's knowledge and understanding of the subject is inadequate, without the required breadth or depth, with deficiencies in key areas.	The student has demonstrated a depth of knowledge and understanding in key aspects of their field of study, sufficient to deal with terminology, facts and concepts.	The student has demonstrated a sound breadth and depth of subject knowledge and understanding, if sometimes balanced towards the descriptive rather than the critical or analytical.	The student has demonstrated sophisticated breadth and depth of knowledge and understanding, showing a clear, critical insight.	The student has shown exceptional knowledge and understanding, significantly beyond the threshold expectation of a graduate at this level and beyond what has been taught.
The student has demonstrated inadequate understanding of subject-specific theories, paradigms, concepts and principles, including their limitations and ambiguities.	The student has demonstrated an understanding of subject-specific theories, paradigms, concepts and principles.	The student has consistently demonstrated an understanding of subject-specific theories, paradigms, concepts and principles as well as more specialised areas.	The student has demonstrated a thorough understanding of subject-specific theories, paradigms, concepts and principles and a sound understanding of more specialised areas.	The student has demonstrated an exceptional understanding of subject-specific theories, paradigms, concepts and principles, and in-depth knowledge, if not mastery of a range of specialised areas.
The student has not produced sufficient evidence of background investigation, analysis, research, enquiry and/or study.	The student has conducted general background investigation, analysis, research, enquiry and/or study using established techniques, with the ability to extract relevant points.	The student has conducted background investigation, analysis, research, enquiry and/or study using established techniques accurately, and can critically appraise academic sources.	The student has conducted thorough background investigation, analysis, research, enquiry and/or study using established techniques accurately, and possesses a well-developed ability to critically appraise a wide range of sources.	The student has conducted independent, extensive and appropriate investigation, analysis, research, enquiry and/or study well beyond the usual range, together with critical evaluation, to advance work and/or direct arguments.

Cognitive skills

Not successful	3rd (pass or threshold)	2.2	2.1	1st
The student has displayed an over-reliance on set sources. They have not demonstrated an adequate ability to select and evaluate reading and research.	The student has demonstrated the ability to select, evaluate and comment on reading, research and primary sources.	The student has selected, evaluated and commented on reading, research and primary sources, sometimes beyond the set range.	The student has thoroughly selected, critically evaluated and commented on reading, research and primary sources, usually beyond the set range.	The student has demonstrated an exceptional ability to select, consider, evaluate, comment on and synthesise a broad range of research, primary sources, views and information and integrate references.
The student's arguments and explanations are weak and/or poorly constructed, and they are not able to critically evaluate the arguments of others or consider alternative views.	The student has shown the ability to devise and sustain an argument, with some consideration of alternative views, and can explain often complex matters and ideas.	The student has argued logically, with supporting evidence, and has demonstrated the ability to consider and evaluate a range of views and information. They have clearly and consistently explained complex matters and ideas.	The student has demonstrated the ability to make coherent, substantiated arguments, as well as the ability to consider, critically evaluate and synthesise a range of views and information. They have demonstrated a thorough, perceptive and thoughtful interpretation of complex matters and ideas.	The student has made consistent, logical, coherently developed, and substantiated arguments, and demonstrated the ability to systematically consider, critically evaluate and synthesise a wide range of views and information. They have demonstrated sophisticated perception, critical insight and interpretation of complex matters and ideas.
The student has shown a limited ability to solve problems and/or make decisions.	The student has demonstrated an ability to solve problems, applying a range of methods to do so, and the ability to make decisions in complex and unpredictable circumstances.	The student has consistently solved complex problems, selecting and applying a range of appropriate methods, and can make decisions in complex and unpredictable circumstances.	The student has demonstrated thorough problem-solving skills, selecting and justifying their use of a wide-range of methods, and can make decisions in complex and unpredictable circumstances with a degree of autonomy.	The student has demonstrated a wide range of extremely well-developed problem-solving skills, as well as a strong aptitude for decision-making with a high degree of autonomy, in the most complex and unpredictable circumstances.
The student has shown little or no real creativity.	The student has produced some creative work.	The student has consistently demonstrated creativity.	The student has shown a high level of creativity and originality throughout their work.	The student has demonstrated exceptional creative flair and originality.

Practical skills

Not successful	3rd (pass or threshold)	2.2	2.1	1st
The student has not demonstrated sufficient evidence of discipline-specific skills development or application.	The student has demonstrated evidence of developing and applying discipline-specific specialist skills.	The student has consistently demonstrated the development and informed application of discipline-specific specialist skills.	The student has demonstrated a capable and effective application of discipline-specific specialist skills.	The student has demonstrated an accomplished and innovative application of discipline-specific specialist skills.
The student has attempted practical tasks/processes but followed a limited, procedural or mechanistic formula, and they contain errors, with little or no independence.	The student has completed practical tasks and/or processes accurately and with a degree of independence.	The student has consistently completed practical tasks/processes mainly independently in an accurate, well-coordinated and proficient way.	The student has performed practical tasks and/or processes autonomously, with accuracy and coordination.	The student has autonomously completed practical tasks and/or processes with a high degree of accuracy, coordination and proficiency.
The student has demonstrated a lack of technical, creative and/or artistic skills in most, or key, areas.	The student has demonstrated technical, creative and/or artistic skills.	The student has consistently demonstrated well-developed technical, creative and/or artistic skills.	The student has a thorough command of highly-developed relevant technical, creative and/or artistic skills.	The student has a full range of exceptional technical, creative and/or artistic skills.
The student has not presented their research findings clearly or effectively, and their gathering, processing and interpretation of data is unsatisfactory.	The student has presented their research findings, in several formats, and has gathered, processed and interpreted data effectively.	The student has consistently presented their research findings effectively and appropriately in many formats, and has gathered, processed and interpreted data efficiently and effectively.	The student has presented thorough research findings perceptively and appropriately in a wide range of formats, and has gathered, processed and interpreted a wide range of complex data efficiently and effectively.	The student has presented research findings perceptively, convincingly and appropriately in a wide range of formats, and has gathered, processed and interpreted a wide range of complex data efficiently and effectively.

Transferable skills

Not successful	3rd (pass or threshold)	2.2	2.1	1st
The student is not able to sufficiently express ideas and convey clear meaning verbally, electronically and/or in writing, uses inaccurate terminology, with many errors in spelling, vocabulary and syntax. They have been unable to demonstrate consistently basic numeracy and digital literacy skills.	The student can communicate information, ideas, problems and solutions verbally, electronically and in writing, with clear expression and style. They have also demonstrated numeracy and digital literacy skills.	The student can consistently and confidently communicate information, ideas, problems and solutions verbally, electronically and in writing. They show a clear, coherent, expressive style, with a range of vocabulary. They have consistently demonstrated strong numeracy and digital literacy skills.	The student can communicate information, ideas, problems and solutions with a high-degree of proficiency verbally, electronically and in writing. They have a clear, fluent and expressive style with appropriate vocabulary. They have a high standard of numeracy and digital literacy skills.	The student can communicate information, ideas, problems and solutions to an accomplished level verbally, electronically and in writing. They have shown an accurate, fluent, sophisticated style. They possess exceptional numeracy and digital literacy skills.
The student has made infrequent contributions to group discussions and/or project work.	The student has demonstrated a capability of making useful contributions to group discussions and/or project work.	The student has consistently demonstrated the capability to make coherent and constructive contributions to group discussions and/or project work.	The student has demonstrated the capability to make strong, valuable contributions to group discussions and/or project work, with an understanding of team and leadership roles.	The student has demonstrated the capability to make clear, authoritative and valuable contributions to group discussions and/or project work, with exceptional teamwork and leadership skills.
The student has demonstrated little or no ability to manage their learning and/or work without supervision.	The student has shown an ability to manage their learning and work with minimal or no supervision.	The student has consistently shown an ability to systematically manage their learning, and work without supervision.	The student has shown a strong ability to systematically manage their learning, and work without supervision.	The student has shown an exceptional ability to manage their learning on their own initiative, and work without supervision.
The student has not demonstrated adequate initiative or personal responsibility.	The student has demonstrated initiative and/or personal responsibility.	The student has consistently demonstrated initiative and/or personal responsibility.	The student has consistently demonstrated well-developed initiative and/or personal responsibility.	The student has demonstrated exceptional initiative and/or personal responsibility.
The student has shown little or no ability to reflect on their work.	The student has demonstrated the ability to reflect on their work.	The student has consistently demonstrated a well-developed ability to reflect on their work.	The student has demonstrated the ability to reflect critically on their work.	The student has demonstrated an exceptional ability to reflect critically and independently on their work.

Professional competences

Not successful	3rd (pass or threshold)	2.2	2.1	1st
The student has not demonstrated achievement of professional competence when assessed against the requirements of a professional, statutory or regulatory body (PSRB).	The student has demonstrated achievement of professional competence when assessed against the requirements of a PSRB.			
The student has failed to adhere to the appropriate rules and/or conventions set by regulators or the industry.	The student has adhered to the appropriate rules and/or conventions set by regulators or the industry.			

Annex E: Consideration of alternative proposals

1. In formulating the proposals in this consultation we have considered alternative approaches. Alternatives that relate to particular aspects of individual proposals are discussed in the analysis of responses to our consultation on regulating quality and standards in higher education held between 17 November 2020 and 25 January 2021⁴¹ and in the main body of this document. More generally, we have considered the following broad policy alternatives.

Make no changes to our current approach

2. We have considered whether it is necessary to make any changes at all to our approach to regulating quality and standards. We could simply continue to apply the requirements set out in the regulatory framework. We have discounted this approach, because our experience of regulating in this area over the past three years leads us to conclude that changes are necessary if we are to deliver our regulatory objectives and protect the interests of students and taxpayers. We consider it necessary to amend our quality and standards requirements to ensure they are clear and comprehensive, in order to provide clarity to providers, students and others, and so that the OfS can regulate with confidence where it considers that courses are not of sufficient quality or where standards are not maintained. This is important to ensure that higher education in England is high quality and students and taxpayers continue to have confidence in the credibility of awards granted. Our proposals are therefore designed to allow us to regulate actively where we are concerned that a provider's courses are falling below our minimum requirements, or may do so.
3. In addition, responses to our phase one consultation have reinforced our view that our requirements for quality and standards needs to be expressed clearly and comprehensively to allow providers to understand their obligations and the approach the OfS is likely to take to regulating these important issues. We have seen responses that suggest important features of our existing approach are not properly understood, for example the extent to which the existing conditions cover all types of higher education course, or the role the designated quality body plays in the statutory framework. We take the view that it cannot be in the interests of students, taxpayers, or providers themselves for this uncertainty to continue. We therefore consider that the current consultation is a necessary step to improving understanding of the scope and effect of our requirements.
4. At the same time, we consider that improved clarity about our requirements will allow us to make progress on our commitment to reduce regulatory burden for those providers with high quality courses, good outcomes, and rigorous standards.

Adopt an approach that involves scheduled cyclical reviews of all providers

5. A small number of respondents to the phase one consultation suggested a return to the quality assessment approach adopted in England before the creation of the OfS. The main feature of that approach was that each provider was subject to a full quality and standards review on a four or six-year cycle. That review process focused on a provider's internal quality and

⁴¹ See www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/.

standards assurance arrangements and required an extensive evidence base of policies and procedures.

6. There are two main reasons for not proposing this type of approach. The first is that the OfS is required by HERA to regulate in proportion to the risk posed by an individual provider. This is reflected in the risk-based approach to regulation set out in the regulatory framework. Requiring every registered provider to cooperate with a quality and standards review on a cyclical basis would not, in our view, be consistent with that risk-based approach because it would mean the same level of scrutiny and regulatory burden for all providers, regardless of the extent to which they may be complying with our conditions of registration.
7. The second reason for not proposing an ‘institutional audit’ type of approach is that the OfS’s regulatory objectives focus on whether students (in practice) receive a high quality academic experience, and whether their awards and qualifications (in practice) hold their value over time. Delivering these objectives requires us to set and assess regulatory requirements that explicitly relate to these tangible things, rather than to the policies and process that providers may have in place. Our proposed approach would focus squarely on courses, resources, support, assessment and standards and we consider this necessary to ensure that students and taxpayers are receiving value for money.

Adopt a rules-based approach

8. We have considered whether it would be possible or desirable to propose revised conditions of registration that take a rules-based approach. We have taken a more rules-based approach to proposed condition B5 which relates to standards. This is because the ‘sector-recognised standards’ that we propose to use in that condition have themselves been written in a more rules-based way when drafted by the sector. However, the proposed conditions for quality are expressed in a principles-based way.
9. Many consultation responses asked for more information or more detail about our proposed requirements and how these would be interpreted in practice. Such requests were perhaps inevitable in a phase one consultation that set out broad principles for our future approach, and we expect the detail contained in the current proposals to resolve many of these issues. But a very small number of responses asked for a more rules-based approach that provided a clear list of requirements that each provider is required to meet. The reasons given for this preference included that a rules-based approach is easier to understand and comply with.
10. The regulatory framework says that the imposition of a narrow rules-based approach would risk leading to a compliance culture that stifles diversity and innovation and prevents the higher education sector from flourishing. This remains our view and we remain committed to a principles-based approach to regulation. As we set out in our Insight brief, we see the key features of a principles-based approach as including a concern with qualitative standards of behaviour rather than the enforcement of compliance with specific prescriptions and processes.⁴²

⁴² A matter of principles: regulating in the student interest (October 2020) is available at www.officeforstudents.org.uk/publications/a-matter-of-principles-regulating-in-the-student-interest/#principlesbasedregulation.

11. This means we can accommodate the diversity of courses and providers we see in a sector with more than 420 registered providers. It also means individual providers have significant latitude in deciding what and how they teach, provided this meets our minimum requirements. Our approach is therefore less intrusive into providers' autonomy than an alternative rules-based approach. It also minimises regulatory burden by giving providers flexibility to decide how to comply.
12. We recognise that, in a principles-based regulatory system, guidance for providers about how those principles are likely to be interpreted in practice has an important role. This is why we have included in the proposed conditions definitions of key terms, and we have also included in guidance illustrative examples of the approach we will likely take to compliance judgements.

Annex F: Matters to which we have had regard in reaching our proposals

The OfS's general duties

1. In formulating these proposals, the OfS has had regard to its general duties as set out in section 2 of HERA – these are reproduced in [Annex H](#). We consider that the proposals in this consultation are particularly relevant to general duties (a), (b), (c), (d), (e) and (g), which relate to: institutional autonomy; quality, choice and opportunities for students; competition where this is in the interests of students; value for money; equality of opportunity; and best regulatory practice.
2. In formulating these proposals, we have given particular weight to (b), (d) and (e): promoting quality, choice and opportunities for students; value for money; and equality of opportunity.
3. The OfS's regulatory objectives reflect the things that matter most to all students: high quality courses, successful outcomes, and the ongoing value of their qualifications. In the circumstances where a provider seeking registration, or already registered, is not meeting these objectives for its students, it is important that the OfS can intervene to ensure that current and future students are not exposed to courses of low quality. Students making choices about what and where to study need to be confident that the regulatory system ensures that they are able to choose from a range of providers and courses that meet minimum regulatory standards. Opportunities for study are not meaningful if students are able to choose, or continue on, low quality courses, because the regulatory system has endorsed such performance. Neither are they meaningful if the awards and qualifications granted are not credible and do not hold their value over time. Many English higher education providers offer high quality courses to students from underrepresented groups and we do not accept that it is necessary to compromise quality and standards to deliver to these groups. Our provisional view is that this means that the interests of students outweigh the interests of a provider in this situation, and that an approach to regulating quality and standards that involves setting clear minimum requirements for performance is an appropriate way to protect students' interests. This view is consistent with the OfS's general duty to have regard to the need to promote quality, choice and opportunities for students.
4. Value for money in the provision of higher education is important for both students and the taxpayer. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs whether or not the course, for example, is up-to-date, provides educational challenge, is appropriately resourced, and delivers a credible awards and qualifications. Investing in a higher education course that is of low quality or results in awards and qualifications that are not credible, is unlikely to represent value for money for students. Similarly, the taxpayer contributes significantly to higher education through the provision of government-backed student loans and, for some providers, public grant funding. This investment is unlikely to represent value for money if, for example, courses are of low quality, with students not equipped with the skills they need to succeed in their future careers. To protect the interests of students and taxpayers, our provisional judgement is that it is appropriate to regulate quality and standards in the way described in this consultation to ensure that student and taxpayer investment is focused on providers and courses that are high quality and deliver credible awards and qualifications.

5. The OfS's approach to regulation is designed to promote equality of opportunity in connection with access to, and participation in, higher education. This means that we are concerned with ensuring that students from underrepresented groups are able to access higher education, and also to succeed on and beyond their courses. Our proposed conditions of registration are designed to ensure that students from all backgrounds are admitted to a course for which they have the potential to succeed and that the course is designed, delivered and assessed effectively for all students.
6. We consider it important that students from underrepresented groups are able to succeed when they enter higher education, and to do so at the same rates as students from more represented groups. The cost in financial and personal terms of being exposed to a badly designed course or receiving inadequate support, and failing to succeed in employment beyond their course, is significant for any student. For students from underrepresented groups, the cost may be more significant because there may be fewer choices available to them. Our view is that a provider that recruits students from such backgrounds is obliged to ensure that they have a high quality academic experience and receive a credible award or qualification on the same basis as students from more advantaged backgrounds. This is reflected in the application of the minimum quality and standards requirements in the proposed conditions to all students, including those from underrepresented groups, regardless of what or where or how they study. Further, proposed condition B2 requires a provider to specifically cater for students from underrepresented groups if it recruits them; requiring the provider to understand the capabilities, potential and needs of each particular cohort of students, and ensure that they have the resources and support necessary to succeed.
7. We have considered whether our proposals are likely to create disincentives for providers to recruit some types of students (such as those from underrepresented groups) and therefore reduce student choice for some groups. This was suggested as a possible unintended consequence of our proposals in some responses to our phase one consultation. We have taken the view in this consultation that no student from any group should study on a course that does not meet minimum requirements for quality and standards, as such courses would not amount to meaningful student choice, and that it is the role of the regulator to ensure that such courses are not available for students to choose. The incentive we intend to create through these proposals is for providers to ensure that their courses meet our minimum requirements such that all students have meaningful choices of high quality courses. We do not consider that extending equality of opportunity for underrepresented groups could or should be achieved by reducing our minimum requirements for quality and standards for any student groups.
8. We have also considered the potential impact on equality of opportunity for students from underrepresented groups of any enforcement action we may take in relation to the proposed conditions. It is important to remember that enforcement action takes place because a provider is not compliant with our regulatory requirements – such a breach is not in the interests of students, regardless of their characteristics. Before we make interventions, including enforcement action, in relation to compliance with any condition, we consider the intervention factors set out in the regulatory framework, including the impact of an intervention on students. We also have regard to the public sector equality duty in enforcement decisions. We would therefore always consider the impact of enforcement action on underrepresented groups and where we consider that a particular intervention would be likely to have a materially negative impact on students and their experience, we would be more likely to decide to use a less

significant intervention to address the issue where this is consistent with remedying the harm caused by the breach.

9. In formulating these proposals, we consider general duties (a), (c) and (g) important, but have given less weight to these.
10. The OfS is required to have regard to the need to protect the institutional autonomy of higher education providers. It does not, however, have an absolute obligation to protect the autonomy of providers. Several respondents to our phase one consultation suggested higher education providers should have autonomy for managing quality and standards, with many describing a preferred system where providers had freedom and responsibility for developing their own processes appropriate for their courses. Our proposals support the exercise of institutional autonomy by taking a principles- and outcomes-based approach to setting minimum requirements for quality and by adopting standards created under sector-led processes. Our view remains that using rigid rules-based mechanisms in relation to qualitative requirements for quality, or for the internal quality assurance processes providers use, would risk pushing providers to adopt a particular approach to the way they design and deliver higher education courses and support their students, and would inhibit innovation.
11. We do not consider that this would be in the interests of students or of providers themselves, not least because we understand the importance of institutional autonomy in relation to quality and standards. Where we consider that it makes sense to adopt a more rules-based approach, we are proposing to do so: our proposed requirements for standards are expressed in a way that provides more precise information for providers about the performance required, because the sector-recognised standards we propose to adopt are written in that way.
12. The general approach set out in the regulatory framework and expanded on in this consultation attaches weight to institutional autonomy. But we are giving weight to autonomy insofar as this is consistent with the need to protect the interests of students and, in particular, students from underrepresented groups. Where the quality or standards of a provider's courses is of concern, we propose that its autonomy is likely to carry less weight than the interests of current and future students. Similarly, we would not consider it appropriate for autonomy to outweigh taxpayers' interests where our minimum requirements for quality and standards are not met.
13. We have particularly considered institutional autonomy in the context of our proposal to continue to impose a condition of registration that relates to standards. Our view is that it remains necessary to regulate standards on the basis set out in HERA in relation to defined sector-recognised standards, because the credibility of awards and qualifications granted to students remains an essential feature of the higher education sector, both within the UK and internationally. Degree awarding bodies remain responsible for the standard of their awards and we would expect them to discharge that responsibility effectively. Our proposal to impose a condition of registration in this area would, however, allow us to intervene where standards were not maintained.
14. The OfS is required to have regard to the need to encourage competition between providers, where that competition is in the interests of students and employers. We are encouraging competition by setting requirements only as minimum baselines, with providers free to innovate and respond to incentives to improve above these baselines as they see fit.

Competition could be further encouraged by removing regulatory barriers such that any provider is able to compete for students, regardless of the quality of its courses, or the credibility of the awards and qualifications its students receive. However, our view is that such competition would not be in the interests of students because they are not generally sophisticated consumers able to make unaided choices about what and where to study. This is particularly the case for students from underrepresented groups, or with protected characteristics, who may not have access to the information, advice and guidance needed to make the right choice for them. The role of the regulator in this context is to set minimum requirements for quality and standards, to ensure that students are able to choose from a variety of providers and courses that meet minimum regulatory requirements.

15. Our proposal to ensure that the initial quality and standards requirements placed on a provider seeking registration are specified in a way that takes account of the context for new providers that have not previously delivered higher education is designed to encourage competition by reducing regulatory barriers for such providers.
16. We have considered the principles of best regulatory practice and, in particular, considerations of proportionality. We consider the proposed approach set out in this consultation to be proportionate and appropriate in ensuring that the OfS can protect the interests of students and balance this with the interests of providers. We have given particular consideration to the proportionality of our proposals, to ensure that regulatory attention is focused on those providers that represent most regulatory risk. As part of this, we have considered the impact of our proposals on small providers, or those with small numbers of higher education students. Some respondents to the phase one consultation suggested that smaller providers would have a smaller number of staff available to consider and address the OfS's regulatory requirements and this meant that such providers would experience a disproportionate regulatory burden when compared to larger providers. We currently take the view that it is necessary to require all providers to comply with minimum quality and standards requirements regardless of their size, in order to ensure a minimum level of regulatory protection for all students, notwithstanding that it may be more burdensome for some providers to comply than others.
17. We have also considered points made in response to the phase one consultation about the need for our requirements and approach to be transparent (a principle of best regulatory practice). The proposals in the current consultation seek to address these points by including definitions of key terms in the proposed conditions, and illustrative examples of the approach the OfS will take to making judgements about compliance in the associated guidance.

The public sector equality duty

18. We have had regard to the public sector equality duty in the Equality Act 2010. This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between different groups and advance equality of opportunity. Related to this, we have had regard to our published equality and diversity objectives and action plan,⁴³ in particular the following objectives:

⁴³ Our equality and diversity statement and objectives, and our equality and diversity action plan, are available at www.officeforstudents.org.uk/about/equality-and-diversity/.

19. Objective 4, which states that the OfS will work to address the risk of some students not receiving a safe, healthy and inclusive higher education experience. It lists as a priority 'implementing the initial and ongoing conditions of registration for quality to drive a high quality academic experience for all students, giving explicit attention to the outcomes for students from underrepresented groups.'
20. Objective 1, which states that the OfS will develop, implement and consult on our equality, diversity and inclusion objectives, evidence base, impact assessments and action plan to ensure successful implementation of our Public Sector Equality Duty.
21. Objective 3, which states that the OfS will challenge the sector to significantly reduce gaps in access, success and progression for students from all backgrounds and identities and across all disciplines.
22. Objective 5, which states that the OfS will work to reduce the risk that some students are prevented from maximising their outcomes through their higher education experience and therefore do not maximise their potential in terms of employment or further study.
23. We have also had regard to the Equality Impact Assessment conducted in relation to the OfS's regulatory framework,⁴⁴ which states that the impact of the current quality and standards conditions is assessed as positive, in particular because the regulatory framework frames these conditions in a way designed to achieve a positive impact on students with protected characteristics and from underrepresented groups. These proposals are framed to have the same positive impact on students by securing minimum requirements for quality and standards for all student groups, while our broader approach to regulation means that we have regard to the impact of interventions on all student groups in deciding whether to take regulatory action.⁴⁵
24. In line with objectives 4 and 5 of our published equality and diversity objectives, it is our view that the requirements for quality and standards set out in the current proposals represent the minimum acceptable level of quality and standards for higher education provided by a provider on the OfS Register to be offered to any students. We will continue to have due regard for our obligations under the Equality Act 2010, as we consider responses to this phase two consultation.

Guidance issued by the Secretary of State

25. We have had regard to guidance issued to the OfS by the Secretary of State under section 2(3) of HERA, including the following guidance:⁴⁶

⁴⁴ Our equality and diversity statement and objectives, and our equality and diversity action plan, are available at www.officeforstudents.org.uk/about/equality-and-diversity/

⁴⁵ Further analysis of responses regarding equality considerations received to our phase one consultation is set out in www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/.

⁴⁶ All statutory guidance cited is available at www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/.

- a. 'Guidance to the Office for Students – Secretary of State's strategic priorities' (February 2021).
 - b. 'Additional teaching grant and funding/reducing the bureaucratic burden on providers' (24 September 2020).
26. The February 2021 guidance refers to the regulation of quality and standards, and sets out the Secretary of State's full support for 'the OfS' desire to ensure that decisions on regulatory intervention and registration can be made in relation to minimum absolute standards of quality which apply across the whole of higher education provision' and his firm belief that 'every student, regardless of their background, has a right to expect a minimum standard of education that is likely to improve their prospects in life'.
27. The guidance supports the way in which our work to establish 'universal minimum standards' is addressing 'both the content and the process by which such standards can be established and, if necessary, adapted in the future in a clear and robust way' and states that this work was likely 'to take account of, though not be confined to, quantitative measures'.
28. We also note the Secretary of State's view that the development of the government's Lifelong Loan Entitlement and ambition to provide greater choice and flexibility for learners should be seen to be 'fully consistent with a robust approach on quality, as students should be confident of high quality and positive outcomes whether they are undertaking a module or a three-year degree'.
29. From the September 2020 guidance, we continue to have regard to the Minister of State's comments about regulatory burden, including that 'there is now an opportunity to consider how we can continue to reduce the bureaucratic burden on providers for the long term, enabling them to continue to focus on delivering high quality outcomes for students next year and beyond, while also ensuring you are equipped to deliver the range of functions granted to you under the Higher Education and Research Act 2017'.
30. The February 2021 guidance echoes this point about regulatory burden setting out the view that 'providers delivering high quality provision and strong outcomes for students should not be adversely affected by additional unnecessary bureaucracy or reporting in relation to quality' and that the OfS should 'take a risk-based approach to quality assessment and regulation, focusing its efforts on lower quality providers'. From the same letter, we note his view that he 'would like the OfS to implement a markedly more risk-based model of regulation, with significant, meaningful and observable reductions in the regulatory burden upon high quality providers within the next 12 months'.

The Regulators' Code

31. We have had regard to the Regulators' Code. Section 3 of the code is particularly relevant, which discusses the need to base regulatory activities on risk:
- a. Paragraph 3.1 provides for regulators to use an evidence-based approach to determine priority risks and allocate resources where most effective.
 - b. Paragraph 3.2 provides for regulators to consider risk at every stage of the decision-making process and choose the most appropriate type of intervention, using a targeted approach.

- c. Paragraph 3.5 provides for regulators to review the effectiveness of their activities and make necessary adjustments accordingly.
32. Section 5 of the code is also particularly relevant, in its discussion of the need for regulators to ensure that clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply:
- a. Paragraph 5.1 provides for regulators to provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities.
 - b. Paragraph 5.2 provides for regulators to publish guidance, and information in a clear, accessible and concise format.
33. In Section 1 of the code, paragraph 1.1 is also particularly relevant. This requires regulators to avoid the imposition of unnecessary regulatory burdens through their regulatory activities.
34. We consider that our proposal particularly encapsulates these aspects of the code.

Annex G: Consultation questions

Questions relating to proposal 1

Question 1a: Do you agree or disagree with the proposed introduction of ongoing condition B1 and associated changes to the OfS's regulatory framework as set out in Annex A?

Question 1b: Please give the reasons for your answer to Question 1a.

Question 1c: Do you have any alternative suggestions to the proposal in Question 1a?

Question 2a: Do you agree or disagree with the proposed introduction of ongoing condition B2 and associated changes to the OfS's regulatory framework as set out in Annex A?

Question 2b: Please give the reasons for your answer to Question 2a.

Question 2c: Do you have any alternative suggestions to the proposal in Question 2a?

Question 3a: Do you agree or disagree with the proposed introduction of ongoing condition B4 and associated changes to the OfS's regulatory framework as set out in Annex A?

Question 3b: Please give the reasons for your answer to Question 3a.

Question 3c: Do you have any alternative suggestions to the proposal in Question 3a?

Questions relating to proposal 2

Question 4a: Do you agree or disagree with the proposed introduction of ongoing condition B5 and associated changes to the OfS's regulatory framework as set out in Annex B?

Question 4b: Please give the reasons for your answer to Question 4a.

Question 4c: Do you have any alternative suggestions to the proposal in Question 4a?

Questions relating to proposal 3

Question 5a: Do you agree or disagree with the proposed introduction of initial condition B7 and associated changes to the OfS's regulatory framework as set out in Annex C?

Question 5b: Please give the reasons for your answer to Question 5a.

Question 5c: Do you have any alternative suggestions to the proposal in Question 5a?

Question 6a: Do you agree or disagree with the proposed introduction of initial condition B8 and associated changes to the OfS's regulatory framework as set out in Annex C?

Question 6b: Please give the reasons for your answer to Question 6a.

Question 6c: Do you have any alternative suggestions to the proposal in Question 6a?

Questions relating to proposal 4a

Question 7a: Do you agree or disagree with the approach to information gathering and assessment proposed in paragraphs 85-90 above and as set out in the proposed guidance for initial conditions B7 and B8 in Annex C?

Question 7b: Please give the reasons for your answer to Question 7a.

Question 7c: Do you have any alternative suggestions to the proposal in Question 7a?

Questions relating to proposal 4b

Question 8a: Do you agree or disagree with the approach to information gathering as part of an investigation proposed in paragraphs 91-98 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?

Question 8b: Please give the reasons for your answer to Question 8a.

Question 8c: Do you have any alternative suggestions to the proposal in Question 8a?

Questions relating to proposal 4c

Question 9a: Do you agree or disagree with the approach to taking account of a provider's compliance history for the purpose of determining eligibility for other benefits of OfS registration proposed in paragraphs 103-126 above and as set out in the proposed guidance for conditions B1, B2, B4 and B5 in Annexes A and B?

Question 9b: Please give the reasons for your answer to Question 9a.

Question 9c: Do you have any alternative suggestions to the proposal in Question 9a?

Questions relating to proposal 5

Question 10a: Do you agree or disagree that the OfS should use its role as EQA provider to inform assessments of condition B4?

Question 10b: Please give the reasons for your answer to Question 10a.

Question 10c: Do you have any alternative suggestions to the proposal in Question 10a?

Questions relating to all proposals

Question 11: Do you have any comments about the proposed implementation of the proposals in this consultation?

Question 12: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or for any particular types of student?

Question 13: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Question 14: Do you have any other comments about the proposals?

Annex H: Section 2 of the Higher Education and Research Act 2017

2. General duties

- (1) In performing its functions, the OfS must have regard to—
 - a. the need to protect the institutional autonomy of English higher education providers,
 - b. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,
 - c. the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers,
 - d. the need to promote value for money in the provision of higher education by English higher education providers,
 - e. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,
 - f. the need to use the OfS's resources in an efficient, effective and economic way, and
 - g. so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
 - i. transparent, accountable, proportionate and consistent, and
 - ii. targeted only at cases in which action is needed.
- (2) The reference in subsection (1)(b) to choice in the provision of higher education by English higher education providers includes choice amongst a diverse range of—
 - a. types of provider,
 - b. higher education courses, and
 - c. means by which they are provided (for example, full-time or part-time study, distance learning or accelerated courses).
- (3) In performing its functions, including its duties under subsection (1), the OfS must have regard to guidance given to it by the Secretary of State.
- (4) In giving such guidance, the Secretary of State must have regard to the need to protect the institutional autonomy of English higher education providers.
- (5) The guidance may, in particular, be framed by reference to particular courses of study but, whether or not the guidance is framed in that way, it must not relate to—

- a. particular parts of courses of study,
 - b. the content of such courses,
 - c. the manner in which they are taught, supervised or assessed,
 - d. the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or
 - e. the criteria for the admission of students, or how they are applied.
- (6) Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.
- (7) Guidance given by the Secretary of State to the OfS which relates to English higher education providers must apply to such providers generally or to a description of such providers.
- (8) In this Part, “the institutional autonomy of English higher education providers” means—
- a. the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way,
 - b. the freedom of English higher education providers—
 - i. to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
 - ii. to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
 - iii. to determine the criteria for the admission of students and apply those criteria in particular cases, and
 - c. the freedom within the law of academic staff at English higher education providers—
 - i. to question and test received wisdom, and
 - ii. to put forward new ideas and controversial or unpopular opinions,
- without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.



© The Office for Students copyright 2021

This publication is available under the Open Government Licence 3.0 except where it indicates that the copyright for images or text is owned elsewhere.

www.nationalarchives.gov.uk/doc/open-government-licence/version/3/