Consultation outcomes

New requirements for the oversight of subcontractual arrangements in English higher education

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Executive summary

1. This document sets out the Office for Students' (OfS's) decision to introduce a new ongoing condition of registration relating to the oversight of subcontractual arrangements between providers in English higher education. Subcontractual arrangements arise where a student is registered with a lead provider, but teaching is delivered by a separate provider under a subcontract.[1]

2. In July 2025 we consulted[2] on our proposals to introduce a new general ongoing condition of registration focused on the oversight of these arrangements. Our proposals were developed in response to increasing concerns that some subcontracted provision may be creating significant risks to students and taxpayers. These concerns included the recruitment of students to courses that were not suitable for their needs, poor quality teaching and student support, breaches of academic integrity, and inadequate information and guidance for students. There have also been cases in which public funding was claimed for students who were not genuinely eligible. In many instances, these issues were linked to weaknesses in how subcontracted provision was overseen by lead providers.

3. We proposed a new requirement for a lead provider to ensure that any risks to the interests of students and/or taxpayers posed by its existing and future subcontractual arrangements were effectively identified and addressed. To facilitate this, we proposed that a lead provider should develop, maintain and operate in accordance with a comprehensive source of information, which would set out the policies and procedures it would follow to oversee relevant subcontractual arrangements. We also proposed a power of direction that we would use to require a lead provider to take actions in certain circumstances, and requirements for a lead provider to publish additional information in its financial statement. We proposed that the new requirements would only take effect where a provider met certain criteria – usually where 100 or more of the lead provider's registered students were taught through subcontractual arrangements.

4. We received 83 responses to our July consultation. Responses were received from lead providers, including large civic and specialist institutions, mission groups, delivery providers, sector bodies, and anonymous or other respondents representing legal services, and individuals from academic and reporting backgrounds.

5. The responses we received demonstrated broad support for the intent of strengthening oversight and transparency of subcontracted provision. Specific views were received around:

   - the proportionality of, and burden that would result from, the implementation of our proposals
   - our proposed timeline to implement the condition and potential barriers
   - the scope of the condition

[1] See proposed condition E8.

[2] See OfS Consultation on new requirements for the oversight of subcontractual arrangements in England higher education.

- issues relating to commercial sensitivity
- our plans to monitor
- the alignment with requirements for subcontracting delivery providers set by the Department for Education (DfE).

6. We would like to thank all those who took the time to consider and respond to the questions in the consultation. We have analysed the consultation responses and stakeholder feedback received. After further policy consideration, we have decided to implement our proposals, broadly in the form on which we consulted, and we have made some changes to our proposals.

7. The main components of our decision and changes made following consideration of respondents' views are summarised in the table below.

Proposal	Decision
1 – Introduce a new general ongoing condition of registration	We have decided to: • Introduce the new general ongoing condition of registration broadly as proposed. • Determine the number of students within a subcontractual arrangement (that will determine whether a provider needs to meet the specific requirements set out in the condition) using a headcount approach, rather than the FTE calculation we originally proposed. • Make some minor adjustments and clarifications to our definition of subcontracting and exemptions to the condition. • Remove the proposed provision that would enable the OfS to apply the obligations of the condition to a provider where the OfS determined it had reasonable grounds to suspect that subcontractual arrangements presented a material risk to students and taxpayers.
2 – A governance and control environment for subcontractual provision (subcontracting information source)	We have decided to: • Introduce the requirements broadly as proposed. • Change the name to better reflect the scope and intention of the document from 'comprehensive source of information' to 'subcontracting information source' (SIS).
3 – A provider to operate in accordance with the subcontracting information source	We have decided to: • Introduce the requirements broadly as proposed. • Introduce a requirement for providers with contracts in force at the time the condition takes effect to take 'all reasonable steps' to ensure that the terms and

Proposal	Decision
	conditions of those contracts enable the provider to operate in accordance with the SIS.
4 – Power of direction	We have decided to: • Remove the power of direction that was included in the proposed condition that the OfS would use to require lead providers to take actions in certain circumstances
5 – Requirements for providers to provide specified information relating to subcontractual provision	We have decided to: • Introduce changes to our Accounts direction guidance (Regulatory advice 9), requiring a provider with relevant subcontractual arrangements to publish information relating to the retention of fees and its rationale for engaging in subcontracting, making some minor adjustments and clarifications. • Introduce a requirement for providers to take 'all reasonable steps' to publish the information where existing contracts conflict with their obligations under the condition.
6 – Monitoring compliance	We have decided to: • Engage our usual approach to monitoring compliance as proposed. • Introduce changes to our guidance on reportable events (Regulatory advice 16), requiring providers with relevant subcontractual arrangements to always report certain events to the OfS.

8. We consider that this new ongoing condition of registration will drive behavioural change in providers engaged in subcontracting, by ensuring robust oversight of arrangements that carry heightened risk. These new requirements will help safeguard students' experience and outcomes while ensuring that public funding is used appropriately. In developing this new condition, we have carefully considered proportionality and sought to balance burden with the need for strong oversight and accountability, recognising the risks that can arise where oversight is weak. A provider with well-established governance frameworks and effective oversight of subcontracted delivery arrangements will find the ongoing compliance straightforward, while those with gaps in oversight will need to take steps to meet the requirements of the condition.

9. The new ongoing condition will take effect from 31 March 2026.The condition will be numbered as condition E10 (rather than E8 as included in our proposals) because of the

addition of new conditions E7-9 following our consultation on reforms of our registration requirements.[3]

10. This document details the consultation outcomes and decisions, and summarises the responses we received and explains the decisions we have made. We have also published the final version of the new condition and accompanying guidance text, highlighting changes made following consultation to provide clarity and support implementation.

11. In this document, we set out a summary of our analysis of responses to the consultation and explain our decisions, including the rationale for the decisions we have taken and alternative approaches we have considered. The new ongoing condition E10 and an updated version of the associated guidance are set out in Annex C; we have highlighted the changes we made compared to the versions that we consulted on.

12. We have also published:

    a. A Notice of Determination issued under sections 5 and 75 of the Higher Education and Research Act 2017 (HERA) setting out the changes to initial and ongoing conditions set out in the consultation outcomes and decision documents.

    b. Consequential updates to Regulatory advice 9 and Regulatory advice16.

Guidance referred to in this document

In this document, we refer to the following regulatory guidance:

Regulatory framework for higher education in England
This sets out the OfS's approach to regulation of English higher education providers.

Regulatory advice 9: Accounts direction
This guidance sets out the information that providers are required to include in their audited financial statements, and how to prepare and publish them.

Regulatory advice 15: Monitoring and intervention
Guidance on how the OfS monitors registered providers in relation to their conditions of registration and on the actions we may take if we consider that a provider is at increased risk of breaching, or has breached, one or more of those conditions.

Regulatory advice 16: Reportable events
Guidance for registered providers about the events or matters they are required to report to the OfS.

Regulatory advice 21: Publication of information
Guidance on the approach the OfS will take to the publication of information about higher education providers.

[3] See Reforms to OfS registration requirements - Office for Students.

Background

13. In July 2025, we published a consultation on the proposed new requirements for the oversight of subcontractual arrangements in English higher education. As set out in our consultation, the OfS identified risks that can arise where a university subcontracts its courses without robust oversight of its partners. In particular, we have seen situations where there has been insufficient control of recruitment, admissions, student attendance and assessment in subcontractual arrangements. We are particularly concerned where these risks impact students traditionally less likely to succeed in higher education (for example, because of weak academic skills, lack of prior knowledge or limited understanding of the UK higher education system).

14. Respondents were asked to share their views on our proposals by submitting written responses to an online survey. The consultation asked respondents a total of 14 questions. All questions were voluntary, so different response rates are recorded for different questions. We also engaged with several mission groups during the consultation period. All the responses were submitted through our online survey by the deadline of October 2025. We gave equal consideration to all responses throughout our decision-making and analysis process.

Responses to the consultation

15. Nearly two thirds (64 per cent) of responses were submitted by or on behalf of lead education providers, with five responses from delivery providers. The remaining responses were from mission groups, other sector bodies, individual submissions, and anonymous respondents.

16. In this document we summarise our response to the themes and key points made by respondents and set out the final decisions we have made. In some cases, comments raised by respondents overlapped with more than one proposal. To avoid duplication, we used a thematic approach to set out the views of respondents and our response.

17. The responses we received demonstrated considerable support for the intent of strengthening oversight and transparency of subcontracted provision, although we received some more specific feedback about the detail of our proposals. This was largely concentrated around the following themes:

    a. proportionality and burden

    b. timeline and barriers to implementation

    c. clarity and practical guidance on scope, definitions, and exclusions

    d. commercial sensitivity

    e. monitoring

    f. alignment with requirements for subcontracting delivery providers set by the Department for Education.

Introducing a new ongoing condition of registration

18. In proposal 1 of the consultation, we proposed a new general ongoing condition of registration relating to the oversight of subcontractual arrangements. The proposed condition would apply to all registered providers, but a provider would only have obligations under the condition if they met certain criteria. The obligations under the proposed condition would require a lead provider in a subcontractual arrangement to ensure that any risks to the interests of students and/or taxpayers posed by its existing and future relevant subcontractual arrangements are effectively identified and addressed.

Consultation questions on introducing a new ongoing condition

Question 1

Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

Question 2

In your view, is the proposed definition of subcontractual arrangements clear and does it correctly capture the nature of these arrangements?

Question 3

Do you have any comments on the scope of providers that will have obligations under the proposed condition?

Question 4

Do you have any comments on the impact of these proposals for particular groups of students?

Question 5

Do you have any alternative suggestions to the approach we have proposed?

Decision

19. We decided to proceed with our proposal to introduce a new general ongoing condition of registration. The proposed condition placed obligations on lead providers where at least 100 of their registered students are taught through subcontractual arrangements. Under the proposals, lead providers were also expected to consider whether any new subcontractual arrangements would be likely to meet the 100-student threshold so that recruitment and admissions activity would be appropriately managed. We proposed that the obligations set out in the condition would not apply to some types of subcontractual arrangements. Following careful consideration of responses to the consultation, we continue to hold the view that the

introduction of this condition is the most proportionate and effective approach to managing the risks associated with subcontracting.

20. The obligations for a provider arising from the introduction of the new general ongoing condition of registration are broadly in line with the proposals that we consulted on. However, we received some useful feedback during the course of the consultation and have made some adjustments to the detailed requirements. These changes are set out in later sections of this document.

21. We decided that the new general ongoing condition E10 will take effect from 31 March 2026.

Decision to introduce a new ongoing condition of registration

Consultation responses

22. Most respondents broadly supported our intent to strengthen the oversight of subcontractual arrangements, recognising the heightened risks associated with subcontractual provision and generally agreeing that this is an area where increased regulatory action is needed. While around a quarter of respondents indicated that they found the proposal to introduce the new condition clear and offered no further comments, other respondents provided feedback on our overall approach and identified areas where additional clarity or refinement could improve proposals.

23. Many of these respondents agreed with our analysis of the nature of the risks associated with subcontractual provision. They noted that our articulation of risks appeared sensible and appropriate, grounded in observed cases, or consistent with other sector reports and guidance. We did not identify any additional risks from the consultation responses that we had not previously considered. A small number of respondents directly commented on their own concerns about mismanagement of public funds in this part of the sector.

24. However, we noted a small number of comments disagreeing with our view of the risks associated with subcontractual arrangements. One lead provider felt that we had not highlighted sufficient evidence to justify our view, especially when, in their view, we assumed that a lead provider is less likely to intervene because of the financial benefits of subcontracting. Others suggested that our proposals indicated that we developed a universal view of the risks and had not developed our approach to take account of lower-risk partnership activity.

25. Some respondents considered that introducing the new condition would provide additional protection for students. These respondents commented that the proposals would support genuine students in their studies and promote higher quality experiences for students across a range of provision.

26. Most respondents supported the increased transparency of subcontractual arrangements that would arise from our proposals and agreed that the proposals were likely to result in an improvement in how risks were managed. Some respondents also noted the benefits for taxpayers and the wider public through increased assurance over the appropriate use of public funds.

27. Some respondents commented that as lead providers are registered with us, their provision of higher education is already covered by our regulatory requirements, regardless of the mode of delivery of their courses. One respondent noted that this meant the proposals' focus on the lead provider was unnecessary. However, other respondents supported our approach of placing obligations on the lead provider, rather than the delivery partner, because they stated it was appropriate for the lead provider to take responsibility for overseeing these arrangements.

28. Some respondents questioned the proportionality of imposing a sector-wide condition because the actions of what they described as a relatively small number of 'bad actors'. Although these respondents in some cases noted that the obligations would not apply to every provider, they remained of the view that the requirements were 'disproportionate' for a provider offering high quality provision.

29. Suggestions made by respondents for alternative approaches included disapplying the condition for subcontractual arrangements where both parties had been assessed as excellent for TEF purposes, or for us to target only those providers where regulatory intelligence or provider characteristics indicated concerns.

30. Some respondents, mainly lead providers engaged in subcontractual arrangements, stated that the proposed condition was duplicative as the risks it was intended to address could be largely managed through existing conditions of registration. Some respondents supported modifications to other conditions to address this risk instead of a condition specifically targeting the oversight of subcontractual arrangements. Where they expressed this view, they generally did not provide examples of where this duplication took place or what changes could be made to initial conditions to address the risk. Two respondents highlighted the potential for the increased use of the existing quality conditions (known as the 'B' conditions) and greater scrutiny of student outcomes data in the regulation of subcontractual arrangements as an alternative to introducing a new condition.

OfS response

31. Following consideration of respondents' views, we have decided to proceed with the introduction of a new ongoing condition of registration. Since we published our consultation proposals, our overarching view about the risks associated with the oversight of some subcontractual arrangements by some lead providers has not changed. We have not identified any changes in the wider sector landscape that would indicate risks have reduced; for example, our regulatory work continues to identify cases of concern, and the number of students studying through subcontractual arrangements (and therefore exposed to the risks we have identified) continues to increase substantially.

32. Since we published our consultation, we have published additional sector data about the outcomes achieved by students studying under subcontractual arrangements.[4] The data shows that, at a sector level, outcomes are weaker for students studying in this way when compared with other students. For example, 77 per cent of full-time first-degree students in subcontractual arrangements continue their courses into a second year, compared with 88

[4] See Size and shape of provision data dashboard: Data dashboard - Office for Students.

per cent of full-time first-degree students across the sector as a whole, and our data has identified two providers within continuation rates below 45 per cent.[5]

33. We carefully considered feedback that suggested that this type of provision should continue to be managed through the existing OfS general ongoing conditions of registration. We agree with those respondents who highlighted that a provider already has regulatory responsibility for all their registered students, regardless of the method of delivery of their course.

34. However, our regulatory intelligence and case work has highlighted multiple examples of circumstances where the application of regulatory responsibility was appropriately delivered in practice. In our experience, it is not unusual for us to identify concerns, specifically related to subcontracted-out provision at a lead provider, where we do not have the same concerns about their directly-taught provision. We remain concerned about the lack of robust oversight that we have seen within these arrangements, despite the existing regulatory requirements.

35. We noted comments that the evidence for our views was not always clear. However, we do not agree that this is the case. As well as our published case findings and student outcomes data, we pointed to additional information in the public domain from other bodies (such as reports from the National Audit Office and others) which drew similar conclusions about the risks associated with subcontractual provision. We also regularly share intelligence with other bodies, such as the DfE and Student Loans Company (SLC), to inform our view of risk. We are satisfied that the credibility of the information that we hold, or that has been identified elsewhere in the sector, appropriately informed our view here.

36. Further, we received comments in response to other consultation questions. These indicated that some existing contractual requirements could hinder providers from complying with condition E10. Although not all respondents were specific about the exact nature of contractual barriers, we noted examples relating to the access to delivery provider data or access to carry out on-site inspections. Feedback of this nature reinforced our concerns about the effectiveness of oversight in some arrangements. It remains our view that a new ongoing condition of registration sends a clear message to the sector. It underlines the importance of setting out clear expectations for effective oversight of arrangements in order to drive up standards.

37. We also continue to hold the view that the obligations included in condition E10 are applicable to the lead provider, rather than to the delivery provider. It is right that a provider is fully responsible for the provision of higher education to the students who are registered with them and from whom a provider receives fees (either directly or via student loan funding). This accountability is already part of regulatory requirements and should continue. This remains the case whether the delivery partner is registered with the OfS or not. We have observed instances of weak oversight and insufficient control from lead providers. As a result, we considered that more prescriptive regulatory requirements are now necessary to ensure that a lead provider fulfils their obligations effectively and consistently. The proposed condition is intended to incentivise stronger oversight arrangements, with the aim of improving quality, accountability and outcomes across subcontractual provision. We believe this is appropriate as the lead provider is responsible for all the students they register, regardless of where or how those students are taught. We also think this places a greater emphasis on the lead

[5] See OfS publishes student outcomes data for subcontracted courses - Office for Students.

provider to ensure that students receive an equivalent higher education experience, and that courses are delivered to similar academic standards, regardless of the method of delivery. In case of doubt, where a delivery partner is registered with the OfS, it must comply with conditions of registration that do apply to it, including those relating to management and governance and quality.

38. We noted and considered the feedback we received about the proportionality of imposing a new condition. Respondents questioned whether our addressed risks related to the actions of only a small number of providers, and whether introducing a new condition would place an associated burden for the rest of the sector. While we recognise that there is always likely to be some element of activity associated with the introduction of new regulatory requirements, we expect here that this activity will be more limited where a provider's subcontractual arrangements are generally not complex, or where appropriate oversight mechanisms are already in place. Where subcontractual arrangements are in place with a small number of partners or where the arrangements are specialised, we envisage that the amount of documentation required will be less.

39. However, regardless of the scale of a provider's provision, robust oversight is necessary. In considering burden, we also noted feedback made elsewhere in the consultation, indicating that many of the requirements of the condition are already in place at many providers. We are also mindful that the proportion of student fees retained by the lead provider is, at least in part, intended to fund oversight activity. Where a provider has not already established effective oversight mechanisms, we think it is right that resources are therefore directed towards addressing this.

40. As explained in our proposals, we previously considered whether to impose specific condition of registrations on only those providers where we had identified concerns, rather than introducing an ongoing condition of registration applicable more broadly. However, given that we have seen risks arise across a significant number of these arrangements as well as significant growth, we decided that it is appropriate to place more requirements on lead providers through ongoing conditions. We introduced a student-number threshold to exclude situations where a lead provider has a small amount of subcontracting activity and we also excluded certain forms of subcontractual arrangements where we have seen less risk arise. Where appropriate we will consider placing specific conditions of registration with additional requirements for lead or delivery partners where there are additional risks.

41. We also considered not making changes to our regulatory framework and instead using the existing conditions as an option to drive standards up where necessary. However, we do not think this is a viable option. We set out here our remaining concerns about risks to students and taxpayers, and the recognition of the validity of these concerns, that we observed in some consultation responses. These risks and concerns have risen significantly in recent years, despite the existence of measures in the current ongoing conditions of registration. Without any change in our approach, we think that the most likely outcome is that these risks continue to escalate due to there being no additional incentive introduced to initiate provider behavioural changes.

42. We also noted feedback about the risk of greater burden falling on smaller providers. To mitigate this risk, we established a student-number threshold for inclusion within the scope of the condition, thereby excluding the smallest arrangements. However, given that the

obligations of the condition fall directly on lead providers, which are commonly larger providers, we placed less weight on these points when reaching our decision for arrangements that meet our student-number threshold. In practice, we expect a lead provider to support their delivery partner(s) in implementation, and a provider to ensure they have the capacity to effectively manage the provision they offer and the number of students that they enrol. Where a small provider is acting as the lead provider, it is important that they have robust oversight in place.

Subcontractual arrangements in scope of the condition

Consultation responses

43. Approximately two thirds of respondents commented on the scope of the condition, including the definition of subcontracting arrangements, the proposed categories of exclusions, and the number of students that would bring a provider into scope of the condition. The remaining respondents either made no comments on our definitions or indicated that they were generally clear on the scope of the condition.

44. Some respondents recognised the value of using a broad definition of subcontractual arrangements in the proposed condition. Respondents noted that, while we correctly targeted our concerns at a small subsection of the sector, their experience suggested that a narrowly defined scope could enable a provider to restructure their business model to fall outside of the scope of the condition and thereby avoid regulatory scrutiny.

45. However, a small number of respondents indicated a lack of clarity on the nature of provision that we are seeking to include in the proposed condition. Some examples were:

    a. Conflation of terms such as ‘subcontracting’ and ‘franchising' by different bodies in the sector to refer to the same provision could reduce clarity about the scope of this condition.

    b. Whether validated provision was included, with respondents noting validated provision had different risks and should not be in scope.

    c. One respondent proposed adopting the definition of franchising used by the SLC, to support consistency and clarity.[6]

    d. A number of specific points about the type of subcontractual arrangements included in the scope and the proposed exemptions.

    We considered the above points in our response, and captured the detail as a table in Annex B.

46. Some respondents also highlighted the potential for different regulatory approaches between students enrolled in subcontracted delivery programmes and other areas of provision, such as transnational education, and the opportunity for inconsistency and discriminatory practice in our decision-making (although further explanation of this view was not provided).

[6] See SLC, Franchise guidance | HEP Services.

47. At the time of publication of our proposals, in July 2025, the Department for Education (DfE) had not published the outcomes of its own consultation,[7] which proposed requiring a delivery partner with more than 300 students to register with us if they wished their courses to remain eligible for public funding. Some respondents made general comments about the desirability of alignment between the two sets of proposals. We received some high-level responses, which suggested that a collaborative, strategic response between the OfS, DfE and SLC would be preferable to avoid any duplication or conflicting approaches.

OfS response

48. We reviewed the responses about our proposed definition of subcontractual arrangements for the purpose of the condition. We decided to implement the condition largely as proposed, and we did not make substantial changes to our overarching definition of subcontracting. However, we reviewed the detailed wording of that definition in response to feedback. This was to ensure it accurately reflects our policy intent.

49. We also noted feedback about the different terminology used to describe the same relationships in different publications. We note that DfE uses the term 'franchising' when describing their current policy activity, and various sector publications and groups define 'franchising' and 'subcontracting' in different ways. We decided to continue to use the term 'subcontracting,' as this is the term described in our regulatory framework and is the term we use in other publications when discussing these sorts of partnerships.

Subcontractual arrangements in scope of the condition

50. In response to consultation feedback, we have clarified in guidance that the following types of arrangements are considered within scope of the condition, and that a provider with sufficient students studying in subcontractual arrangements of this nature should expect to have obligations under condition E10:

    a. **Arrangements between providers within the same ownership structure**. We received a small number of comments querying whether arrangements between providers with some elements of common ownership, such as trading arms, parent organisations or wholly owned subsidiaries, would be in scope. When considering our response, we used the starting point that a 'provider' should be considered as the entity that is registered in its own right with the OfS for the delivery of higher education.

    Our view is that, where that entity (provider) then enters into contractual arrangements with another entity (regardless of whether or not they form part of the same broader ownership group), then the provider should consider whether that arrangement meets the overarching definition of a relevant subcontractual arrangement in the same way that it would for any other contractual arrangement. The exception is where a 'lead' provider is delivering via a wholly owned subsidiary company (as defined in the Companies Act 2006).

    We recognise that some organisational structures in the sector are particularly complex and that this is an area where we can expect to see ongoing change. We think that

[7] See DfE, Department for Education consultation response: Strengthening oversight of partnership delivery in higher education.

introducing a more closely defined approach here would inadvertently add complexity for many providers while creating opportunities for the avoidance of scrutiny for a small number of providers.

b. **Joint ventures**. We noted queries received about whether joint ventures are included in the scope of condition E10. However, we did not identify (either from consultation responses or from our regular engagement with providers) any criteria that would effectively differentiate a 'joint venture' arrangement from the definition of subcontractual arrangement that we proposed. While we recognise the wide variety of approaches to delivery used within the sector, we do not intend to introduce further complexity to our definition. We remain of the view that a definition with criteria based on the students' contractual relationship (i.e., the provider that they are registered with) and the proportion of teaching hours delivered elsewhere is the most straightforward way of determining whether or not a provider's partnership arrangements should be considered as subcontractual for regulatory purposes.

Subcontractual arrangements excluded from the scope of the condition

51. Similarly, we clarified that the following types of arrangements are considered excluded from the scope of the condition, and that a provider with arrangements of this nature should not expect to have obligations under condition E10:

a. **Validation arrangements**. In our proposals, we did not expressly refer to validation arrangements as either being within, or excluded from, the scope of the proposed condition. Our policy intention was, and remains, that these do not form part of the scope of the proposed condition. We have not identified the same risks to students and taxpayers associated with validation arrangements. Nor do we consider that this is an area of provision where we need to target our regulatory action at this point in time.

Our regulatory framework explains that a validation arrangement refers to a module or programme which a degree awarding body approves to contribute, or lead, to one of its awards. The course is delivered by the provider that designed it and the **students on the course normally have a direct contractual relationship with that provider and not the validating provider**. This means that validation arrangements do not meet the definition of a relevant subcontractual arrangement because students do not hold a contractual relationship with the lead (or in this case, validating) provider (see E10.12h). For clarity, validation arrangements are not included in the scope of condition E10. However, we are mindful that validation arrangements are an area of the sector where we may observe changing provider behaviours where a small number of providers may seek to avoid regulatory scrutiny of subcontracting. Should we observe increasing risk here, we would consider whether further regulatory activity is appropriate and respond accordingly.

b. **Embedded colleges.** Our regulatory framework defines an embedded college as:

'A provider, usually part of a network, operating within or near to the main premises of an HE [higher education] provider, in partnership or as part of a joint venture, usually delivering pathway courses which prepare students for entry to higher education programmes at that HE provider, or integrated higher education programmes which students complete at that HE provider.'

In many circumstances, we understand that these arrangements between the lead providers and the embedded college would be outside of the scope of condition E10 because more than 50 per cent of the course is taught by the lead provider. Providers should, of course, test the exact circumstances of their own arrangements to understand whether the obligations of the condition apply to them.

We remain aware that some arrangements established as embedded colleges can pose the same risks to students and taxpayers. This might include, for example, pathway colleges established in locations that are geographically remote from the lead provider. Students at these colleges may therefore be less likely to progress directly to the full programme. There is also less evidence about how the college's practices are overseen. Where we identify concerns, we would expect to respond accordingly using the regulatory tools available to us.

c. **Joint medical and veterinary schools** and other types of medical training (e.g., clinical placements). We identified that our proposed definitions and exclusions did not specify our policy intent for joint medical and veterinary schools, where two registered providers create a third entity to deliver medicine or veterinary courses. We consider these highly specialised and externally accredited arrangements to fall outside the risks and policy objectives addressed by condition E10 and have updated the condition to exclude them. We have also excluded clinical placement arrangements and other partnerships with NHS service providers, as these similarly do not fall within the policy objectives of condition E10.

d. **Arrangements where the partner provider holds degree awarding powers**. In our consultation, we proposed that arrangements where the delivery provider holds degree awarding powers would not have obligations under the condition. We did not receive any feedback about this exemption in the responses to the consultation. During our decision-making process, we considered whether we should further limit the scope of this exemption to include only those providers with research degree awarding powers. However, we felt that there was little additional benefit in narrowing this exemption in this way, because we are satisfied that the process for granting degree awarding powers of any kind is suitably robust. We have therefore decided to continue with this exemption unchanged.

e. **Alignment with DfE exemptions**. After our consultation closed, DfE published its requirements for delivery partners with 300 or more students to register with the OfS. Its requirements include exemption categories, primarily for partnerships with other publicly funded bodies where governance requirements for the use of public money are already in place. We reviewed these exemption categories and agree with the DfE's view that these represent a reduced risk to taxpayers associated with other subcontractual arrangements and have aligned our exemption categories to be consistent. For clarity, this alignment applies to the **type** of relationships only, and not to the number of students studying within any subcontractual arrangement that would otherwise incur obligations under condition E10.

f. **Accredited Initial Teacher Training (ITT) courses**. We did not specify our position with regards to accredited ITT courses in our proposals. However, in response to feedback, we considered whether it would be appropriate to include them in the scope of the condition.

We decided to update the condition to add an exemption for ITT courses where a course is accredited by DfE. We think it is appropriate to exclude these courses because of the additional controls and scrutiny already in place via the ITT accreditation process.

52. Annex B provides a summary of the points of clarification we received and confirmation of whether certain arrangements are included in the scope of the condition. However, we note that Annex B is intended as a summary of points raised in consultation and not as a comprehensive guide to all arrangements that may exist in the sector. As such, every provider should refer to the text of condition E10 to determine if its own partnership arrangements are within the scope of the condition.

53. As part of our normal regulatory processes, from time to time we expect to check that our definitions and the scope of the condition remain fit for purpose. Should we identify a need to adjust our definitions and scope, we will follow appropriate consultation processes.

Obligations arising from the condition

Consultation responses

54. We indicated in our proposals that a lead provider would have obligations under the proposed condition if at least 100 students of its registered students were studying through subcontractual arrangements. Responses did not point to a clear consensus of views as to whether this was an appropriate threshold. Different views received included:

- that the 100-student threshold was too low
- that it was appropriate
- that we should not have a lower threshold
- that we should include all subcontractual arrangements.

55. Respondents who stated that the threshold was too low questioned whether it represented a significant burden for the smallest arrangements, especially where the 100 students are a cumulative total of students from multiple, small-scale arrangements. A small number of respondents commented that this may have the unintended consequence of discouraging a provider from entering, or continuing with, smaller subcontractual arrangements. Others noted that a threshold at this level would have the practical effect of bringing almost all subcontractual arrangements into scope, while the risks are often associated with the larger arrangements.

56. Respondents who considered that the proposals set an appropriate threshold broadly indicated that this struck a reasonable balance between the risks and the burden associated with the proposed condition, although they did not expand on the reasons for their view.

57. Some respondents stated that we should not use student numbers to determine providers with obligations under the proposed condition. Reasons given included the view that student numbers was not an appropriate basis for determining whether there are issues within a subcontractual arrangement.

58. In the consultation proposals, we indicated that the threshold of at least 100 students would be determined on a full-time equivalent (FTE) basis. However, we welcomed views as to whether respondents thought this approach, or a headcount approach, is preferable. We received a limited number of comments on this point and did not identify a clear consensus among those who commented. We noted that, in general, respondents who supported an FTE approach were also of the view that the threshold of at least 100 students was too low.

59. Among the responses, there were some requests for clarification on when a provider would come into scope of the condition when increasing student numbers, or new subcontractual arrangements took effect. Two respondents noted that the inclusion of 'planned' student numbers in the threshold created uncertainty and may result in under-reporting by a provider. It was suggested that an alternative approach would be to rely on the number of confirmed enrolments so that a provider that under-recruits is not drawn into scope, and to allow a grace period for a provider whose recruitment unexpectedly exceeds 100 students.

60. The most common point made by respondents relating to our alignment with DfE's proposals related to the criteria used to decide whether a provider was required to meet the obligations set out in the condition. Our proposal was that this should apply to all lead providers where 100 or more students are taught in subcontractual partnership, whereas DfE was proposing, and has subsequently decided, that a delivery partner with more than 300 students is required to register with the OfS.

61. A small number of respondents questioned our proposal to bring a lead provider into scope of the condition where they did not meet the normal criteria for having obligations under the condition, but where the OfS considered that there are nonetheless significant risks associated with the provider's subcontractual arrangements. Respondents here predominantly considered that the wording of 'reasonable grounds' in our proposals was insufficiently clear. However, we also noted a small number of comments in support of the use of this type of mechanism because it would enable the OfS to respond promptly to regulatory intelligence.

OfS response

62. Our decision to proceed with the introduction of condition E10 largely as proposed means that providers with 100 or more students in subcontractual arrangements will need to meet the requirements set out in the condition. This number will apply cumulatively across all of a lead provider's courses and years of study, regardless of the number of separate delivery partners.

63. We reached this decision because we continue to be concerned about the risks posed to students and taxpayers. Responses to the consultation raised a wide range of views on this point. When considering whether we should adjust the figure, we focused on proportionality and on ensuring that we target our regulatory activity where it is genuinely needed. We believe it is still reasonable to set a minimum point at which a provider takes on obligations under the proposed condition. The threshold of 100 students continues to strike an appropriate balance: supporting proportionality for the smallest subcontractual arrangements while still reducing the risk for the majority of students.

64. As outlined in our proposals, we set the 100-student threshold after reviewing OfS data on student numbers registered with a lead provider but taught elsewhere. We considered that setting the threshold at this level would, in practice, ensure that a provider oversees

arrangements effectively regardless of the number of students involved. We also believe this approach remains the right one because it avoids placing excessive burden on the very smallest arrangements, while still maintaining appropriate oversight.

65. We reconsidered our proposed approach to using an FTE method for establishing student numbers. Instead, we have decided to apply the student number threshold using a headcount approach. This means we count the number of students registered on the relevant courses, based on the data that providers submit to Jisc through the Higher Education Statistics Agency (HESA) and Individual Learner Record (ILR) returns.

66. The headcount approach counts each student once in each academic year, regardless of how many courses they take or whether they study full-time or part-time. We agreed with respondents who suggested this would be a more effective approach for providers offering flexible modes of delivery. We also aimed to align our approach with the partnership data dashboards that the OfS published in October 2025. These dashboards, along with other student outcomes dashboards, calculate student numbers on a headcount basis. We note that DfE requirements for OfS registration for delivery partners with more than 300 students also use a headcount basis. Taken together, we think these factors provide a strong case for amending our approach and reducing complexity for a provider seeking to establish its compliance obligations.

67. We looked again at the proposal that obligations under the condition would apply to planned intakes where that intake would have the effect of bringing a provider into the scope of the condition (for example, by resulting in the number of students reaching 100 or more for the first time). As an alternative, we considered amending the wording of this requirement so that obligations would take effect at the point at which a relevant contract was signed between providers. However, we found that this would be likely to create further points of uncertainty for a provider. For example, we felt that this would not take into account circumstances where a provider initially entered into a very small-scale agreement, but increased student numbers over time (and therefore reached the 100-student threshold) within the terms of the existing contract. On balance, we therefore took the decision to retain the wording used in the proposed condition.

68. Our policy objective for applying obligations to planned intakes is to ensure that activity associated with the recruitment of students is included in the oversight employed by a provider. We have taken this approach because we have observed instances of poor practice during the recruitment and admissions phase, and we do not think it is acceptable to exclude this phase of activity from rigorous oversight for any individual cohort of students. We recognise that this places a certain onus on providers to engage in an appropriate level of planning activity to identify their own compliance requirements. We consider that this should be well within the capability of an effectively-managed organisation and we would be likely to be concerned about a provider that suggested that this would be unachievable.

69. We decided to remove the proposed provision that would enable the OfS to apply the obligations of the condition to a provider where we determined we had reasonable grounds to suspect that subcontractual arrangements presented a material risk to students and taxpayers (see condition E8.1b). We reached this decision following feedback suggesting we establish clear criteria for engaging this provision, as well as more general feedback

suggesting we consider the use of existing regulatory processes, such as specific ongoing conditions of registration, when responding to concerns.

70. We carefully considered the feedback we received suggesting we establish clear criteria for engaging this provision. Our reason for proposing this clause was to provide a flexible regulatory tool that allows for a tailored regulatory response to material concerns identified in subcontractual arrangements that would not normally be in scope of the condition. Developing more detailed criteria, as suggested by respondents, could limit our ability to act in line with a specific scenario.

71. We think the risks to students and taxpayers to be substantively mitigated by the introduction of the other requirements in the condition in the majority of other subcontractual arrangements. We expect every provider to comply with these requirements. Where we have concerns about risks in other arrangements, we will consider the regulatory tools already available to us, which may involve (but not be limited to) imposing a specific condition of registration.

72. Finally, we noted the feedback from respondents who preferred we align as closely as possible with the requirements for delivery partner registration set out by DfE. We understand why this might be desirable for a provider, and made the following adjustments to improve the alignment between the two sets of requirements:

    a. Using a headcount measure to establish student numbers, rather than an FTE measure.

    b. Where appropriate, adding exemptions to align with DfE, so that partnerships can clearly identify their compliance obligations.

73. We looked further for other opportunities to align more closely with DfE's subcontracting requirements. We considered adopting the same student number threshold of 300 students. However, we decided not to take this approach because the obligations contained within condition E10 and those introduced by the DfE are directed at different providers. Whereas the DfE registration requirements are for delivery partners, our condition places obligations on the lead provider, and our view is that we should consider the appropriate threshold for implementing this set of obligations independently of any obligations placed on any other group of providers (in this case, delivery partners). When reaching our view on the most effective approach for managing our own policy objectives, we determined it is not appropriate for us to follow a threshold set elsewhere.

Impact on particular groups of students

Consultation responses

74. We received comments from just under one third of respondents about the potential impact of our proposals on particular groups of students. The majority of these respondents referred to the importance, in their view, of subcontracted provision for students from backgrounds traditionally less likely to access higher education. Some respondents considered that this included students from geographic areas with fewer higher education options, students from lower socioeconomic or low participation backgrounds, students seeking more tailored and flexible support, and mature students.

75. We received mixed views about the potential impact of our proposals on these groups of students. Many respondents who supported the proposals favoured measures that would increase protection and improve the quality of higher education for all students. They also noted that increased oversight would be likely to have a greater impact on students from disadvantaged backgrounds, as these students were most likely to study through a delivery partner.

76. However, a smaller number of respondents suggested that the additional oversight applied to subcontractual arrangements would, in practice, result in a provider's focus being directed at the students themselves rather than at systemic organisational practices at partner providers, and that this would place an unfair level of scrutiny on those students that did not exist at providers where students are taught directly. It was also suggested by some respondents that it could create the perception that qualifications achieved through subcontractual arrangements held less value.

77. A small number of respondents also highlighted the value of specialist courses delivered through subcontractual arrangements, such as niche or bespoke partnerships with an industry. Respondents linked these comments to their concerns that increased regulatory burden might lead some providers to step away from this type of provision or restrict innovation. Although some respondents made this point particularly in relation to specialist provision, a very small number also suggested that larger, non-specialist providers could consider withdrawing from subcontractual provision as a result of increased regulatory burden.

OfS response

78. From the consultation responses, we did not identify any circumstances in which implementing our proposals would have a disproportionately detrimental impact on any group of students with particular characteristics. The measures we decided to implement are intended to reduce the risks to students studying in subcontractual arrangements, regardless of their background, and to increase the quality of the higher education experience in this type of delivery across the sector. We agree with those respondents who indicated that students from disadvantaged backgrounds are more likely to study in this part of the sector, and we consider that this policy is therefore more likely to have a positive impact on these students. We noted comments that the introduction of condition E10 may inadvertently suggest that some qualifications may hold less value. Our view, however, is that this is more likely to be an ongoing concern if there is not sufficient oversight of this provision by the lead provider. Over time, these requirements should ensure that standards in all subcontracted partnership arrangements are high and therefore reduce this risk.

79. We noted concerns that the burden of the new condition may cause some providers to step away from subcontractual arrangements, causing cold spots and gaps in provision, potentially reducing student choice. While we do not discount the possibility that there may be some providers that reconsider their participation in subcontractual arrangements, we think the likely impact of this is outweighed by the overall benefits to students and taxpayers. With respect to specialist niche provision in particular, we note that many (although not all) areas of more specialist provision, such as medical training, would fall into our exempt categories.

The oversight and control environment

80. The overarching requirement set out in our proposals was for each relevant provider to have in place oversight and control mechanisms to effectively manage risks associated with subcontractual arrangements. To support the delivery of the overarching requirement, a provider would be required to maintain a comprehensive source of information covering the policies, procedures and other provisions relating to the oversight of its subcontractual arrangements (proposal 2 in the consultation).

81. Our proposed condition included a further requirement for providers to operate in accordance with their comprehensive single source of information (proposal 3). Our initial view, set out in the consultation, is that a provider's internal policies are not sufficient to manage the risks associated with its subcontractual arrangements unless the provider implements those policies effectively in practice, and with appropriate capacity and resources.

Consultation questions on the oversight and control environment

Question 6

Do you have any comments on the nature of the risks that we have included in our draft guidance that we are proposing providers mitigate?

Question 7

Do you agree or disagree with the minimum content requirements we have proposed for the single document we propose a provider should maintain? Please give reasons for your answer.

Question 8

Do you have any views on any challenges that you anticipate with the implementation of this proposal?

Question 9

In your view, are there any barriers to implementing the measures in this proposal, which require a provider to operate in accordance with its comprehensive source of information? If so, please specify which, and tell us why.

Decision

82. We decided to proceed with our proposals to require providers to ensure that any risks to the interests of students and/or taxpayers posed by its existing and future relevant subcontractual arrangements are effectively identified and addressed. To facilitate this, a provider will be required to develop a comprehensive source of information setting out its oversight measures for relevant subcontractual arrangements. However, we have changed the name to better reflect the scope and intention of the document from 'comprehensive source of information' to 'subcontracting information source'. We have used this amended naming in the remainder of

this document. We also decided to implement the minimum content requirements included in our proposals and have provided further clarity for respondents about the format and publication requirements for these documents.

83. A provider will also be required to operate in accordance with the subcontracting information source as set out in the final condition, so that providers deliver oversight measures that are effective in managing risks to students and taxpayers. We did not make any substantial changes to this requirement following the consultation, although we did make some changes relating to a provider's existing contracts and included additional information for providers in the guidance accompanying the condition.

Developing the 'subcontracting information source'

Consultation responses

84. Responses to this aspect of our proposals demonstrated the finely balanced views held by respondents. The majority of comments regarding the introduction of the subcontracting information source (SIS) were of a general nature and broadly supported this approach. However, a small number of respondents did not think that the introduction of the SIS would result in benefits. This was because they felt that the majority of the requirements were already covered by existing regulatory requirements, or because they were unclear about how the steps included in the SIS would address the risks set out in our proposals.

85. Some respondents questioned the inclusion of requirements for contingency planning and the relationship of that element with existing student protection plans. Respondents commented that there would be a level of duplication here, which made the contingency planning in the proposals unnecessary.

86. Respondents also commented on the requirement for a provider to include their strategic rationale for undertaking subcontractual arrangements within the SIS. Comments were centred on how the content of the rationale would be interpreted by the OfS, especially for providers whose main rationale for subcontracting was financial benefit. These respondents stressed their view that the financial benefits of subcontracting did not preclude the delivery of high quality provision of education for students.

87. A small number of responses suggested that the minimum content requirements should be more directly focused on students – for example, expanding on student protection provisions, measures to directly improve the student experience or the clarity of information available to students.

88. A small number of respondents requested additional information and guidance about our expectations for internal and external audit measures. Specific points here included the frequency and coverage of audit expected by us, and clarity on the role of governing bodies here.

89. We received comments regarding duplication of existing documents, or the resources required to create the SIS, alongside requests for clarification on the format of the SIS and our expectations for publication. For example, some respondents thought that we expected a webpage-style format or standalone set of policies outside of a provider's usual policy library, while others sought confirmation that the format would be flexible. Respondents also raised

questions about the complexity of version control of the included policies and the confidential nature of some of the minimum content if publication was required.

90. Some respondents suggested an alternative approach in the form of a suite of 'consolidated information'. In this approach, a provider would develop a brief overarching policy document or directory setting out their overall approach, with links to the relevant procedural documents required as minimum content. These respondents felt this would be a more effective approach which would more accurately describe our intention, while preventing the need for providers to develop additional content that would only be used in the event of regulatory engagement.

91. A small number of respondents commented about the similar approach used in condition E6 (E6.2 requirements relating to policies and procedures).[8] While some respondents had valued this approach and felt it was equally useful here, others were concerned about our repeated adoption of this approach and asked that we consider developing separate guidance about the type of information that should be published by a provider.

92. We received feedback from several respondents who agreed with the proposed minimum content requirements for the SIS, with a smaller number that disagreed. Those respondents in agreement with the proposed minimum content requirements considered that the requirements were comprehensive and reasonable, that a provider with strong governance would have much of the content already in place, and that the requirements aligned with good practice. A small number of respondents also noted the value of sector-wide consistency in this area of provision.

93. Respondents who disagreed considered that the requirements were overly prescriptive. These respondents felt that the minimum content requirements did not take account of provider context and the varying levels of risk across different arrangements, and suggested they would have preferred the use of a scalable approach based on the size and complexity of the subcontractual arrangement. In their view, this would help to prevent some providers from deploying excessive resources for minimal benefit and support institutional autonomy by enabling providers to determine their own oversight measures. A small number of respondents also noted here that the consultation proposals indicated an apparent lack of trust on our part towards all subcontractual arrangements.

OfS response

94. As set out above, we decided to include the requirement for providers to develop a subcontracting information source in relation to their relevant subcontractual arrangements. Although we noted the comments we received querying the benefits of this approach, on balance we remain of the view that this will be an effective risk mitigation tool. The condition sets out a suite of minimum content requirements that providers must include, and these are largely unchanged from our proposals. However, we considered the points raised in consultation feedback about the nature of the requirements as well as practicalities relating to format and publication.

[8] See E6.2 at: Condition E6: Harassment and sexual misconduct - Office for Students. https://www.officeforstudents.org.uk/for-providers/student-protection-and-choice/harassment-and-sexual-misconduct/condition-e6-harassment-and-sexual-misconduct/

Format and publication

95. We noted comments we received seeking clarifications on the expected format of the subcontracting information source. We do not intend to specify the exact format or system to be used by a provider to collate their SIS. As with other aspects of condition E10, our view is that providers are best placed to determine the most suitable approach for their own needs. However, we considered that the approach suggested by some respondents of an overarching policy document or directory setting out a provider's overall approach, with links to the relevant procedural documents required as minimum content, could be a sensible way forward for some providers.

96. While we noted that some respondents raised points relating to version control, we believe that this is an internal matter for providers to resolve in the context of their own document management systems. However, we expect that the clarifications we made here about our expectations for the format of the SIS will address some of these concerns.

97. We noted that some respondents queried whether there was a requirement to publish the information covered in the SIS. To clarify, we do not expect a provider to publish this information externally. This is because we expect that the documents included here will contain a certain amount of detailed operational and contractual information, and we agree with those respondents who suggested this would not be appropriate for the public domain. We detailed the aspects of our proposals where we do require a provider to publish specified information (through changes to Regulatory advice 9), and our reasons for doing so, elsewhere in this document.

98. We also do not require a provider to submit their documentation to us for approval or review, as was suggested by some respondents. Before publishing our proposals, we considered requiring this but concluded that doing so would place an excessive burden on the provider and divert our resources from cases where the risks to students and taxpayers are significant. We continue to hold this view. Some respondents indicated that this would require them to commit resources to the development of material that was not directly required by the regulator. In response, we state that the main objective of this documentation is to drive improvement in internal processes for the oversight of subcontractual arrangements. This is similar to many other types of legislation (for example, health and safety legislation) that require organisations to develop and implement certain policies to manage risks without normally needing to submit evidence to the relevant regulator.

99. However, we took account of the queries raised about the duplication of existing documents to meet the requirement to develop the SIS. We considered these queries in conjunction with feedback which indicated a lack of clarity about the expected approach. On reflection, we think that the use of the term 'comprehensive source of information' inadvertently caused confusion with the detail of requirements contained within other conditions of registration. Under the provisions of condition E6, a provider is required to maintain a comprehensive source of information which is published and accessible at all times. We therefore changed our terminology to 'subcontracting information source', to remove the similarity with terminology used elsewhere.

Minimum content requirements

100. We received a small number of consultation responses relating to the nature of the content that we specified as being part of the minimum content requirements. While we have decided not to make any substantial changes to the content requirements, we have set out below our rationale for continuing with the requirements highlighted by respondents.

101. In response to consultation feedback, we reviewed the provisions contained within the Minimum content requirements, which covered the requirement for a provider to set out how they will support students to continue and complete their studies in the event of a delivery failure. We considered whether existing Student Protection Plans (SPPs) provided sufficient coverage to allow us to remove this requirement, but on balance have decided to retain it. In our proposals, we noted that a provider may be able to draw on existing SPP content here – thereby limiting any additional development work – but highlighted that the public-facing nature of SPPs may mean they are not the most appropriate format for detailed planning between providers. In our view, this remains the case, as we expect the depth of oversight and operational planning required here to exceed that of a published SPP.

102. For example, we observed during market exit cases that a provider has not always considered the management of student data and attainment records. This step would be essential in the event of delivery provider failure, yet the operational detail of this is not something that we would necessarily expect a provider to include in their SPPs. While SPPs remain a valuable source of information for students about what to expect, they do not serve the same purpose or carry the same operational and practical focus as the contingency planning we are requiring here.

103. In the event of delivery provider failure in a subcontractual relationship where student numbers are large (either in terms of absolute numbers or relative to the lead provider's directly-taught provisions), we are of the view that a lead provider may find it challenging to support students to continue and complete their studies without an appropriate level of operational planning and preparation. In reaching this view, we have been mindful of an increase in the number of subcontractual arrangements across the sector with more than 1,000 students; this suggests larger relationships are becoming more common across the sector.[9]

104. We also noted the feedback received about the regulatory interpretation of a provider's strategic rationale, required to be included in the SIS. However, we have not changed our view on the inclusion of this information, and therefore it remains part of our requirements.

105. For clarity, there is no regulatory assumption that a strategy to increase revenue for a lead provider is, in itself, a negative approach. We recognise that for some providers subcontractual arrangements are a critical element of their financial sustainability in the current climate.

106. Our concern, however, is that in some cases the financial imperative to generate revenue may lead to an approach that delivers subcontracted courses at the lowest possible cost, potentially to the detriment of students. Our policy intent in requiring the inclusion of a strategic rationale is to ensure that, through the development of that rationale, provider

[9] See OfS publishes student outcomes data for subcontracted courses - Office for Students.

governing bodies properly consider the implications of a financial driver for subcontracting, including where this may introduce risks to the quality of delivery for students. Our regulatory concerns are therefore more likely to focus on those subcontractual arrangements that have not taken adequate steps to balance financial considerations with the need to deliver a high quality experience for students.

107. We considered the small number of requests that we received for additional content to be added to the minimum requirements, such as further student-focused information. We agree with the general premise here that information and transparency for students, or prospective students, is important and should be a high priority for a provider. However, we reflected that the overarching purpose of condition E10 is to improve the robustness of oversight and governance controls within subcontractual arrangements, and that these items fall outside of that scope. We also reflected on our intent to ensure that our minimum content requirements are limited to those elements that we expect to apply to all relevant subcontractual arrangements. Nevertheless, we would highlight that the requirements we have set out in condition E10 are intended as a baseline, and we encourage each provider to consider any additional elements that may be relevant to their own arrangements.

Operating in accordance with the comprehensive source of information

Consultation responses

108. Some respondents sought additional information on our expectations for a provider to 'act in accordance' with the comprehensive source of information (now the 'subcontracting information source' (SIS)). Several respondents requested more detailed guidance, templates, and worked examples to support compliance, as well as further clarification on monitoring and enforcement mechanisms. Without this clarity, many respondents considered that a provider could struggle to allocate their resources effectively and would therefore risk non-compliance with its SIS. Some respondents suggested that we go further than the proposed approach – for example, that we conduct audits, spot checks, or other forms of ongoing regulatory oversight.

109. One respondent highlighted a challenge in meeting the SIS requirements where a delivery partner may lack access to raw student data, including HESA submissions and student experience metrics. This limitation was highlighted as a possible obstacle to meeting oversight obligations under the proposed condition E10. A small number of respondents called for a mandatory data-sharing provision in contracts to enable compliance and suggested that we clearly set out the minimum data requirements to avoid ambiguity, ensuring consistency across partnerships.

110. Multiple respondents requested clarity regarding how we will judge whether a provider's measures are adequate and how we will take account of context across different types of providers and scale of subcontracting arrangements. For example, one respondent commented that the condition does not account for the likely variation across institutions, nor does it explain how we will evaluate such differences. The same respondent also suggested there was a lack of clarity regarding how a provider is expected to benchmark what is deemed 'acceptable' in terms of resourcing and capacity. Another respondent noted that, while some elements of this condition can be standardised, others must be contextualised based on the type of partnership, and that flexibility in this consideration would be essential.

111. A few respondents noted they do not anticipate any significant barriers to producing and maintaining the subcontracting information source, particularly a provider that already maintains robust governance and oversight processes as a minimum standard for its working practice.

112. Several respondents commented on the requirements to conduct on-site testing of control measures that were included in the proposals. Several respondents stated that the proposed on-site testing measures will be costly to implement. Another commented that on-site testing would, in their view, be 'impossible' for any courses delivered online. Some respondents suggested on-site testing should not be mandatory; for example, one lead provider who responded commented that 'trusted partners' with a history of delivering good provision 'should be able to rely primarily on reporting', and that on-site tests were 'invasive' and unnecessary.

113. Finally, one respondent queried our rationale for specifying that a provider must have adequate resources to meet its internal policies and procedures as 'it is surely implied that, for a policy to be effective, it needs to be actionable'.

OfS response

114. We decided to proceed with the requirement for a provider to operate in accordance with their subcontracting information source largely unchanged. While we have noted the specific comments about some of the practical impacts of doing so, we did not identify consultation responses that suggested we should not require a provider to ensure they are effectively delivering their documented control measures.

115. However, we reviewed the comments seeking clarity on how we would judge the effectiveness of a provider's implementation of its oversight measures, including how we determine whether a provider's resources are adequate and how we take account of its size and the complexity of its subcontractual arrangements. We agree that providers would benefit from additional information on the factors we consider when assessing compliance with condition E10. We therefore added an additional section to the guidance document setting this out in more detail.

116. We also noted respondents' desire for us to document an assessment approach that takes account of context across different types of providers and scale of subcontracting arrangements. The overarching requirement of the condition is that a provider must identify and address the risks to students and taxpayers of their individual subcontractual arrangements. Several sections of the subcontracting information source also directly highlight the need to ensure that oversight measures are in line with a provider's individual strategic approach to subcontracting. The requirements to develop a subcontracting information source, to operate in accordance with it, and to adequately resource that activity, should flow from a provider's assessment of its own risk in relation to its subcontractual arrangements. Setting quantitative 'acceptable' resourcing minimums, templated worked examples, or sector benchmarks would not, in our view, achieve our policy objective of requiring a provider to identify and address their specific risks, and to apply their own judgements about the appropriate control environment and level of resourcing. If we set out this kind of approach, we think it would likely limit the ability of providers to develop a set of controls and processes that are appropriate for them and their particular context and

potentially add additional burden for providers whose subcontractual arrangements are not complex.

117. We considered feedback about the practicalities of requiring on-site testing as part of the verification of the effectiveness of oversight measures. Some respondents highlighted existing contractual barriers that would prevent this type of oversight activity from taking place. In our review of responses, we understood comments of this nature to further demonstrate some of the current limitations in assurance and oversight activity that we seek to address through condition E10.

118. We also noted that there were multiple suggestions that data-sharing arrangements within contracts should be mandated by the OfS, and we have understood this to mean that it is not uncommon for partners to have limited access to relevant source data. Given the nature of the risks to students and taxpayers, particularly where those risks relate to the use of public funding, we do not consider this to be appropriately robust. We received feedback of a similar nature from a small number of respondents who indicated that a reliance on simple reporting from a delivery provider would not provide sufficient assurance given the reputational risks of poor quality. While we agree that it is appropriate for a provider to develop oversight measures suitable for the complexity of their own subcontractual arrangements, we consider there are likely to be limitations to the effectiveness of measures where access to source information is restricted.

119. We recognise that on-site testing will introduce some additional complexities and resource requirements for some providers when overseeing their subcontractual arrangements. However, we decided to retain this requirement because neither our own analysis nor the consultation responses identified an alternative approach that provides a similar level of assurance and risk mitigation. We remain of the view that on-site testing, through unannounced inspections, data audits or similar methods, is among the most effective ways to identify gaps in oversight, as direct access to source information provides insight that other approaches cannot match.

120. We are also mindful that there is an inherent incentive within subcontractual arrangements for reporting from the delivery partner to potentially present as overly positive. On-site testing helps mitigate the risk that such reporting masks issues that could affect students and taxpayers. We do not intend to further prescribe how a provider should carry out on-site testing. However, our guidance to the condition includes more details on our expectations for on-site testing for different teaching contexts.

121. We also do not intend to provide guidance at the level of detail requested by some respondents, such as document templates or on-site audits or model contract clauses. Although we considered the appropriateness for us to do this, we also considered the feedback received which highlighted our need to strike an appropriate balance between burden for the provider and the benefit of the OfS providing this type of information. We believe that our approach strikes an appropriate balance between these considerations, going far enough to establish effective risk mitigation measures while not over-reaching on the prescriptiveness of our requirements.

122. In line with our approach for other ongoing conditions of registration, we are of the view that it would be impractical for us to develop detailed operational guidance that would work

effectively for all providers, given the diversity of the sector. We consider that the provider is in the best position, and should have the appropriate capability within their teams, to consider their own operating context and identify those measures that work most effectively for their specific subcontractual arrangements, within the parameters of the requirements of condition E10.

123. As part of our decision-making process, we considered including a direct requirement for a provider to have the capacity and resources necessary to operate in accordance with its SIS (E8.12 in the proposed condition). We firmly agree with respondents that a provider should deliver on its own policies and allocate adequate resources to do so. However, our experience in practice, for example through quality investigation work involving the oversight of courses delivered by subcontractual partners, indicates that this has not always been the case.

124. We included this direct requirement in the proposed condition to emphasise that, while developing robust policies is essential to compliance, the effective **delivery** of oversight measures is the most important factor in mitigating risk. This remains our overarching policy objective. Although some readers may view the capacity and resource requirement as superfluous, we decided to retain it in condition E10 to reinforce the emphasis on delivery.

Burden and proportionality

Consultation responses

125. We received a number of comments about our general approach to requiring a provider to develop and implement a SIS, and to operate in accordance with it. Many others focused on the burden and proportionality of implementing these proposals. Some respondents expressed views that the nature of the requirements set out in the proposals was overly prescriptive and not consistent with our usual risk-based approach. Others reported that these proposals would result in further costs, for example through additional administration and compliance costs.

126. Some respondents commented that the proportionality of our approach to requirements was overly prescriptive. They felt that the minimum content requirements of the SIS did not take account of provider context and the varying levels of risk across different arrangements. In their view, a scalable approach would help to prevent some providers from deploying excessive resources for minimal benefit and support institutional autonomy by enabling a provider to determine their own oversight measures. A small number of respondents also noted here that the consultation proposals indicated an apparent lack of trust from the OfS towards all subcontractual arrangements.

127. However, we received contrasting feedback from several respondents who agreed with the proposed minimum content requirements. Those respondents considered that the requirements were comprehensive and reasonable, that a provider with strong governance would have much of the content already in place, and aligned with good practice. A small number of respondents also noted the value of sector-wide consistency in this area of provision.

128. Other comments in relation to the proportionality of our proposals highlighted the role of other stakeholders in ensuring appropriate use of public funding, such as delivery partners and the

SLC. One respondent also indicated that they were concerned that the proposals would have the effect of creating more distant relationships between lead and delivery partners, with an impact on collaboration.

129. Some respondents commented on the administrative resources that would be needed to implement the subcontracting source of information, and to maintain this into the future. This includes views that a provider would be asked to duplicate information they already held, that the proposals would result in practices which were overly bureaucratic, or would place excessive demands for information on the delivery provider.

130. Respondents noted in particular burden in circumstances where a lead provider had relevant subcontractual arrangements with multiple delivery partners. Respondents sought clarity on whether a separate SIS would be required for each relevant subcontractual arrangement.

131. Some respondents noted in particular the resource capacity of a smaller provider, expressing views that both costs and human resources are barriers to implementation of both the creation of and meeting the ongoing operational requirements of a provider's SIS; this would be particularly impactful for a smaller provider with a limited budget. Some respondents noted that a smaller provider may not have the resources to define, monitor or enforce policies, especially when competing priorities (for example, admissions periods or managing ongoing financial constraints) are present.

132. We received further comments related to the proportionality and burden of the use of a subcontracting information source as a format to set out oversight measures. For example, one respondent commented that creating and maintaining a bespoke document solely for regulatory purposes, that for many providers may never be requested by us, would be 'disproportionate'. The same respondent suggested an alternative approach that a provider may maintain a concise, consolidated summary of information to demonstrate how it meets the relevant conditions of its SIS, which would build on its existing governance, assurance and contractual processes.

133. Some respondents addressed the specific requirements of the SIS as an additional pressure on systems and governance processes. For example, one respondent noted they are already engaged in extensive on-site testing of subcontractual provision and have also already developed robust marking and moderation procedures to ensure partners meet a high standard of delivery. While this same respondent recognised the importance of quality assurance, they also highlighted that their existing efforts are already resource and cost intensive to develop; they expressed that additional expectations could increase costs while offering little added improvement in quality assurance practice due to it duplicating existing governance. However, this was balanced by comments we received from a few other respondents who noted that, while a provider may already have these documents in place, establishing information in this way would improve regulatory oversight and overall reduce pressure in future.

OfS response

134. In reaching our decision to proceed with these aspects of our proposals largely as planned, we considered the comments we received about the proportionality and burden of the development and implementation of the SIS. A lead provider with relevant subcontractual

arrangements will be required to collate a SIS which sets out their oversight and control mechanism and to operate in accordance with our minimum content requirements.

135. We are reassured by the feedback from several respondents who considered that our proposals represented examples of good governance practices, and who stated that a number of providers would have a proportion of this content already in place. However, we also recognised that this was not a universally held view among respondents.

136. We recognise that the use of a suite of minimum content requirements is more prescriptive in its approach than some other ongoing conditions of registration, and that some providers have commented about that approach. Our view is that the serious nature of our concerns around subcontractual arrangements and the quality of oversight we have observed in some cases means that, on balance, a more direct approach is necessary to give sufficient clarity of expectations to every provider.

137. However, we are mindful of our general duty relating to institutional autonomy in our development of the conditions. Although the minimum content requirements do point a provider toward the nature of the policies they are required to consider, we mindfully did not specify **how** a provider should deliver those requirements. We did not specify the exact nature of the steps they should take so that the provider can develop an approach that is relevant to their own operating context, thereby minimising burden where appropriate.

138. We also agree with those respondents who suggested that a provider's approach should be scalable and proportionate to its own operating context. We believe that this is a reasonable approach, and that the specific aspects of oversight measures should be determined by each provider based on the nature of its individual subcontracting arrangements. As with other ongoing conditions of registration, it is not our role to determine operational practices for any provider to follow, although we will assess the adequacy of a provider's practices in any regulatory engagement. Where a lead provider has subcontractual arrangements with multiple delivery partners, we expect them to collaboratively determine with their partners whether oversight mechanisms should vary from partner to partner or whether they wish to adopt a common set of practices.

139. However, we remain of the view that a suite of minimum content requirements is an appropriate way to establish a framework for a provider to use in establishing its oversight measures. We think that this approach allows a provider to adopt an appropriately scalable approach for its subcontractual arrangements while providing a clear set of minimum mandatory content. Without the minimum content requirements, we are not satisfied that every provider would independently develop the depth and breadth of oversight measures we think are needed for robust risk management.

140. We noted a small number of responses asking for more information about how each component of the minimum content requirements mitigates our risk concerns within subcontractual provision. We consider the documents specified to be those that most directly address the risks to students and taxpayers. Consistent with other requirements in the condition, their intention is to ensure that a lead provider has the appropriate measures in place to take an active role in overseeing and controlling the delivery of its subcontractual arrangements.

141. These documents are intended to operate as a combined set of measures; risk-mitigation offerings may vary depending on a provider's individual circumstances. Setting out the intended risk-mitigation effect of each document separately could inadvertently guide a provider to focus the content of those documents differently than they would if considering their own context holistically and may therefore result in a less effective overall approach.

142. We considered the comments that respondents made about the cost and resources of implementing the SIS. Our view is that some of this feedback came from some misunderstanding about the format and nature of the activity needed. We clarified our expectations about format and publication above. However, we also considered feedback indicating that those providers with robust governance processes already in place are generally less concerned with resourcing considerations. When reviewing feedback, we did not identify any factors that changed our overarching view: that the burden of implementation of these requirements is likely to fall most heavily on those providers where oversight and governance practices are most in need of strengthening.

143. We also considered the points raised about the requirements of condition E10 leading to potential duplication of a provider's oversight measures already in place. In introducing these requirements, it is not our intention to require a provider to redesign existing processes that are working effectively to manage risks, or to introduce additional processes where one already exists that serves the same purpose. We agree that this would not be an efficient use of provider resources. Rather, our intention is for a provider to satisfy themselves as to the effectiveness of any existing oversight processes and to introduce improvements where needed, and to address any gaps where their established policies do not yet meet all the minimum content requirements. We developed the minimum content requirements to provide clarity for a provider about the nature of policies that we believe are necessary for a comprehensive approach to risk management and oversight for subcontractual arrangements.

144. Where a provider is effectively managing risks to students and taxpayers, we expect the provider to utilise existing policies, procedures and other arrangements, and expend some resource to identify gaps and create their SIS. Some respondents cited resource considerations that go beyond the resource cost of identifying gaps and consolidating existing information. For example, that a smaller provider may not have the resources to define, monitor or enforce policies in times of financial constraint or peak operational activity (for example, admissions), in particular policies related to the requirement to undertake on-site testing. We are clear that the lead provider must allocate appropriate resources to its subcontractual activity. If a provider cannot resource its control activities at peak activity periods or at times of financial stress, it should consider whether continuing to engage in this activity is in line with its regulatory requirements or with the best interests of the students taught under these arrangements.

Provision of information in financial statements

145. We consulted (in proposal 5 of the consultation) on proposals to amend Regulatory advice 9: Accounts direction[10] to require a provider to publish specified information relating to their subcontractual arrangements in their audited accounts.

Consultation questions on the provision of specified information in financial statements

Question 11

Are there aspects of the proposal to require additional disclosures in a relevant provider's audited financial statements that you found unclear? If so, please specify which, and tell us why?

Question 12

In your view, are there any barriers to implementation of this proposal?

Question 13

Do you have any comments on the proposals to publish this information, either in providers' audited accounts or by the OfS?

Decision

146. We decided to implement the changes to our Accounts direction guidance (Regulatory advice 9) largely as proposed, but we have made some changes to recognise issues relating to existing contracts, which is discussed in detail in the 'Implementation, monitoring and assessment' section below. The new requirements are set out in the updated regulatory advice. We remain of the view that these disclosures are an effective part of our overall approach to improving oversight of these arrangements and support improved transparency in this part of the sector.

Strategic rationale for subcontracting

Consultation responses

147. We proposed requiring a provider to include its strategic rationale for subcontracting within its published financial statements. Many of the comments we received in relation to this proposal were seeking more information about how the OfS might respond to a provider's rationale for entering into subcontractual arrangements. For example, some respondents sought clarity on whether the requirement to ensure that the needs of students are prioritised over financial considerations, implied that the OfS may consider that only some reasons for entering into subcontractual arrangements were acceptable or appropriate. Further, they questioned

[10] Our Accounts direction provides guidance to providers on preparing and publishing financial statements. Available at Regulatory advice 9: Accounts direction - Office for Students.

whether we considered revenue generation an appropriate reason to engage in subcontracting, and whether determining appropriate reasons for a commercial relationship was within our remit. Others noted that they did not believe that financial benefit should automatically be assumed as a risk indicator for poor due diligence or oversight.

148. One respondent stated that a provider would benefit from us offering examples of a suitable strategic rationale for subcontractual arrangements. This respondent suggested that, without additional guidance, small or new providers would be disincentivised from undertaking subcontractual arrangements.

149. Other respondents questioned whether the publication of the rationale would achieve our regulatory aims, with one respondent noting that the rationale could become what they described as a 'PR exercise' if we did not verify the content of the statements.

150. Some respondents asked for clarity on how we intended to use the subcontractual rationale, including how it would affect any potential regulatory response, risk assessment or investigation.

151. Finally, some respondents highlighted the resource costs associated with creating and reviewing the subcontractual rationale text, especially when this information may be held in other documents, including a provider's SIS. One respondent thought that requiring the board to sign off the rationale text as part of the audited accounts would be too burdensome.

OfS response

152. We have decided to proceed with our proposals to require a provider to include their strategic rationale for engaging in relevant subcontractual arrangements in their published accounts ('subcontractual rationale') and added this requirement to our Accounts direction guidance (Regulatory advice 9). We recognise that there are many reasons why a provider engages in subcontractual relationships. We set the expectation that the subcontractual rationale should be in line with that contained in the SIS and should ensure that the needs of students are prioritised over financial considerations.

153. Beyond these requirements, we expect that the subcontractual rationale may vary significantly from provider to provider to reflect the variety of strategic reasons a provider may have for engaging in subcontracting. We consider that further prescription or guidance of what is an appropriate rationale, setting out examples of suitable rationales, or prescribing how this should be set out, could limit a provider's ability to explain the purpose of their arrangement.

154. The requirement that the subcontractual rationale should ensure that the needs of students are prioritised over financial considerations is not intended to suggest that financial considerations are unimportant, not a legitimate aim of a commercial contract, or that this shouldn't be referenced in a provider's rationale. It also does not presuppose, per se, that a rationale including financial considerations is inherently riskier than one that does not. Where financial considerations are a key part of the provider's subcontractual rationale, this should be articulated clearly.

155. However, as we set out at consultation, for some providers, these partnerships provide a significant revenue stream. Our analysis of provider annual financial returns shows that some

are financially reliant on these arrangements to such an extent that the sudden loss of this income could threaten their ability to continue to operate. In these cases, the financial importance of maintaining subcontractual partnerships may discourage a lead provider from implementing the sort of robust oversight measures that would protect the interests of students. More broadly, we think it remains appropriate for a provider to demonstrate in its rationale how it prioritises the needs of students, to ensure students can understand how the delivery mechanism supports meeting their needs.

156. In the event of us engaging with a provider about their relevant subcontractual arrangements, we would not expect to directly assess the content of the subcontractual rationale itself (although it may be relevant to understand about a provider's context), but we would be likely to check compliance with the requirement to publish. We consider that the main benefit of developing the subcontractual rationale is in encouraging the provider to develop a clear and consistent understanding of their strategic approach, and in increasing transparency for external stakeholders.

157. We noted the comments about the additional burden associated with this requirement, but our view is that this is unlikely to be excessive or unreasonable. Where text from existing contracts, the SIS, or other strategic documents would effectively meet the requirements for the subcontractual rationale, there is no barrier to a provider using this, which should limit resource required to develop the subcontractual rationale. We recognise that including this information in the provider's accounts creates a need for senior review that could have some associated costs. However, given that the subcontractual rationale should set out the strategic reasoning for engaging in subcontracting, we consider that this is information the governing body should already have considered and understood. If a provider wishes to include review of this information as part of a wider strategic discussion of their broader partnership arrangements, there is no barrier to them doing so.

Fee information

Consultation responses

158. The consultation set out proposals that require a provider to include information about the proportion of fees retained by the lead provider in relevant subcontractual arrangements. We received several comments from respondents supporting the increased transparency that would be provided by this requirement. However, feedback also included a number of comments about the purpose and format of this information.

Format and scope

159. Many respondents considered that the information set out in the consultation in relation to additional disclosures was clear, although some thought that more information would support compliance. Many respondents sought clarification on specifics around the format and scope of the disclosures. For example, respondents asked:

- whether information on international students should be included
- whether disclosures for all arrangements – including small and low-risk ones – need to be reported in the same level of detail

- whether financial disclosures should be presented at the level of individual partnerships or aggregated across all subcontractual arrangements
- whether disclosures should include future commitments or only current-year arrangements.

One respondent also suggested that we develop a template for disclosures to support provider compliance.

Accounting frameworks

160. One respondent questioned whether these disclosures would duplicate existing monitoring mechanisms, such as existing accounting frameworks. Another requested clear differentiation between the requirements of these additional disclosures and existing mechanisms. This same respondent requested information on how the proposed disclosures 'interact with existing reporting under the OfS accounts direction, particularly around income categorisation and materiality thresholds.'

Purpose of disclosure and oversimplification

161. Some respondents commented on the purpose of these disclosures and suggested that the consultation may 'oversimplify' financial flows between the lead and the delivery provider. Some respondents noted that this 'oversimplification' may potentially lead to a misrepresentation of the nature of these arrangements. Two respondents suggested that the format of the disclosures should ensure that different scenarios are accounted for, such as where funding does not necessarily flow simply from lead provider to delivery partner or where costs are shared between providers. Another respondent asked how disclosures could reflect non-financial risks which are not easily quantified.

Resource capacity and administrative burden

162. Respondents identified that, in order to publish the subcontractual fee retention information, there would be both a one-off resource cost to implement the change, and ongoing costs to continue to comply. For example, one respondent commented that 'there will be data and IT costs at a time of cutbacks' and another that 'expanding the scope of financial statements may increase audit fees and require additional internal resources.' Another respondent noted that 'collecting, consolidating, and disclosing subcontractor financial data may be difficult due to variations in systems and practices.' One respondent expressed the view that the complexity of payment structures – such as lump sum fees, variable student fees and tiered payments – would lead to extra work for a provider to calculate the average fee retained per student.

163. Other respondents also noted the additional costs that may arise from the changing of contracts that contain confidentiality clauses prohibiting the disclosure of the information proposed in the consultation. They explained that this would require extra legal costs and more time to implement. Other respondents noted that a smaller provider may be limited in its resources compared to a larger provider. In contrast, a few other respondents highlighted that internal oversight and governance processes may already be in place to meet these additional requirements.

OfS response

164. We considered the responses received and decided to proceed with the requirement for the lead provider to publish information about fee retention from subcontractual arrangements. We think there is value for students and other stakeholders to see a simple comparable summary of fee retention, and this simplicity supports our aim of driving transparency, which was supported by many respondents.

165. We considered feedback from respondents highlighting that partnership relationships between lead and delivery partners are complex and varied, with multiple methods for structuring payments as well as the additional costs associated with providing this information. We recognise that different contracts have varying payment structures (such as lump sum fees, variable student fees and tiered payments), so calculating the average fee retained per student may require additional analysis, and this information will need to be added to the scope of a provider's external audit of their accounts.

166. We appreciate that some respondents would have preferred more detailed templates that reflect the breadth of contract types and provide detailed guidance for each type. However, we considered that it would not be feasible to develop detailed guidance or templates appropriate for every contract type and shape, given the multiplicity of contracts currently in use across the sector and the potential for new structures to be developed in future. For transparency reasons, we consider that there are advantages in the published information being simple and comparable between providers – although we recognise there may be some additional costs associated with this.

167. As such, we intend to proceed with using the table that we published in our consultation, which breaks down fees by each partnership in scope of the condition, rather than a more detailed breakdown. As set out in the guidance, a provider will need to populate this table with relevant information for all arrangements in scope of condition E10. Arrangements where students are taught exclusively outside of England, Scotland, Wales or Northern Ireland (known as transnational education (TNE)) would be excluded. (See Annex B for more detail on definitions and exclusions.)

168. Some respondents considered that the table, as consulted on, would not properly allow for arrangements where funding did not necessarily simply flow from the lead to the delivery partner. We understood this refers to situations where multiple financial flows move backwards and forwards, reflecting a more complex fee model. In this instance, we do not expect the detail of the individual flows to be included, but the net outcome. We have made some small changes to the table and explanatory text to clarify this.

169. To account for the variation in how payment flows between the lead and delivery partner can be structured, a provider can, if it wishes, add its own commentary when publishing this information. For example, a provider may wish to note where it shares costs for particular services.

170. These new requirements are set out in the updated Accounts direction (Regulatory advice 9).[11] The requirements are additional to existing requirements, and we have not made any other amendments to other content in this regulatory advice.

Publication and impacts on competition

Consultation responses

171. Respondents expressed mixed views on the proposed publication of financial information. Most respondents agreed that transparency was positive in principle, but others expressed that publishing fee retention information could have 'an impact on fair competition' and the subcontracting market because of the commercial sensitivity of the information.

172. One theme was that publishing the information could impact the type of provision being delivered and give erroneous perceptions of the market, potentially leading to providers exiting this type of provision. Some specific comments included:

    a. Multiple respondents stated that publication of numerical data without any context would be misleading, distorting perceptions of the partnership and prejudice future contract discussions, as well as potentially impacting the perspectives of students on a provider.

    b. Some also suggested that, should there be a negative impact on future subcontractual development, there could be a consequential negative impact on social mobility and widening access and participation.

    c. One respondent considered that publication of this information would inadvertently fix the amount retained by lead providers at a low level. This would limit the ability of a lead provider to deliver some services that it is best placed to provide (e.g., access to online libraries or other central services). This could, in their view, result in a reduction in the quality of student support and a negative impact on the student experience.

    d. Another respondent noted a risk that this approach could push the sector towards standardised, low-risk commercial terms, which would in turn reduce diversity of provision.

    e. One respondent expressed that the focus of disclosures on fee retention could encourage a provider to prioritise financial optics over innovation or quality within their subcontractual partnerships.

    f. One respondent asserted that sharing of partnership costs has been identified as unacceptable by the Competition and Markets Authority (CMA).

173. Some respondents suggested that our aim of transparency could be achieved in different ways. For example, the OfS could publish anonymised, aggregated disclosures with contextual narrative, or maintain a public register of arrangements in which detailed financial splits are provided to us but not published.

174. Other respondents noted that they did not believe the approach facilitates transparency, with one respondent noting that publication of the relevant information in the financial return would not achieve our aim, as students are unlikely to access the information in this format. Another

[11] Available at Regulatory advice 9: Accounts direction - Office for Students.

stated that the ‘lack of public access to institutions’ commercial information does not mean a lack of transparency or integrity from that institution’.

175. Other respondents highlighted the potential for a negative impact on particular partnership relationships. They suggested that current contract terms are a potential barrier to making this information public but also that it could have a negative impact on the working relationship between partners. For example, one respondent commented that commercial confidentiality ‘underpins partnership working’ and that ‘publishing of this data is likely to result in unnecessary turbulence in the market’.

OfS response

176. We have considered views that publishing this financial information could have impacts on the nature of the market, for example unintentionally fixing pricing and pushing the sector towards standardised low-risk commercial terms that prioritise financial optics. We recognise that publishing this data does carry this risk. However, the risk is mitigated in part because we are only requiring a provider to publish limited information. A provider is not required to provide information about the structure of its contracts or detailed payment flows with its partner. A provider can, if it wishes, add further additional contextual information but it is not required to do so. We have put weight on the importance of transparency to students about how their fee is being distributed between the partners.

177. We recognise that the role of delivery and lead providers in these relationships can vary, with different services being delivered by different parties, differing contract lengths, and a range of payment structures. This aligns with our regulatory casework: when we review individual contracts and partnership documentation, we find that while there are similarities, they often reflect different priorities, roles, responsibilities and scope of service. We think that this variety of arrangements, and the diversity of the sector overall, partly mitigates the risk of publishing information leading to standardised pricing and commercial terms. To the extent that this risk remains, we consider that the benefits of transparency for stakeholders outweigh this risk.

178. Our decision requires a provider to publish only an average fee retention percentage per student in a format that is consistent across the subcontractual market. This standardised, consistent format approach to publishing will be required by all lead providers.

179. Additionally, respondents expressed concerns about the impact on individual partnership relationships, which we understand refers to the renegotiation of contracts (for example, confidentiality clauses) in response to the new requirements. This is discussed in the Implementation, monitoring and assessment section below.

180. We have considered the view of one respondent that sharing of partnership costs was identified as unacceptable by the CMA. We did not identify any CMA guidance or requirements that would prohibit the sharing of this data.[12]

[12] The most recent publication from the CMA on collaboration between higher education providers is available at: Collaborating with other higher education providers - GOV.UK.

Alternative approaches

181. We have considered options for alternative approaches to publication suggested by some respondents. In particular, we have considered options of collecting the information as part of the Annual Financial Return, and publishing anonymised results or sector-level averages or ranges.

182. A key policy aim for the condition is to support transparency, not only at a sector level, but also in relation to individual partnerships. We think there is value for students and other stakeholders in having clear, comparable reporting that sets out which partner retains which part of the fee. At present, students and other stakeholders are generally unable to see or understand how fees are distributed between providers. We consider transparency here important because it supports students in making informed decisions about the value for money they receive. Publishing anonymised information or sector averages would not support student decision-making about their choice to study with a particular provider.

183. We note that one respondent's view that students would be unlikely to read these accounts. Although we accept that students or prospective students may not engage directly with the details in a provider's audited financial statements, the inclusion of this information for all relevant providers enables interested parties to conduct analysis. Even if students do not engage with the accounts themselves, publishing this information in a consistent format across all providers allows other stakeholders to collate and present this data in ways that supports students to make effective choices. We will consider whether the OfS publishing consolidated reports on some elements of the disclosures, for example in relation to the proportion of tuition fees retained by lead providers, would support further transparency for students and taxpayers.

184. Our view is that requiring this information to be published through audited accounts will help ensure that this is being considered at a senior level within a provider. While some respondents disagree that the information should be considered at board or other senior levels, we consider it appropriate that boards and senior management are actively engaged in discussions about subcontracting, given the significant impact it can have on students, taxpayers, and a provider's overall business plan.

Subcontractual directions

185. In proposal 4 of the consultation, we included a requirement for a provider to comply with any subcontractual arrangement direction (SCD) imposed by the OfS in circumstances where we have reasonable grounds to suspect that the provider's subcontractual arrangements (either existing or future arrangements) pose significant risks to students' or taxpayers' interests. In our proposals, a SCD would likely require a provider to take (or refrain from taking) specified actions in a certain timeframe. Our proposed condition and guidance included some non-exhaustive examples of the type of actions we expected to consider in these circumstances.

Consultation questions on subcontractual directions

Question 10

Do you have any comments on the proportionality and effectiveness of our proposed approach to using subcontractual arrangement directions?

Decision

186. We have, on balance, decided not to proceed with the use of a power of direction in relation to the oversight of subcontractual arrangements. However, we will monitor whether the requirements in the new condition, together with any specific conditions we may impose, adequately address the risks to students and taxpayers posed by subcontracting and may decide to introduce SCDs in the future.

The use of subcontractual arrangement directions

Consultation responses

Proportionality of approach

187. There were a small number of responses in support of the use of subcontractual directions (SCD) in appropriate circumstances. Respondents who held this view noted the benefits of adopting a preventative approach that can be engaged quickly when needed, and recognised the similarities with existing student protection directions. There was also feedback recognising the value of having the ability to impose directions in cases of significant risk to avoid the need for us to adopt a universally more intrusive approach for a provider with lower risk.

188. Conversely, some respondents considered that the proposals to introduce SCDs were too intrusive. Respondents commented that the proposed SCDs went further than our usual risk-based approach to monitoring and intervention and felt there was a risk that this power could be used disproportionality.

189. We received some responses that sought more information on the need to introduce the power to apply an SCD. Some felt that we already have the powers to issue directions and that the creation of a specific SCD was an 'unnecessary,' and potentially ineffective, step. Others requested clarity about the need for the use of an SCD when, in their view, a specific

ongoing condition of registration could be employed instead. Similarities to the student protection direction used in market exit cases were noted in responses here, but respondents were uncertain about the need for this additional type of intervention for subcontractual concerns.

190. Finally, a small number of respondents pointed to potential links with the future approach to quality assessment, subject to consultation outcomes.[13] Although comments here were general in nature, we understood that respondents were suggesting that the proposed cyclical quality assessment could also serve to support us in identifying and addressing concerns about the quality and oversight of subcontractual arrangements.

Application of subcontractual directions

191. A number of respondents requested more specific information about how we might apply an SCD. In particular, some respondents were keen to have more information about the thresholds, criteria or circumstances that we would use to determine when a provider would use an SCD, and requests for clarity and further definition of our intended approach.

192. We received some feedback that questioned the intended purpose of the SCD as a rapid intervention in cases where we identified severe and immediate risk. For example, we received some comments that suggested an SCD would be an appropriate step only after all other attempts to address risks have been exhausted, and where investigations had surfaced clear evidence of risk. A small number of respondents commented on the comparison with student protection directions and did not agree that similar time-critical interventions were relevant to the scope of the proposed condition.

Actions required by a subcontractual direction

193. Many respondents commented on some of the actions that we had indicated in our consultation could be imposed by the OfS through an SCD. Comments were primarily focused on the potential conflict between the required actions under an SCD and a provider's existing contracts with its delivery partners. Respondents explained that actions of this nature would be likely to place a lead provider in breach of its contractual obligations with its delivery partners, that in turn could lead to providers facing court action and substantial financial costs. Examples of actions of concern that were highlighted by respondents included:

    a. Withholding payments to a delivery provider or limiting student numbers;

    b. Stepping in to deliver courses in place of a delivery provider; and

    c. Requiring a lead provider to stop dealing with a particular delivery provider or terminate a partnership.

194. A small number of respondents also noted that sudden and disruptive interventions, such as the examples listed above, would have a detrimental effect on students, and requested that we allow sufficient lead time in any SCD to allow for this.

[13] See Reforms to quality regulation - Office for Students.

195. Some respondents also requested that we provide a specific, pre-determined list of the actions that we might require a provider to undertake through an SCD.

OfS response

196. We have decided not to include the provisions for the use of subcontractual arrangement directions (SCDs) in the final condition (included at E8.13 – E8.17 in the proposed condition) and associated guidance.

197. We carefully considered the feedback we received suggesting we establish clear criteria for engaging this provision. Our reason for proposing this direction clause in the consultation was to provide a flexible regulatory tool that would allow for a rapid and tailored regulatory response to serious concerns, given the potential risks to students and taxpayers of poorly managed subcontractual provision. Developing more detailed criteria, as suggested by respondents, could limit our ability to act in line with the specific scenario.

198. We think the risks to students and taxpayers should be substantively mitigated by the introduction of the other requirements in the condition. We expect every provider to comply with these requirements. Where we have concerns about compliance, we will consider the regulatory tools already available to us, which may involve (but not be limited to) imposing a specific condition of registration.

199. We will monitor whether the requirements in the new condition, together with any specific conditions we may impose, adequately address the risks to students and taxpayers posed by subcontracting and may decide to introduce SCDs in the future (subject to engagement with sector).

Implementation, monitoring and assessment

200. The consultation set out our intention that the regulatory requirements contained in proposed condition E8 would be monitored in line with our usual approach to monitoring compliance with ongoing conditions of registration. We proposed (in proposal 6 of the consultation) to adopt the same approach to enforcement and monitoring as set out in our Monitoring and intervention guidance (Regulatory advice 15),[14] and did not indicate any departures from this approach that would be relevant for the proposed condition.

201. We proposed that providers would be required to develop and implement their comprehensive source of information (now known as subcontracting information source) within four weeks of the condition taking effect (see proposal 2 of the consultation). We also indicated that the financial disclosures included in our Accounts direction guidance (Regulatory advice 9) would apply to financial years ending on 1 January 2026 or later (see proposal 5 of the consultation).

202. In our consultation, we said that we would expect to make some consequential changes to reportable events requirements (published in our reportable events guidance – Regulatory advice 16[15]) to accompany the implementation of condition E10. We included some possible examples, for illustrative purposes, in the interests of transparency.

203. The responses to the consultation highlighted several key themes around the implementation and monitoring of our proposals, and changes to reportable events requirements, which we have consolidated in this section.

Consultation questions on monitoring

Question 14

Do you have any comments on the appropriateness and effectiveness of our proposed approach to monitoring compliance with the proposed condition?

Decision

204. We decided to retain the prompt implementation of condition E10. This means that condition E10 will come into force on 31 March 2026. However, we have allowed additional time (until 30 June 2026) for providers to develop and implement their subcontracting information source (SIS) where a provider has existing relevant subcontractual arrangements in place and is not either entering into a new contract or varying an existing one (see paragraph 206). This will not impact our routine monitoring of the compliance of subcontractual arrangements with other regulatory requirements. We expect providers to be actively working to ensure their SIS is in place during this additional time period.

[14] See Regulatory advice 15: Monitoring and intervention - Office for Students.

[15] See Regulatory advice 16: Reportable events - Office for Students.

205. Where there are existing contracts in place, we have also decided to change the requirement at E10.10 to a requirement to take 'all reasonable steps' to ensure that the terms and conditions of existing contracts enable the provider to operate in accordance with the SIS. We have updated the guidance to reflect this.

206. Where a provider is entering into new contracts relating to relevant subcontractual arrangements (or varying existing ones) on or after 31 March 2026, the provider will need to ensure that the SIS is in place by the time it enters into that new (or varied) contract, and that the terms and conditions of the contract enable the provider to operate in accordance with its SIS. This is because we are seeking to ensure that providers are not able to circumvent our requirements by entering into new contracts that don't enable them to comply with the SIS.

207. We have decided that the requirements to publish subcontractual fee retention information (given in our Accounts direction – Regulatory advice 9) will apply to publication of accounts for years ending on 1 July 2026 or later. We have also amended the requirement in this guidance to publish retained fee information to be a requirement to take all reasonable steps to publish the subcontractual fee retention information for providers with existing contracts.

208. New contracts finalised after the effective date of condition E10 on 31 March 2026 are expected to comply absolutely with the requirements of Regulatory advice 9 and to not contain any clauses that may prevent providers from doing so.

209. We will monitor compliance with ongoing condition E10, in line with the approach taken for other conditions set out in our monitoring and intervention guidance.[16] However, in response to feedback, we have changed the guidance that accompanies the condition to clarify our expectations. We will also update our reportable events guidance[17] to provide detail on the new reportable events associated with the condition.

Timing of implementation

Consultation responses

210. In the consultation, we proposed that a provider would be required to develop the subcontracting information source within four weeks of the condition taking effect. We also proposed that the specified financial disclosures should be included in audited accounts for financial years ending in January 2026 onwards. While a small number of respondents welcomed the implementation timeline, because they believed that most of the required elements were already in place at their provider, most respondents who commented on this area considered that the proposed implementation timelines were too short.

Process design and implementation

211. One respondent noted that preparing 'audit ready' SIS documentation within the proposed timeline, without further guidance from us, would be extremely challenging. Some noted that even a provider with a well-established governance framework would require significant time to collate, review and present the required information in the prescribed format. Several

[16] See Regulatory advice 15: Monitoring and intervention - Office for Students.

[17] See Regulatory advice 16: Reportable events - Office for Students.

respondents further stated that the proposed timeline did not allow for what they believe to be necessary governance approvals and oversight to operate in accordance with the SIS.

212. Similar comments were made in relation to our proposal to require the inclusion of the specified financial information in the audited accounts for financial years ending in January 2026. Respondents commented that financial and academic systems may not be fully aligned, highlighting queries around data integration. Others highlighted that the requirements would increase audit complexity and need discussion with their provider's audit partners.

213. Most respondents did not suggest an alternative timeline, but those who did offered a range of suggestions, from two months up until 12 months, or a phased approach. Some respondents suggested that a longer implementation timeline would allow for more meaningful collaboration between providers and result in better quality of oversight measures in the long term. Another suggested that the OfS should have regard to the individual barriers impacting a provider's ability to meet our implementation timescales in future considerations.

214. A small number of respondents commented that the time required was, to some extent, dependent on when in the academic year the condition became effective, because of the varying ability to allocate staff resources at different times of the year. Others noted the uncertainty around the timing of publication of DfE's consultation outcomes and of the possibility that implementation timings could coincide, placing additional strain on resources.

Conflict with existing contracts

215. Alongside concerns about the timeline, the most significant challenge raised by respondents was in relation to the potential for requirements to develop and operate in accordance with the SIS, and publication of the fee retention information in audited accounts, to conflict with existing contractual provisions.

216. Respondents noted that some existing contractual terms would need to be amended to enable introduction of some of the oversight requirements. For example, respondents considered there could be a need for changes to provisions to enable unannounced inspections, student interviews, enhanced data-sharing requirements, action to address poor performance or the publication of commercially sensitive information.

217. Many respondents noted that making these contractual changes would be expensive and time consuming, citing formal legal processes and renegotiations, alongside internal governance, decision making, and co-ordination with their delivery partner, which could make the proposed implementation timescales unmanageable.

218. Others suggested that contractual changes could allow for transitional arrangements to avoid destabilising or discouraging partnerships. A small number of respondents highlighted some hypothetical examples of other impacts on providers, for example impacts on staffing and employment at delivery providers in the event of lead providers withdrawing from subcontractual arrangements. Respondents emphasised the need for us to provide model clauses or template agreements to ensure consistency and diminish this as an ongoing barrier to compliance.

OfS response

219. We carefully considered the feedback we received on the proposed timeline for a provider to develop and implement its SIS. In particular, respondents told us that the timeframe would impact negatively the quality of measures and support more effective implementation. Given that our policy objective is to secure the effectiveness of a provider's oversight measures, we agree that allowing sufficient time for proper consideration is sensible. However, we also consider it important to mitigate risks to students and taxpayers promptly and have sought to balance these considerations in determining implementation timing.

220. In light of this feedback, we considered extending the period for compliance, by delaying the date on which the condition as a whole would come into effect for a further three months. On balance, we remain of the view that applying the requirements of the condition as soon as possible is necessary to protect students and public funds. We particularly considered the potential ongoing impact of decisions and actions that a provider could take in that period, especially where a provider is entering into new or varying existing subcontractual arrangements, and so we decided that a delay would not be the most appropriate approach.

221. Any provider entering into new contracts, or varying existing contracts, will need to ensure as part of its pre-contract due diligence that it is able to comply with condition E10. It is important that providers do not enter into new or varied subcontractual arrangements that do not allow for full compliance with the requirements and policy objectives of condition E10.

222. However, in response to consultation feedback, we recognise that providers with existing subcontractual arrangements may benefit from an additional period of time to identify any further oversight measures needed and to develop the SIS. On balance, we think allowing a longer timeframe for compliance for these providers would be appropriate, and we have therefore amended our guidance to the condition in relation to this timeframe.

223. This does not affect other monitoring that we routinely undertake regarding the compliance of subcontracted arrangements with other regulatory requirements. Where we have concerns that a provider is failing to responsibly manage its subcontractual arrangements, including by failing to act fully or promptly to ensure its SIS is in place by 30 June 2026, we may seek to assess whether the provider has in place adequate and effective management and governance arrangements to continue to comply with all conditions of its registration (condition E2). We continue to expect providers to take prompt action to develop and implement their SIS, and that it will be in place and being implemented by no later than 30 June 2026.

224. The exception to this is where a provider enters into a new contract (or varies an existing contract) relating to relevant subcontractual arrangements on or after the condition comes into force on 31 March 2026. It is important that the new or varied contract enables compliance with the provider's SIS. This means that, where a provider enters into a new contract (or varies an existing contract) on or after 31 March 2026, it will need to ensure that it has its SIS in place by the time it enters into that new (or varied) contract, and that the terms and conditions of the contract enable the provider to operate in accordance with the SIS.

225. With respect to compliance with the new Accounts direction requirements (within Regulatory advice 9), in response to views of respondents we have decided to require the new information to be provided for accounting periods ending on or after 1 July 2026.

226. We have considered feedback provided by respondents about the potential need for changes to existing contracts to enable the new requirements to be met. We also reflected on comments that identified potential scenarios where compliance with condition E10 could result in legal action or a substantive financial penalty being pursued by a partner provider. We recognise that such contractual issues could arise for both the requirement to operate in accordance with the SIS and the publication of subcontractual fee retention information. To ensure that our condition does not result in unintended consequences, we have decided that some flexibility is needed.

227. We considered whether a longer implementation timeline for all requirements of condition E10 would be appropriate, so that lead providers could make any necessary changes at their next planned contractual break point. However, information in consultation responses highlighted a significant variation in reported contract lengths and the timing of break clauses, with some not falling for several years. Aligning implementation to these longer timescales would therefore require a substantial delay to the implementation of the condition, which we do not consider appropriate.

228. We therefore concluded that the most effective way to balance these concerns is to amend paragraph E10.10 of the condition, and the guidance in Regulatory advice 9. This means that, for existing contracts, a provider is required to take **all reasonable steps** to ensure that the terms and conditions of those contracts enable it to operate in accordance with the single SIS, and to publish the subcontractual fee retention disclosure in their audited accounts. This means that we will consider the specific circumstances of each provider and what is reasonable in those particular circumstances.

229. In the condition guidance and the updated Regulatory advice 9, we explain that taking 'all reasonable steps' in relation to their existing contracts is likely to include, but not be limited to, a requirement that a provider should:

    a. take all reasonable steps to renegotiate contract terms with partner providers where necessary;

    b. use all potential contract clauses (for example, those that allow contract change in response to regulatory action) to allow renegotiation where appropriate;

    c. use the soonest possible contract break or endpoints to enable changes to contractual terms that would not lead to a significant financial penalty. Whether it will be reasonable for a provider to pay a financial penalty as part of taking 'all reasonable steps' will depend on the specific circumstances, including the amount of the penalty and the financial position of the provider.

230. To support our monitoring of the condition, we have included an additional reportable event alongside the inclusion of the 'all reasonable steps' requirements. This reportable event requires a provider to notify the OfS if, having taken all reasonable steps, it remains unable to operate in accordance with its SIS or publish the subcontractual fee retention disclosure. In line with our existing reportable event requirements, any notification should occur within five working days of the event being identified or (if not possible because of exceptional circumstances beyond the control of the provider) as soon as practical and without undue

delay. This will enable us to engage appropriately with a provider in a way that supports the management of risk.

231. A provider reporting such circumstances should expect to be asked to provide evidence of the steps it has taken to amend its existing subcontractual arrangements. This would enable us to assess the provider's context in any regulatory engagement or intervention. Information requested may include, but may not be limited to, copies of relevant contracts and documentation demonstrating the actions taken, or attempted, to resolve contractual barriers to implementing the requirement of condition E10 or the updated Accounts direction.

232. When considering whether a provider has taken all reasonable steps, we may consider how the behaviour of both the lead and the delivery provider has contributed to a provider's efforts to resolve contractual barriers. As set out elsewhere in this document, we would be likely to have concerns about the effectiveness of collaboration within a relationship where one or more parties were not minded to support their partner in meeting their regulatory obligations. While we would consider each set of circumstances on their own merits, lead providers should expect us to engage closely with them around their contract engagement and due diligence processes, and around their ability to meet their wider regulatory obligations (for example, the OfS quality conditions) for all of their registered students.

233. Depending on the circumstances, we may therefore also engage directly with the relevant delivery partner(s) if they are registered with the OfS to understand the context. Where delivery partners are not registered with the OfS, our opportunities for engagement are more limited. However, when assessing any registration application from that delivery partner, we may consider any regulatory intelligence that we hold about that provider.

234. For clarity, the provision to take all reasonable steps does not apply to new contracts between providers that are finalised on or after 31 March 2026. Relevant subcontractual arrangements finalised after this date must not contain any clauses or be structured in a way that would prevent a provider from operating in accordance with its SIS, publishing the subcontractual fee retention disclosure, and complying in full with its obligations under condition E10.

Monitoring and assessment

Consultation responses

235. We received a limited amount of feedback about our proposed approach to monitoring compliance with condition E10. We proposed to monitor compliance using the same risk-based approach we employ for other ongoing conditions of registration, and we received positive feedback from respondents about that. However, we also identified some alternative views from respondents, including several respondents who suggested we go further in our approach to monitoring.

Effectiveness of the proposed approach to monitoring

236. Many respondents expressed strong support for the monitoring approach outlined in our proposals. They welcomed robust oversight and a clear, consistent risk-based framework to protect students and public funds. Our approach was widely recognised as proportionate, appropriate, well-rounded, and aimed at strengthening monitoring. Respondents stated that a

'targeted, risk-based monitoring approach appears appropriate' and described the proposals as 'efficient.'

237. However, a small number of respondents considered that the suggested approach was not robust enough and that further monitoring should be undertaken. One of these respondents considered that a more 'intrusive' approach was needed to drive the necessary changes in oversight. For example, they considered that the OfS should undertake its own on-site inspections at a provider's location. Another respondent stated that bad practice had done significant damage to the higher education sector and that the OfS should take quick and decisive action to enforce change. Suggestions on additional activity that the OfS could undertake included:

    - more detailed monitoring of access and participation plans – respondents did not provide further detail on what this would involve
    - proactive risk identification. Respondents did not explain what this would entail, but we have interpreted this suggestion to mean that we should undertake proactive detection of risks, rather than relying solely on provider reporting
    - targeted on-site testing, spot checks, and other direct inspections to verify compliance and quality in practice.

238. A few other respondents considered that the OfS should be doing more to help providers comply with the condition. This included a range of suggestions, such as:

    - anonymised findings from investigations to improve transparency and share lessons across the sector
    - reporting of remedial actions imposed by the OfS to make regulatory interventions and corrective measures visible to stakeholders for accountability and transparency
    - transparent enforcement thresholds to clarify the criteria that would trigger regulatory intervention
    - creating opportunities for a provider to 'comply and explain' and/or resolve any possible non-compliance or 'cause for concern' before any regulatory interventions were taken.

239. In contrast, one respondent argued that our proposed monitoring approach was not risk-based and so could become a one-size-fits-all model. This respondent did, however, recognise that the proposal would address risks linked to excessive student intake and improve protection of students. Another respondent considered that it was important for monitoring to be tailored to a provider's size, risk profile and delivery model to ensure that the approach was proportionate.

240. One respondent suggested that we commit to reviewing the effectiveness of the proposed condition to assess whether it has achieved its aims without disproportionate burden.

Clarifications and guidance

241. Some respondents considered that additional guidance and support would be beneficial to ensure clarity and effectiveness of implementation. Respondents requested that the OfS

provide additional supporting information, such as further guidance and clarification of expectations, and that the OfS should provide feedback on a provider's SIS documentation. However, no further detail on these suggestions was provided.

242. One respondent asked if the new requirements applied to the lead provider only or both the lead and delivery partner. They also questioned whether any corresponding enforcement activity would be focused on one or both partners. Two other respondents sought clarity on how we would approach investigation and enforcement when the delivery partner is registered in its own right, including how we would approach circumstances where the delivery partner was deceiving its lead provider.

243. One respondent suggested that, if we decide to implement the proposals outlined in the consultation, we should either adhere to or amend the factors that we consider when making publication decisions (set out in Regulatory advice 21: Publication of Information[18]) They considered that this was necessary to mitigate any adverse impact on providers, students, and the public interest. The respondent did not provide further detail on why potential changes to this regulatory advice were necessary or appropriate.

Regulatory sanctions

244. A number of respondents commented on our approach and powers in relation to imposing sanctions where we find a breach of the condition. For example, respondents expressed views on the considerations that the OfS might make as part of any decision to impose sanctions. We are not consulting on our approach to enforcement here and so we have not discussed these responses in this consultation.

OfS response

Effectiveness of the proposed approach to monitoring

245. We are pleased that we received strong support for engaging our usual approach to monitoring and intervention for condition E10. Many respondents indicated that a risk-based approach was preferable, and we agree. Our primary intent in introducing condition E10 is to improve the effectiveness of oversight of subcontractual arrangements, with responsibility for this falling predominantly on lead providers. We think that a risk-based approach to monitoring provider compliance with the condition is the most proportionate approach that manages burden for those providers that are effectively discharging their responsibilities, while allowing intervention where this is not the case. We therefore decided to adopt the same approach to enforcement and monitoring as set out in Regulatory advice 15 and did not identify any departures from this approach that would be relevant for condition E10.

246. However, in considering the appropriateness of this approach we took account of the significant regulatory intelligence that we receive about poor practice in subcontractual arrangements, and the severity of the risks that we have identified in this part of the sector. We are strongly focused on ensuring good outcomes for students and taxpayers, and intend to investigate concerns and take robust enforcement action where needed. This will continue following the introduction of condition E10.

[18] See Regulatory advice 21: Publication of information - Office for Students.

247. We considered feedback from some respondents who considered that we should adopt a more proactive approach to monitoring, given the significant risks that can arise where oversight is not effective. We agree that it is important that risks around subcontractual arrangements are identified and responded to proactively. This is very much a priority for the OfS and we carry out proactive monitoring to identify risk and consider regulatory activity where these exist. That monitoring approach is consistent with and informed by our guidance on monitoring and intervention (Regulatory advice 15) which enables us to increase our monitoring where risks arise. Given this, we consider that the risk-based approach to monitoring that we set out in Regulatory advice 15 is appropriate for condition E10.

248. We also considered the responses we received around the broader proportionality and burden concerns associated with the introduction of condition E10. We think that these responses also point us towards adopting the risk-based approach set out in Regulatory advice 15. This enables us to tailor any monitoring and enforcement activity towards a provider's own context and risk profile, and to take account of relevant factors such as student numbers and delivery model (among others) on a case-by-case basis.

249. We noted feedback indicating there may be an element of duplication with other regulatory processes, such as quality investigations or reportable events, which also provide routes for regulatory monitoring. We consider that the introduction of condition E10 enhances the clarity available to each provider about our expectations and potential areas for enforcement specifically in relation to subcontractual provision, compared with broader or more general expectations across other regulatory processes. In this situation, we believe that a more specific and targeted activity is appropriate, and we fully expect to intervene where we think this is necessary. In practice, where we identify concerns at a provider, we do not consider it unusual for those concerns to span across more than one condition of registration, due to the complex nature of a provider's organisational practices. We expect to manage scenarios like this is line with our current approach to investigation and enforcement.

250. We agree with those respondents who highlighted the importance of sharing the outcomes of our regulatory work relating to subcontractual arrangements, for example through the publication of investigation outcomes. As set out in our guidance on publication of information (Regulatory advice 21)[19], we normally expect to publish the outcomes of investigations. We also expect to follow this approach for any investigations undertaken under the provisions of condition E10.

251. We also normally expect to publish details of certain regulatory interventions, such as the imposition of a specific ongoing condition of registration for a particular provider, through the OfS register and, as appropriate, we may publish other information to highlight areas of risk and provide more information to support providers to manage this.[20]

Clarifications and guidance

252. We noted requests from respondents for additional guidance about the approach we will take to assess compliance with condition E10. In response, we have updated the guidance that accompanies the condition to set out information about our approach to assessment. The

[19] See Regulatory advice 21: Publication of information - Office for Students.

[20] For example, see Subcontractual arrangements in higher education - Office for Students.

guidance explains the considerations we set out are non-exhaustive, so that we are able to respond to new and emerging scenarios if necessary. However, we consider that the guidance provides an appropriate framework for a provider to use in its consideration of the steps it intends to take.

253. We recognise that some respondents requested more granular detail in terms of the guidance, for example suggesting reporting templates or the use of a pilot programme to develop additional content. We believe that providers are best placed to determine the exact nature of the steps they need to take within their own operating context, and that they should have the capacity and capability to do this for themselves (in accordance with the test of delivering effective controls). This is important as there is such variety in the individual subcontractual arrangements used across the sector, which will lead to different risks, opportunities and contexts. We understand that this involves effort on the part of the provider and so creates an element of regulatory burden. However, we consider that this approach also allows the provider the flexibility to meet our requirements in ways that it judges best for its context and students.

254. We also noted comments indicating that provider context should be considered as part of any assessment or investigative work in relation to condition E10 and the oversight and governance of subcontractual arrangements. In the guidance to condition E10, we highlighted some particular factors that we would expect to consider, including student numbers, the range of courses delivered, the number of delivery partners a provider has engaged with, and the provider's previous track record of compliance with OfS regulation. This is part of our wider consideration of a provider's regulatory risk. However, this is not an exclusive list, and we will consider any other factors that are relevant to our view of a provider's regulatory risk.

255. The obligations of condition E10 apply to the lead provider, and therefore any action relating to a failure to comply with condition E10 will be taken against the lead provider. Depending on the circumstances, it is possible that where a lead provider is found to be at breach of condition E10, there could be related breaches of other conditions by the lead provider or a delivery partner, and action against any such breaches could be followed in parallel. This would, of course, be assessed on a case-by-case basis as part of our consideration of regulatory risk. As noted earlier in this document, we would be likely to have concerns about a relationship between providers that were not able to work together collaboratively to achieve regulatory compliance or to effectively manage risks to students and taxpayers.

256. We noted that some respondents suggested additions to our monitoring approach. For example, the provision of feedback on document quality was suggested, which would rely on an approach where a provider would routinely submit the documents contained within their SIS to us. Routine submission of documents does not form part of our approach to monitoring condition E10, and we do not require a provider to do this. As set out elsewhere, this approach is intended to reduce burden for a provider where we have not identified concerns, while enabling us to concentrate our resources where the risk is greatest. As a result of this overarching risk-based approach, we do not intend to provide routine feedback to a provider unless we are engaging with them about regulatory concerns. However, we may from time-to-time issue further guidance in response to our ongoing engagement with providers.

Reportable events

Consultation responses

257. We received a very small number of responses in relation to the signalled changes to reportable events. These respondents suggested the changes to reportable events are potentially unclear and requested clarity in the expanded definitions, although we did not identify any specific examples from the responses. A small number of respondents also considered the changes were disproportionate, overly specific or onerous.

258. A small number of respondents agreed that the OfS should go further, for example suggesting that we should be notified **before** a provider entered into any subcontractual arrangements (or one respondent suggested 'high risk subcontractual arrangements') and that we should provide approval before these arrangements went ahead.

259. Respondents requested that any changes to the nature of reportable events be underpinned by clear and comprehensive guidance to support consistent and confident decision making.

OfS response

260. We have considered the views of a small number of respondents that these reportable events are overly onerous. However, we consider the events in scope to be straightforward to identify, and information required is broadly the same as providers should routinely record for their own internal purposes. As such, the additional burden of reporting to us is likely to be low for a provider that has strong oversight of these arrangements. Given the significant risks to students and public funds that can arise from such subcontractual arrangements, it is important that we have up to date and comprehensive information about where this activity takes place in order to inform our monitoring of risk.

261. We also considered the view of a small number of respondents that approval from the OfS should be required before entering into such arrangements (or 'high risk' arrangements). We are mindful of the importance of institutional autonomy and our new condition is designed to ensure consistently high standards of oversight by lead providers. Lead providers are best placed to decide whether to enter into such subcontractual arrangements, without requiring prior approval from the OfS, in accordance with the requirements of condition E10 which ensures adequate and effective oversight mechanisms are in place.

262. We have therefore decided to update reportable events requirements to include those requirements that we highlighted in our consultation. We have now published these changes to Regulatory advice 16, specifically the additions to section F and section H. The new requirements require a provider to report the following events in relation to relevant subcontractual arrangements:

    a. the provider entering into a new relevant subcontractual arrangement

    b. the suspension or termination of a relevant subcontractual arrangement

    c. changes in the contractual basis of a subcontractual arrangement – for example where a contract changes from a subcontractual agreement to a validation agreement

d. significant changes to the size and shape of a provider's subcontractual arrangements, including where either partner has taken steps to significantly increase or reduce the number of students that can be recruited to the subcontractual delivery, or the number of students registered on subcontractual courses has increased significantly beyond forecast recruitment

e. any audit undertaken (by a provider's internal audit function, or otherwise) which has resulted in a 'low' or 'no assurance' opinion where the subject matter relates to subcontractual or validated activity in any way

f. any allegations of, or opening of investigations into, suspected fraud, misuse of public funding, financial or data irregularities by any party (for example, with respect to recruitment agents contracted by either the lead or delivery partner) in relation to a relevant subcontractual arrangement

g. allegations of, or investigations into, widespread academic misconduct or inappropriate recruitment and admissions practices within a subcontractual arrangement.

263. We also decided to include four further requirements to support our ability to identify and engage with providers about concerns relating to condition E10:

a. the requirement for a provider to notify us if it becomes subject to the requirements of condition E10 on or after 1 April 2026 (for example as a result of entering into a new subcontractual arrangement that triggers the requirements of the condition to apply)

b. any notification from SLC or DfE that they intend to investigate and/or potentially cease or suspend payments, in relation to a relevant subcontractual arrangement

c. for subcontractual arrangements entered into before 31 March 2026, that a provider cannot operate in accordance with its SIS despite having taken all reasonable steps

d. for subcontractual arrangements entered into before 31 March 2026, that a provider cannot publish the information set out in the 'Subcontractual fee retention' section of Regulatory advice 9 despite having taken all reasonable steps.

264. For the avoidance of doubt, providers who will have obligations under condition E10 at the point at which it comes into effect on 31 March 2026 because of existing relevant subcontractual arrangements do not need to submit a reportable event as noted at paragraph 263 (a). This requirement applies to providers where changes to their subcontractual arrangements from 1 April 2026 result in them coming into scope of the condition.

265. We recognised that a small number of providers considered the reportable events guidance to be unclear. Full guidance on reportable events is contained within Regulatory advice 16, and providers should continue to refer to that for matters relating to timing of reporting, method of reporting, or other information.

Annex A: Matters to which we have had regard in making our decisions

The OfS's general duties

266. In making our decisions, we have had regard to the OfS's general duties as set out in section 2 of the Higher Education and Research Act 2017 (HERA). These are:

    a. the need to protect the institutional autonomy of English higher education providers,

    b. the need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers,

    c. the need to protect the academic freedom of academic staff at English higher education providers,

    d. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,

    e. 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,

    f. the need to promote value for money in the provision of higher education by English higher education providers,

    g. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,

    h. the need to use the OfS's resources in an efficient, effective and economic way, and

    i. 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.

267. In making our decisions, we have given particular weight to (d), (e), (f) and (g). A summary of our reasoning is set out below.

Quality, choice and opportunity

268. We are introducing the new ongoing condition to enhance risk management and oversight of subcontracted delivery by lead providers. This condition will ensure providers discharge their responsibilities for student outcomes, financial probity, and the quality and integrity of English higher education delivered through subcontractors in the United Kingdom. Effective oversight is essential to ensure that subcontractual delivery continues to be of a high quality. A

provider's oversight and monitoring framework shapes its culture and decision-making at every level, influencing its ability to deliver on its objectives.

269. Students making choices about what and where to study need to be confident that they will receive high quality education from registered providers, no matter where they study. We consider that implementing these new ongoing requirements will have a positive effect on student choice and confidence in high quality higher education, because it requires lead providers to maintain robust control, transparency and accountability for their subcontractual delivery arrangements. Where a provider fails to meet these requirements, we can act to protect current and future students from unacceptable risks by intervening to address weaknesses in oversight or, if and where necessary, restricting subcontracting activity.

Value for money

270. Value for money in higher education is essential for both students and the taxpayer. Students make a substantial financial investment in their studies and often take on significant debt to cover tuition fees and living costs. These student loans are often taxpayer backed. That investment is less likely to represent value for money where providers fail to demonstrate accountability and effective oversight of subcontracted delivery partners, or when students do not receive the experience they were promised by their provider.

271. Our new ongoing condition E10 requires providers to maintain strong oversight and transparent arrangements for all subcontracted provision. Providers must have robust systems in place to oversee the appropriate use of public funds within their subcontracting arrangements and ensure that the OfS can intervene where necessary to ensure value for money for student and taxpayer money.

Equality of opportunity

272. The OfS's approach to regulation is designed to promote equality of opportunity in access to, and participation in, higher education. This includes ensuring that students from disadvantaged or underrepresented backgrounds can not only enter higher education but also succeed on and beyond their courses.

273. The Equality of Opportunity Risk Register [21] sets out a range of risks to equality of opportunity that may prevent some students from accessing higher education or may result in poor outcomes or progression for students with certain characteristics.

274. Achieving equality of opportunity requires not only access but also high quality education. Where disadvantaged students are disproportionately enrolled through subcontracted arrangements, it is essential that this provision meets the same standards as direct delivery. Poor quality subcontracted provision does not widen opportunity; it risks entrenching disadvantage. The personal and financial costs to a student of being recruited to an unsuitable or low quality course can be significant, and these costs disproportionately affect disadvantaged students.

275. Students studying through subcontracted arrangements are more likely to be mature, from more deprived areas, from minority ethnic backgrounds, or from areas with historically lower progression to higher education. Subcontracting can provide important alternative routes into

[21] See Equality of Opportunity Risk Register - EORR - Office for Students

higher education for these students – but only when the education is high quality and students are properly supported. Currently, students in some subcontracted provision are less likely to continue their studies, and sector-level outcomes for continuation, completion and progression are below the OfS's numerical thresholds. Effective oversight of these arrangements by lead providers is an important safeguard for ensuring that students registered on these courses are receiving a high quality education experience and are able to succeed. By setting a high bar for the governance and oversight of subcontracted delivery, condition E10 helps ensure that students' choices are meaningful, rewarding and secure.

276. Our new ongoing condition E10 requires lead providers to demonstrate strong oversight, transparent arrangements, and effective governance of subcontracted delivery. This protects students – particularly those with fewer alternative options – from being placed on substandard or unstable courses and ensures that subcontracted provision expands choice without compromising quality or student protection. Where providers fail to meet these requirements, we can intervene to prevent growth of arrangements that expose students to poor quality or instability, and to support those that offer high quality, secure provision.

277. The government has recently announced reforms to strengthen oversight of subcontracting in higher education to protect public funding and prevent fraud in the student finance system. We have aligned, where appropriate, with these decisions to ensure consistent and effective monitoring across the sector.

The principle that regulatory activities should be proportionate

278. We have considered the principles of best regulatory practice, including that of proportionality. Our new requirements seek to manage the risks to students and taxpayers while balancing this with the interests of providers. Our new requirements are intended to be relatively straightforward for well-prepared providers to comply with, while also enabling us to identify and address concerns where providers are engaged in subcontracted delivery that may present risks to the interests of students and taxpayers. We note that several responses to the consultation, from providers and other sector bodies, agreed with this view of our approach.

279. We have considered carefully whether alternative options would achieve our regulatory aims. Where we are implementing universal requirements for all providers with relevant subcontractual arrangements, as part of the ongoing condition, this is because we consider that this approach would be the most effective way to ensure all providers meet the high-quality standards of delivery that students deserve to receive in England.

280. Nevertheless, we recognise that some providers will need to take action to comply with the OfS's new regulatory requirements (for example, to prepare the required information and update existing contracts accordingly). We recognise that the burden of this could be higher for providers with larger or complex subcontractual arrangements relative to their directly taught provision. We note that small lead providers are, in general, less likely to have engaged in larger, more complex subcontracting arrangements and therefore the work required to comply with the condition is likely to be more limited for these providers.

281. Our view is that, given the significant adverse impact on students that can arise where subcontracted arrangements are not overseen appropriately and the associated risks to public funding, the implementation of condition E10 is proportionate for all lead providers,

regardless of size. We recognise that additional work required by lead providers that already have robust procedures and operations in place regarding the oversight of these arrangements will be limited.

The principle that regulatory activities should be transparent

282. We have considered the need for our requirements and approach to be transparent, another principle of best regulatory practice. The new condition E10 is underpinned by detailed guidance. This will support consistency in provider compliance as well as the OfS's monitoring and enforcement approach. In response to feedback we received on the consultation, we have clarified some of the detail in the new conditions, and provided further guidance, for example on definitions, scope and exclusions (Annex B), as well as format and context of disclosure of financial information. Alongside the new condition E10, we are providing detailed guidance to support providers in consistent and effective compliance.

Institutional autonomy, competition and freedom of speech

283. We have also had regard to our general duties relating to institutional autonomy, competition, free speech and academic freedom.

284. We recognise that condition E10 introduces specific requirements for providers' governance and oversight of subcontracted delivery, and that this may affect aspects of institutional autonomy. However, we consider that our requirements are necessary to ensure that lead providers registered with the OfS maintain effective control and accountability for all provision of their subcontracting partnerships on an ongoing basis. For the reasons set out above, we consider that strengthened oversight of partnership delivery in higher education underpins a high quality education experience for students; therefore we have given more weight to the need to promote quality and value for money in English higher education than to institutional autonomy. Providers will continue to have scope to adopt governance arrangements and enter into subcontractual partnerships that are suitable for their particular context and comply with regulation standards.

285. We have had regard to our general duty to encourage competition between providers where that competition is in the interests of students, and the duty for the OfS to have regard for the benefits for students resulting from collaboration between providers. By introducing condition E10, we are addressing concerns arising from practices in some parts of the sector where competition between providers has not been in the interests of students, or where collaboration has not resulted in benefits for students. Our requirements for increased transparency and more effective oversight will ensure that both competition and collaboration between providers is conducted in a way that remains in the best interests of students.

286. We have also had regard to the need to promote the importance of free speech and to protect academic freedom. However, those duties are less pertinent to our decisions about our new ongoing condition for subcontracted delivery.

The public sector equality duty

287. In making our final decisions, we have had due regard to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between groups and advance

equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

288. Our new ongoing condition E10 may particularly affect current and prospective students of lead providers that have, or in future seek to enter into, subcontractual arrangements with delivery partners. Our new requirements are intended to have a positive impact on all students. We know that, at a national level, some students sharing protected characteristics may not have equal opportunity to access a sufficiently wide variety of higher education course types and may be less likely to succeed on courses where the course type or delivery style is not suited to their situation.[22] We also know that students from disadvantaged backgrounds are more likely to choose to enrol on courses delivered through subcontractual arrangements. Our new condition establishes firm requirements for oversight and management and governance with providers that are engaged in subcontractual arrangements. In doing so, our new requirements will increase the range of positive higher education choices for all students – by enabling effectively governed delivery providers, whose higher education provision meets high quality standards of delivery, while limiting the opportunity for poor practice at delivery providers to continue.

Guidance from the Secretary of State

289. We have had regard to guidance issued to the OfS by the Secretary of State[23] under section 2(3) of HERA, including the following guidance:

    a. Guidance to the OfS on strategic priorities for the financial year 2025-26 (May 2025). Although this guidance relates to the allocation of Strategic Priorities Grant funding and not directly to the governance of subcontractual arrangements, it nonetheless sets out the Secretary of State's 'determination to protect the integrity of the HE sector and to ensure that this government achieves maximum value when spending public money' in relation to subcontractual provision. We have had regard to this when considering our approach, especially in our consideration of mitigating risk to taxpayers.

The Regulators' Code

290. We have had regard to the Regulators' Code.[24] Section 3 of the code is particularly relevant. Section 3 discusses the need to base regulatory activities on risk. Paragraph 3.1 provides for regulators to use an evidence-based approach to determine priority risks and allocate resources where most effective. Paragraph 3.5 provides for regulators to review the effectiveness of their activities and make necessary adjustments accordingly.

291. We have reflected on the effectiveness of our arrangements for determining a provider's ability to deliver a high quality higher education experience for students via the subcontracted partnership delivery model, which is underpinned by effective management oversight and governance arrangements and an approach that treats students fairly. Our new ongoing requirements have been informed by the well-documented increased risks to public money

[22] See OfS, Equality of Opportunity Risk Register, Risk 5: Limited choice of course type and delivery mode.

[23] All statutory guidance cited is available at OfS, Guidance from government.

[24] See GOV.UK, Regulators Code.

posed by the growth of subcontractual provision.[25] Our requirements and published guidance also set out clearly our regulatory expectations, which support greater regulatory certainty and consistency for providers.

292. Section 5 of the code is also relevant, in that it discusses the need for regulators to ensure that clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. Paragraph 5.2 provides for regulators to publish guidance and information in a clear, accessible and concise format. As we note above, we have clarified some of the details and provided further explanation of some elements in response to feedback that we received on the consultation.

[25] For example, National Audit Office: Investigation into student finance for study at franchised higher education provider.

Annex B: Queries about scope and application

1. In response to feedback received during the consultation, which raised a number of queries about the types of partnership included in the scope of condition E10, this table summarises our response. More detailed rationale for our decisions on inclusion or exclusion of particular arrangements is included in proposal 1 of the main body of the document.

2. To note, this table is intended to summarise points raised in consultation feedback and not to capture every type of arrangement that may exist in the sector – as such, providers should refer directly to condition E10 to determine if their own arrangements are considered to be **relevant subcontractual arrangements**.

Type of arrangement	Views of respondents	OfS rationale	Scope – in or out
Subcontracting	Request for clearer definition of subcontracting	A **relevant subcontractual arrangement** is where a provider holds a contract with one or more partner providers relating to the delivery of higher education courses. Students have a contractual relationship (i.e. are registered) with the provider but at least 50 per cent of the total course delivery hours is provided by the partner provider.	In scope
Police and Crime Commissioners	Is the OfS going to align its scope exemptions with DfE?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
Local Authorities	Is the OfS going to align its scope exemptions with DfE?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
Government departments	Does the term 'public bodies' include government departments?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope

Type of arrangement	Views of respondents	OfS rationale	Scope – in or out
The Armed Forces	Is the OfS going to align its scope exemptions with DfE?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
Mayoral combined authorities	Is the OfS going to align its scope exemptions with DfE?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
Further education college corporations (FECs)	Are FECs as delivery partners included in the condition?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations. Note: this applies when an FEC is operating in the role of delivery partner. Where FECs are operating in the role of lead provider, the usual definition of a **relevant subcontractual arrangement** applies.	Out of scope as a delivery partner.
Sixth form college corporations	Is the OfS going to align its scope exemptions with DfE?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
State-funded schools	Is the OfS going to align its scope exemptions with DfE?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
Designated institutions	Is the OfS going to align its scope exemptions with DfE?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
Online delivery (where students are ordinarily	Does the condition apply to online courses where some students are UK residents and may access student loans?	Subcontractual arrangements where courses are delivered online to students ordinarily resident in the UK are included in scope.	In scope

Type of arrangement	Views of respondents	OfS rationale	Scope – in or out
resident outside the UK)			
Transnational education (TNE) partnerships	Is TNE included in the condition?	Not at this time. The obligations of the condition apply to courses where students are ordinarily resident in the UK.	Out of scope
Partners already on the OfS register	Does the condition include providers that are already on the OfS register?	Yes, these will be included in the condition where they meet the definition of a **relevant subcontractual arrangement**.	In scope
Partners already covered by Ofsted inspections	Does the condition include providers that are already covered by Ofsted inspections?	Yes, these will be included in the condition where they meet the definition of a **relevant subcontractual arrangement**.	In scope
Partnerships between providers with their own degree awarding powers (DAPs)	Does the condition include joint awards between providers with their own DAPs? Particularly where academic responsibility is equally shared, and whether such arrangements constitute subcontracting and how a lead provider is determined.	No, partnerships where the partner (delivery) providers hold degree awarding powers are not included.	Out of scope
Joint medical schools and training	Does the condition apply to medical schools established as a separate entity, but via a partnership between two lead providers?	These are excluded from scope. The OfS considers that joint medical schools demonstrate lower risks to students and taxpayers and are not included within our policy objective.	Out of scope

Type of arrangement	Views of respondents	OfS rationale	Scope – in or out
Clinical education placements	Does the condition apply to clinical education placements? Does the condition include non-fee-funded (e.g. NHS-funded placements) provisions or other private independent and voluntary organisations?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope where the delivery partner is a provider of National Health Service (NHS) services (including an NHS trust as defined in section 25 of the National Health Service Act 2009).
Providers of National Health Service (NHS) services (including an NHS trust as defined in section 25 of the National Health Service Act 2009)	Does the condition apply to NHS England funded programmes?	The OfS is adopting the same exemption categories as included in DfE's registration requirements, so that partnerships can clearly identify their compliance obligations.	Out of scope
Joint veterinary schools	Does the condition apply to joint veterinary schools?	These are excluded from scope. The OfS considers that joint veterinary schools demonstrate lower risks to students and taxpayers and are not included within our policy objective.	Out of scope
Accredited initial teacher training (ITT) programmes	Does the condition apply to teacher training programmes, for example IIT programmes?	No, we believe an exclusion for accredited ITT programmes are appropriate. This exclusion does not apply to any courses other than those designated as accredited ITT programmes by the DfE.	Out of scope

Type of arrangement	Views of respondents	OfS rationale	Scope – in or out
Validation (award-only) arrangements	Does the condition apply to validation arrangements?	No. Validation arrangements do not meet the definition of **relevant subcontractual arrangements** because students do not have a contractual relationship (i.e. are not registered) with the validating partner.	Out of scope
Embedded colleges	Does the condition apply to embedded colleges?	Yes, where they meet the definition of a **relevant subcontractual arrangement**. Providers should consider the nature of each arrangement, for example whether the teaching provided through an embedded college constitutes at least than 50 per cent of the **total delivery hours** of the course.	In scope where the definition of **relevant subcontractual arrangement** is met.
Joint venture	Does the condition apply to joint venture partnerships?	Yes, where they meet the definition of a **relevant subcontractual arrangement**. 'Joint venture' is a term that is used to describe a variety of partnership structures. The condition applies to the entity (provider) that is registered with the OfS. Where that provider has entered into a **relevant subcontractual arrangement** and has contractual relationships with (i.e. has registered) students, those arrangements are in scope.	In scope where the definition of **relevant subcontractual arrangement** is met.
Wholly-owned subsidiary companies	Does the condition apply to an entity delivering via a wholly-owned subsidiary company?	In most cases, a relationship between a parent and a wholly-owned subsidiary company will not be defined by a commercial contract and as such not meet the contracting structure set out in E8.18k.i. If for any reason a formal contract is used (for example, to define an internal service level agreement), for the avoidance of doubt this is not included in scope.	Out of scope
Other subsidiary companies	Does the condition apply to an entity delivering via a subsidiary company that is not 'wholly owned' by the lead entity?	The condition applies to the entity (provider) that is registered with the OfS. Where that provider has entered into a **relevant subcontractual arrangement** and has contractual relationships with (i.e. has registered) students, those arrangements are in scope regardless of the ownership structure in place.	In scope where the definition of **relevant subcontractual arrangement** is met.

Type of arrangement	Views of respondents	OfS rationale	Scope – in or out
Parent entity	Does the condition apply to the parent entity, especially where student numbers are distributed across separate lead institutions?	The condition applies to the entity (provider) that is registered with the OfS. Where that provider has entered into a **relevant subcontractual arrangement** and has contractual relationships with (i.e. has registered) students, those arrangements are in scope regardless of the ownership structure in place.	In scope where the definition of **relevant subcontractual arrangement** is met.
Individual trading arms	Does the condition apply to individual trading arms, especially where student numbers are distributed across separate lead institutions?	The condition applies to the entity (provider) that is registered with the OfS. Where that provider has entered into a **relevant subcontractual arrangement** and has contractual relationships with (i.e. has registered) students, those arrangements are in scope regardless of the ownership structure in place.	In scope where the definition of **relevant subcontractual arrangement** is met.

Annex C: Condition E10: Subcontracting

Scope and application

E10.1 The requirements in E10.5 to E10.11 apply to a provider in the following circumstances:

a. when both of the following apply:

i. the provider has one or more **relevant subcontractual arrangements**;

ii. the total number of students registered on the provider's **relevant subcontractual courses** is 100 or more (or such other number as the OfS may determine from time to time); and/or

b. where the provider has concluded, or reasonably should have concluded, that there is a material likelihood that the total number of students registered on its existing or future **relevant subcontractual courses** will be 100 or more (or such other number as the OfS may determine from time to time) in a given academic year (the "**relevant academic year**"), from the **relevant trigger point** until the end of the **relevant academic year**.

E10.2 For the purposes of this condition, student numbers will be calculated using the methodology set out in one or more documents published by the OfS from time to time.

E10.3 For the purposes of E10.1b, "**relevant trigger point**" means the later of the following points:

a. one calendar year prior to the beginning of the **relevant academic year**; or

b. the point at which the provider reasonably should have concluded that there is a material likelihood that the total number of students registered on its existing or future **relevant subcontractual courses** will be 100 or more (or such other number as the OfS may determine from time to time) in the **relevant academic year**.

E10.4 Where the requirements in E10.5 to E10.11 cease to apply to a provider at any time (for any reason), that cessation does not in any way affect the ability of the OfS to investigate and/or take any form of regulatory or enforcement action in respect of any non-compliance with the requirements (whether or not the non-compliance remains ongoing in nature) which took place during the period that the requirements were in effect.

Overarching obligation

E10.5 The provider must ensure that any risks to the interests of students and/or taxpayers posed by its existing and future **relevant subcontractual arrangements** are effectively identified and addressed, including, but not limited to, by complying with:

a. the requirements in E10.6 to E10.8 in respect of a single **subcontracting information source**; and

b. the requirements in E10.9 to E10.11 in respect of operation in accordance with that single **subcontracting information source**.

Subcontracting information source

E10.6 The provider must maintain a single **subcontracting information source** which sets out policies, procedures and other provisions relating to its existing and future **relevant subcontractual arrangements**. That single **subcontracting information source** (and any revisions made to it from time to time) must comply at all times with the **minimum content requirements** and the **content principles**.

E10.7 Where changes are made to the single **subcontracting information source** referred to in E10.6, the provider must retain the pre-existing version of that information for a minimum period of five years following changes being made to it.

E10.8 For the purposes of this condition, "**minimum content requirements**" means the requirements set out in the OfS's publication 'Subcontracting information source minimum content requirements'. For the avoidance of doubt, this publication forms part of this general ongoing condition of registration E10.

Operation in accordance with the subcontracting information source

E10.9 Except as set out in E10.10, the provider must operate in accordance with the single **subcontracting information source** referred to in E10.6. This includes (but is not limited to) ensuring that, where the provider enters into any new contracts (or variations to existing contracts) at any point while the requirements in E10.5 to E10.11 apply to the provider (see E10.1), the terms and conditions of those contracts enable it to operate in accordance with the single **subcontracting information source**.

E10.10 For any existing contracts which are in force at the time the requirements in E10.5 to E10.11 take effect for the provider (see E10.1), the provider must take all reasonable steps to ensure that the terms and conditions of those contracts enable it to operate in accordance with the single **subcontracting information source**.

E10.11 The provider must have the **capacity and resources** necessary to operate in accordance with the single **subcontracting information source** referred to in E10.6.

Further definitions

E10.12 For the purposes of this condition:

a. "**capacity and resources**" includes, but is not limited to:
   i. the financial resources of a provider; and
   ii. the number, expertise, and experience of a provider's staff or contractors.

b. "**conflict of interest**" means an interest held by a person (for example, a financial interest or a personal relationship) in relation to a matter or decision that would lead a fair-minded and informed observer, having considered the facts, to conclude that there was a real possibility that the person in question was biased in relation to that matter or decision.

c. "**content principles**" means the following requirements:

   i. the provider may include other additional information and provisions in the single **subcontracting information source** in addition to the **minimum content requirements**, but such other information and provisions must:

A. not contradict, undermine or conflict with the **minimum content requirements**; and

B. be subject to a provision which makes it expressly clear that the **minimum content requirements** take precedence over any other information and provisions;

ii. the provider must not include information and provisions on subject matter relating to existing or future **relevant subcontractual arrangements** (and/or any subject matter of a similar nature to matters covered by that defined term) in any other documents which could reasonably be considered to contradict, undermine or conflict with the **minimum content requirements**.

d. "**designated institution**" has the meaning given in section 28 of the Further and Higher Education Act 1992.

e. "**further education corporation**" has the meaning given in the Further and Higher Education Act 1992.

f. **"governing body**" has the meaning given in section 85 of the Higher Education and Research Act 2017.

g. "**mayoral combined authority**" has the meaning given in section 107A(8) of the Local Democracy, Economic Development and Construction Act 2009.

h. "**relevant subcontractual arrangement**":

i. means an arrangement between the provider and one or more other entities ("**partner providers**") in relation to the provision of higher education courses in which:

A. the provider holds a contract with one or more **partner providers** (in relation to the provision of higher education courses);

B. students on one or more of those courses hold (or will hold) a contractual relationship with the provider; and

C. 50 per cent or less of the **total course delivery hours** on one or more of those courses is provided (or will be provided) by the provider's staff or contractors;

ii. does not include an arrangement where:

A. the **partner provider** falls under one of the following (or, where there are multiple **partner providers**, each of the **partner providers** falls under one of the following):

a) is a **school**, a **further education corporation**, a **sixth form college corporation**, a **designated institution**, a provider of National Health Service services (including an NHS trust as defined in section 25 of the National Health Service Act 2006 or an NHS foundation trust as defined in section 30 of that Act), a local

authority, a police and crime commissioner, a **mayoral combined authority**, the armed forces**,** or a government department;

b) holds an authorisation given by or under an Act of Parliament or Royal Charter to grant taught awards or research awards;

B. the contract relates to the provision of higher education courses where all of the content on all of those courses is either:

a) delivered in a location which is outside of England, Scotland, Wales and Northern Ireland; or

b) delivered online, where all of the students registered on the relevant course are ordinarily resident in countries other than England, Scotland, Wales and Northern Ireland;

C. the contract relates to the provision of a UK primary medical qualification and each **partner provider** is fully accredited by the General Medical Council;

D. the contract relates to the provision of a UK veterinary degree programme and each **partner provider** is fully accredited by the Royal College of Veterinary Surgeons;

E. the contract relates to the provision of an initial teacher training course that leads to qualified teacher status and each **partner provider** is fully accredited by the Department for Education to deliver initial teacher training courses;

iii. For the avoidance of doubt, an "existing" **relevant subcontractual arrangement** refers to an arrangement where the provider has signed a contract of the kind described in paragraph E10.12hiA.

i. "**relevant subcontractual course**" means a higher education course provided for under a **relevant subcontractual arrangement** where:

i. students on that course hold (or will hold) a contractual relationship with the provider; and

ii. 50 per cent or less of the **total course delivery hours** on that course are provided (or will be provided) by the provider's staff or contractors.

j. "**risk and audit functions**" means functions which relate to:

i. identifying and managing risks;

ii. overseeing internal or external auditing of the provider, as well as the provider's financial reporting and disclosures.

k. "**school**" means:

i. a school as defined by section 4 of the Education Act 1996;

ii. an Academy under section 1(10) of the Academies Act 2010;

iii. an academy trust; or

iv. a federation or federated school as defined by section 24 of the Education Act 2002.

l. "**sixth form college corporation**" means a sixth form college corporation established under the Further and Higher Education Act 1992.

m. "**subcontracting information source**" means:

i. a single document that comprehensively sets out all the information required in order to comply with E10.6; or

ii. a single document that gives a clear summary of the information required by E10.6, and refers to additional documents that comprehensively set out the remaining relevant detail as required by E10.6. If the provider adopts this approach, the single document must include a summary of the content to be found in those other documents (insofar as relevant).

n. "**total course delivery hours**", in relation to a course, means the total number of hours spent by staff or contractors (of the provider or its **partner providers**) preparing to deliver course content, delivering course content, and assessing student work in relation to the course.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

E.10.1 – E.10.4: Scope and application

1. This condition defines a "relevant subcontractual arrangement" in E.10.12. This is where:

   - a provider (a "lead" provider) holds a contract with a partner (delivery partner) for the provision of teaching;
   - students hold a contractual relationship with the lead provider;
   - and where the lead provider contracts out 50 per cent or more of total course delivery hours to a delivery partner.

2. Some relationships are also intentionally not included in the scope of the definition. For example, those where the provider's partner (i.e. the "delivery provider") is a school or a further education corporation, or a sixth form college corporation. Please see the definition set out in

the “further definitions” section of the condition. For the avoidance of doubt, this definition is distinct from the description of a “subcontractual arrangement” as set out in the regulatory framework glossary.

3. A provider must meet the obligations set out in this condition at any point when it has a total of 100 or more students registered on one or more relevant subcontractual courses. A provider must also meet the condition obligations where it has concluded (or reasonably should have concluded) that there is a material likelihood that it will have 100 or more students registered on relevant subcontractual courses during a given academic year. Where this is the case, a provider must comply with the condition from the “relevant trigger point” (see paragraphs 7-9 below) until the end of that academic year.

4. The threshold of 100 students is calculated as the aggregate total of students, on a headcount basis, across all relevant subcontractual courses of the provider. This total includes students registered in any year or on any module of a subcontracted course and is not limited to the students registering on a course in a single academic intake. The OfS may, from time to time, revise its approach to counting student numbers to ensure it remains appropriate.

5. A provider must regularly assess whether the obligations of this condition apply to it as it plans student intakes. We expect each provider to have sufficient capability to determine this based on its own student data and recruitment plans.

6. In considering whether a provider reasonably should have concluded that there is (or was) a material likelihood that the total number of students registered on its relevant subcontractual courses will (or would) be 100 or more, the OfS may consider how a reasonable provider, intent on complying with all of its conditions of registration and acting in the interests of students and, where relevant, taxpayers (rather than in its own commercial, reputational or other interests), would have forecast its student numbers.

7. In most cases the obligations in condition E10 will apply one calendar year before the start of the academic year in which the provider expects to have 100 or more students registered on relevant subcontractual courses (as set out in E10.3.a).

8. The OfS would normally expect a provider to be able to identify whether it will have 100 or more students on relevant subcontractual courses in a given academic year at least one year before the start of that year. This is because the provider will need to agree its contract with a delivery provider, set admission criteria and leave time for student recruitment. For existing subcontractual relationships forecasts of student numbers may be set several years in advance of recruitment.

9. In a scenario where:

    a. a provider agrees with a delivery partner to deliver a course at short notice or,

    b. a provider recruits more students than expected, and this results in 100 or more students being on relevant subcontractual courses

    the obligations in condition E10 will apply from the point that a provider reasonably should have concluded that there was a material likelihood that it would have 100 or more students in the relevant academic year (as set out in E10.3.b).

10. A provider forecasting numbers close to 100 should consider how they will ensure they can meet the requirements of this condition if recruitment is higher than expected. This includes considering whether they should reasonably expect that over-recruitment might occur.

11. Where a provider reaches 100 or more students, but it had not identified that this was materially likely, the OfS may consider whether the provider should reasonably have expected to cross the 100-student threshold. In these cases, the OfS may seek to understand the circumstances better, for example through considering a provider's forecasting processes, contracts, monitoring of emerging trends and risk identification. The OfS may consider how a reasonable provider, intent on complying with all of its conditions of registration and acting in the interests of students and, where relevant, taxpayers (rather than its own commercial, reputational or other interests), would have forecast its student numbers. It will then assess whether any regulatory action is appropriate, for example in situations whether there is a breach or increased risk of breach of the condition.

12. If a provider recruits fewer students than expected, and fewer than 100 students are on relevant subcontracted courses, the obligations in condition E10 will continue to apply until the end of that academic year.

13. Condition E10.1 refers to two 100-student thresholds. The OfS may decide to vary these thresholds, where it considers this appropriate. The OfS may also in future decide to amend the definition of 'relevant subcontractual arrangements', or change the types of arrangements that fall within the scope of the exemption categories set out in E10.12. If the OfS decides to do this, we would seek to ensure we understand relevant views before making changes.

E10.5: Overarching obligation

14. A lead provider must ensure that any risks to the interests of students and/or taxpayers posed by its existing and future relevant subcontractual arrangements are effectively identified and addressed.

15. The condition sets out a non-exhaustive set of requirements with which a provider must comply. These requirements are detailed further below. The overarching requirement is that a provider must identify and address the risks to students and taxpayers. The OfS may assess whether a provider has met the overarching obligation of the condition, and take regulatory action if needed. This may occur even if a provider has met specific requirements such as maintaining a subcontracting information source.

16. Box A below sets out an illustrative non-exhaustive list of risks that a provider should consider, when identifying risks to the interests of students and taxpayers that could be posed by its relevant subcontractual arrangements.

Box A: Potential risks to students and taxpayers

Risks to students

- A delivery partner (or its agents) misrepresenting or mis-selling courses, charging excessive fees, or not complying with consumer protection law.

- Students being recruited to courses that are not suitable or not accessible to the student. For example, where entry requirements (including English language requirements) do not ensure admitted students have the capabilities required to engage with the course without significant additional support, and where this support may not be provided to students.
- Students receiving a lower quality academic experience from the delivery provider than the experience students at the lead provider receive. For example, a course not being sufficiently stretching for the level of study, poor quality teaching and assessment, or students failing to obtain an award without early warning that their academic progress was not sufficient.
- Academic misconduct by students in a relevant subcontractual arrangement, including where a delivery partner does not have procedures in place to properly identify submission of assessments that are not a student's own work.
- Poorly monitored or controlled student support services or safeguarding arrangements.
- Students not being aware that their course is being delivered through a subcontractual partnership, or that the lead provider has retained a proportion of their tuition fee.
- Disruption or discontinuity of a student's course, including if a delivery partner fails.

Risks to taxpayers

- Student loan funding being paid to, and on behalf of, students who are not genuinely entitled to that funding, as a result of inaccurate data submitted by a delivery partner to the lead provider, with inadequate controls for collection and submission of data, and inadequate auditing of data and controls.
- Incorrect payment of student loan funding to a provider because of inaccurate or inflated reporting of student attendance to the OfS and Student Loans Company.
- Students and third parties accessing public funding in the form of maintenance loans, childcare or other grants, by registering on a course that they do not genuinely intend to study.
- Reduced confidence in the higher education sector and so damage to the wider public interest generated by high profile reports of poor delivery, or the failure of an individual provider.

17. Information on how the OfS would assess whether a provider has met the overarching requirement and effectively identified and addressed risks to the interests of students and taxpayers posed by its relevant subcontractual arrangements, is included in the assessment section below (see the section on 'Assessment' below).

E10.6 – E10.8: Subcontracting information source (SIS)

18. A provider must determine the policies, procedures and other provisions that will identify and address risks to the interests of students and taxpayers posed by its relevant subcontractual

arrangements. The minimum content requirements (see the OfS publication, ‘Subcontracting information source minimum content requirements’) set out some specific requirements, but this is not an exhaustive list. The lead provider should consider the specific context in which delivery will take place.

19. We recognise that a provider may need time to prepare its SIS. We expect a provider to take prompt action to develop (and implement) their SIS and that it will be in place and being implemented (per E10.9-E10.11) by no later than 30 June 2026. The exception to this is where a provider enters into a new contract (or varies an existing contract) relating to relevant subcontractual arrangements on or after the condition comes into force (on 31 March 2026). In these cases, we expect a provider to have developed its SIS by the time it enters into (or varies) the contract and that the terms and conditions of that contract will enable the provider to operate in accordance with the SIS. For more information on implementing (or ‘operating in accordance with’) the SIS please see the relevant section below.

20. The OfS does not require a provider to regularly share its SIS with the OfS or publish it as a matter of course. However, a provider must maintain it and be prepared to share it with OfS on request. The OfS may decide to compel the provider to provide this information (under condition of registration, F3).

21. A provider must retain historical versions of its SIS for a minimum of five years. This ensures that the OfS can review the oversight and control arrangements that were in place at the time of an event or concern under a previous version of the SIS.

22. Some providers may have documents with a wider purpose that include relevant policies, procedures and other provisions. For example, a provider’s procurement or new contract engagement policy may set out controls relevant to all contracts over a certain size, rather than only those relevant to subcontractual arrangements. In such cases, the SIS may serve as a summary document that references these broader policies. Where a provider takes this approach, it must summarise relevant information, including by making it clear how each policy it references applies to its subcontractual provision. The format and structure of the SIS is for each provider to determine.

23. Information on how the OfS would assess whether a provider has satisfied the requirements of E10.6 to E10.8, is included in the assessment section below.

E10.8 and minimum content requirements

24. The requirements set out in ‘Subcontracting information source minimum content requirements’, represent the minimum content that each provider must include in its SIS. In addition, a provider should judge whether other policies, procedures or provisions are necessary to effectively manage risks to the interests of students and taxpayers relevant to its particular context. If it needs additional arrangements, the provider must document these in its SIS.

25. Information on how the OfS would assess whether a provider’s SIS meets the minimum content requirements, is included in the assessment section below.

26. In ‘Subcontracting information source minimum content requirements’, the minimum content requirements are set out in the following categories:

a. Subcontractual rationale

b. New arrangements

c. Oversight by governing body and others

d. Policies and procedures

e. Adaptability

27. More guidance on each of these categories is set out below.

Subcontractual rationale

28. The SIS must set out the provider's overall strategic rationale for entering into subcontractual arrangements, including its rationale for any existing arrangements. This rationale must be clear and fit with its vision and strategic intent. The SIS must also set out how, in developing that rationale, the provider ensures that the needs of students are prioritised over financial considerations. This must be consistent with the rationale the provider publishes in the disclosures of its audited financial statements (see 'Regulatory advice 9: Accounts direction'). The OfS expects this rationale to explain the benefits that the lead provider is expecting from its subcontractual arrangements, including the benefits for current and future students.

New arrangements

29. The SIS must explain the provider's approach to assessing potential new subcontractual arrangements, including how it assesses their feasibility. The SIS must also explain how this assessment approach is in line with the provider's overall strategic rationale for entering into new subcontractual arrangements. This is likely to include an explanation of the strategic decision-making process that will take place and an explanation of how a new partnership would support the provider's wider strategy, including consideration of benefits and risks to students.

30. The SIS must also describe how the provider undertakes due diligence on potential partners in new subcontractual arrangements, including the provider's procurement or new contract engagement process. This should include how its approach aligns with the provider's policies that identify and manage risk in relation to its subcontractual arrangements and any relevant legal or regulatory requirements. A provider may draw on its existing procurement or new contract engagement policies and procedures where these are appropriately adapted to reflect the specific risks and responsibilities associated with subcontractual provision. 'Procurement or new contract engagement' is used here as a term to describe the process by which providers identify, assess and contract with potential delivery partners. We acknowledge that providers may have different terms for this process.

31. A lead provider remains responsible for regulatory compliance in relation to its subcontractual arrangements, including for the quality of courses that its partners deliver. The OfS therefore requires the SIS to set out how, when assessing new arrangements, the provider considers whether it will be able to continue to meet its regulatory responsibilities with respect to delivery of courses by its partner (including in relation to compliance with conditions B1, B2, B3, B4 and B5).

Oversight by governing body and others

32. The SIS must include information setting out how a provider's governing body (and any committee and/or individual with responsibility for risk and audit functions) maintains control and oversight of subcontractual arrangements. A governing body must clearly understand how the provider's particular subcontractual arrangements support its strategic approach, and how it will meet, and continue to meet, its regulatory obligations in relation to this provision.

33. Each provider should determine how best to deliver governing body oversight, for example whether the governing body, or relevant committee(s) and/or individual(s) should deliver it. It should also decide how responsibility should be split, shared or otherwise structured between these individuals or bodies. A provider should also determine how accountability for these issues is to be managed on a day-to-day basis by the provider's leadership team. However, the governing body retains responsibility for the provider's subcontractual activity and the OfS expects the governing body to be properly engaged on arrangements that represent risks to students or taxpayers. A provider's oversight arrangements must be clearly set out in its SIS.

34. A provider may wish to set out how its general approach to identifying and managing risk integrates the particular risks for its relevant subcontractual arrangements.

35. The governing body must also assure itself of the quality and rigour of internal or external auditing of existing and future relevant subcontractual arrangements. Normally, this would be delivered via an internal audit function and overseen by a risk and audit committee of a provider's governing body. We accept that some providers (especially smaller providers) may not have a risk and audit committee and may have established a different arrangement to undertake these duties as part of the governing body. Providers will be familiar with our expectations around disclosures related to internal controls set out in our accounts direction (Regulatory advice 9) under 'Statement of Internal Controls'.

Policies and procedures

36. The SIS must include the policies and procedures the provider has in place to meet the overarching obligation in the condition (in E10.5) and ensure delivery of its strategic rationale for subcontracting.

37. A provider may have existing policies and procedures that address some or all of the minimum content requirements in condition E10. Where this is the case, these documents should be referenced in the SIS, with a clear explanation of how existing policies apply to the provider's subcontractual arrangements and identifying the relevant sections.

38. There are a number of matters listed in the 'policies and procedures' section of 'Subcontracting information source minimum content requirements' which the SIS must cover. Among these, the SIS must include the provider's policies and procedures as to how it verifies information or data held by its partner about students on subcontracted courses, including providing for verification via onsite inspections. There may be several appropriate mechanisms for a provider to verify the information or data held by its delivery partner, for example student interviews or assessment sampling. Beyond the specific requirement to undertake onsite testing it is for the provider to determine which mechanisms are appropriate to effectively manage risks to students and taxpayers. For the avoidance of doubt, we expect these verification methods to go above and beyond relying on information or activity provided by the delivery partner.

39. The scope of onsite testing should be appropriate for the teaching delivery methods, and be sufficient to mitigate the risks to students and taxpayers identified by a provider. A non-exhaustive list of illustrative examples are set out below:

    a. Where students are taught physically on campus, the OfS would expect onsite testing to include in-person visits to that campus to observe teaching and other physical facilities that are provided by the delivery partner.

    b. Where learning is online, the OfS would expect onsite testing to involve accessing the online learning environment to verify the services reported (e.g. access to pre-recorded or live teaching) are being delivered to expected quality standards.

    c. Where student data is held physically at a separate location (for example a head office) it may be appropriate to conduct onsite testing at that location. We would not normally expect onsite testing to extend to visits to third party data centres, e.g. cloud storage providers.

40. The SIS should also explain how it will protect the interests of students if a partner's delivery fails. A provider's approved student protection plan (SPP) as required under initial and ongoing condition C3, or key documents as set out in initial condition of registration C5,[26] should already include measures for protecting the interests of students if a delivery partner fails. Where this is the case, the provider must clearly set out in its SIS:

    a. How the SPP (or key documents) will be implemented specifically for students taught at each of its subcontractual partners. For example, this may include plans for the lead provider to take over course delivery directly, or to transfer students to a suitable alternative course delivered by another provider.

    b. Any additional or tailored arrangements that would apply in such scenarios.

41. When setting out how it will protect the interests of students in the event of poor performance by a delivery partner, a lead provider should take a broad interpretation of 'poor performance', beyond performance that may be expressed in contractual KPIs or other formal metrics. In this context 'poor performance' should be defined sufficiently broadly to include performance by a delivery partner that introduces risk to students and/or taxpayers. A provider should consider risks to students and taxpayers, included but not limited to those set out in Box A above and explain how it would:

    a. Identify when such risks are crystallising or are likely to do so, and ensure that performance monitoring and metrics can identify these issues with a delivery partner's performance.

    b. Intervene where necessary to protect the interests of students and taxpayers, including setting out the tests it would use to identify situations in which the lead provider needs to escalate a concern and the range of remedial actions that could be taken.

    c. Escalate concerns and take action where necessary, including the steps the provider will take if a delivery partner fails to act or takes insufficient action to address concerns.

[26] "key documents" means the provider's terms and conditions, other documents with contractual effect, notices, policies relating to the circumstances in which it may make changes to its courses, refund and compensation policies, and complaints processes.

Adaptability

42. The primary purpose of the SIS is to ensure a provider is effectively identifying and addressing risks to the interests of students and taxpayers arising from its relevant subcontractual arrangements. The OfS recognises that these risks may evolve over time, particularly where new subcontractual arrangements are introduced or where there is a significant increase in the number of students studying in relevant subcontractual arrangements.

43. A provider must therefore explain in its SIS how it keeps its policies and procedures under regular review and how it adapts them in response to changes, including to the scale or nature of its subcontractual provision.

E10.9 – E10.11: Operation in accordance with the subcontracting information source

44. The SIS will contain the policies, procedures and other provisions required to effectively identify and address risks to the interests of students and taxpayers posed by its relevant subcontractual arrangements. Condition E10.9 requires a provider to operate in accordance with its SIS. In doing so, the provider must ensure that any risks to the interests of students and/or taxpayers posed by its relevant subcontractual arrangements are effectively identified and addressed, in line with the overarching requirement. A provider should determine how to achieve this but this could include, for example, deploying staff to implement policies set out in the SIS or ensuring the governing body or appropriate subcommittee receives relevant monitoring information.

45. Any new contracts (or variations to existing contracts) must allow the provider to operate in accordance with its SIS. The OfS would expect to see the provisions in a provider's SIS reflected in its new contracts (or variations to existing contracts) with delivery partners. Each contract does not need to explicitly include all content from the SIS, but contracts must be capable of being implemented in a way that supports compliance with the SIS.

46. For its existing contracts only, a provider must take all reasonable steps to ensure that the terms and conditions of its existing contracts enable it to operate in accordance with the SIS. 'Existing contracts' are defined in the condition. By all 'take all reasonable steps' we mean taking all reasonable steps to amend any existing contracts to comply with this requirement as promptly as possible. What is reasonable will depend on the facts. It is likely to include but is not limited to:

    a. Taking all reasonable steps to renegotiate contract terms with partner providers where necessary.

    b. Using all potential contract clauses (for example those that allow contract change in response to regulatory action) to allow renegotiation where appropriate.

    c. Using the soonest possible contract break or endpoints to enable changes to contractual terms where that would not lead to a significant financial penalty.

d. Whether it will be reasonable for a provider to pay a financial penalty as part of its 'all reasonable steps' will depend on the specific circumstances, including the amount of the penalty and the financial position of the provider.

47. If after exhausting all reasonable steps a provider still cannot operate in accordance with the SIS, it must submit a reportable event, as set out in the OfS's guidance on reportable events (Regulatory advice 16). The provider should also consider ways to mitigate risks to students, for example by using contract provisions to limit student numbers.

48. Where a provider submits a reportable event under Regulatory advice 16, we may take steps to understand how it has met its obligation to take 'all reasonable steps'. This may involve, for example:

    a. Requiring a provider to provide further information (for example the contract document, as well as information about actions that a provider has already undertaken to attempt to operate in accordance with the SIS).

    b. The OfS undertaking a review of the arrangements the provider has in place to oversee the relevant subcontractual arrangement and the compliance with wider regulatory requirements.

    c. The OfS contacting a delivery partner to discuss their reasons for not renegotiating, or for refusing changes to contractual terms that would support operation in accordance with the SIS. Where an unregistered delivery partner applies for registration, we may consider any information we hold about that provider when considering its application for registration.

49. The OfS does not intend to routinely review individual contracts between subcontractual delivery partners, but it may require such contracts to be submitted. A lead provider remains responsible for ensuring contractual terms and conditions do not conflict with compliance with its regulatory responsibilities, including but not limited to those in condition E10.

50. Information on how the OfS would assess whether a provider is operating in accordance with its SIS is included in the assessment section below (see paragraph 52 onwards).

51. Condition E10.11 requires a provider to have the capacity and resources necessary to operate in accordance with the SIS. Each provider is responsible for determining its approach to meeting this requirement. Information on how the OfS would assess whether a provider has the capacity and resources necessary to operate in accordance with the SIS is included in the assessment section below (see paragraph 52 onwards).

Assessment

52. When making assessments about any aspect of this condition, the OfS may consider any regulatory information and intelligence it holds. This may include, but is not limited to:

    a. third party notifications

    b. reportable events

    c. the outcomes of any OfS investigation or improvement work with the provider

d. any OfS quality assessment

e. any OfS data audit

f. any data submitted to the OfS by a provider (for example B3 outcomes monitoring)

g. information received from other regulatory or relevant public bodies

53. The overarching requirement in the condition is that a provider must ensure that any risks to the interests of students and/or taxpayers posed by its relevant subcontractual arrangements are effectively identified and addressed. The nature and scale of these risks will depend on a provider's context and the characteristics of each subcontractual arrangement.

54. Some factors which are likely to be relevant to assessing the risks of a particular arrangement will be inherent to the nature of the arrangement, for instance:

- the number of students
- the range of courses or delivery modes,
- the speed at which provision is expanding.

55. Other relevant factors may be more amenable to change and mitigation, for instance lead providers may well want to take into account any relevant audit findings or complaints associated with the provision to determine the appropriate level of oversight required, and keep this under review if these trend up or down. The OfS expects that the oversight arrangements that a provider sets out in its SIS would reflect the risk associated with the subcontractual arrangement.

Overarching obligation

56. Where the OfS decides to assess whether a provider is meeting the overarching obligation (E10.5) it may consider whether any of the information or intelligence it holds suggest that risks to the interests of students and/or taxpayers posed by a provider's existing and future relevant subcontractual arrangements may not have been effectively identified and addressed. An illustrative non-exhaustive list of these risks is set out in Box A, above.

57. For example, if the OfS receives information that a delivery partner is misrepresenting courses, charging excessive fees, or breaching consumer protection law, this may indicate that the provider has not effectively identified or addressed the associated risks.

58. In assessing whether a provider has identified and addressed risks effectively, the OfS may consider whether there have been repeated incidents, as well as isolated incidents. The former are more likely to indicate poor oversight by lead providers. If an issue is narrow, quickly identified, appropriately reported and followed by strengthened controls, the OfS is less likely to conclude that the provider has failed to identify and address the risk effectively. Conversely, if the same issues arises repeatedly without being identified or addressed or happen on a larger scale, this is more likely to indicate a systemic failure in the provider's risk management processes. However, we would consider each case dependent on the facts of that case.

59. For the avoidance of doubt, while other elements of this condition identify particular steps that a provider must take as part of meeting its overarching obligation, the OfS may also identify a breach or risk of breach of the condition, and take enforcement action, based on an assessment of compliance with this overarching obligation itself.

60. Where the OfS determines that these risks are not being effectively identified and addressed, this may indicate weaknesses in how a provider meets other aspects of condition E10. It may also suggest that the provider's SIS is inadequate, or that the provider is not operating in accordance with it.

Subcontracting information source

61. Where the OfS decides to assess whether a provider is meeting its SIS requirements the OfS may consider the below non-exhaustive list of factors:

    a. The specific tests set out in E10.6 and E10.7. For example, where a provider cannot produce current or historical versions of its SIS, or when produced it does not comply with the content principles described, the OfS may conclude the provider has failed to meet the requirements of E10.

    b. Whether the SIS includes the specific information set out in 'Subcontracting information source minimum content requirements', for example whether the SIS includes information on how the provider deals with whistleblowing about activity under its relevant subcontractual arrangements. Where a provider's SIS does not include all or part of the specific information set out in 'Subcontracting information source minimum content requirements', the OfS may conclude the provider has failed to meet the requirements of E10.

    c. Whether the information included in the SIS meets the specific tests for each section of 'Subcontracting information source minimum content requirements', for example: whether the mechanisms for oversight by the governing body (and others) (part (c)) and policy and procedures (part (d)) would enable the provider to meet the overarching obligation contained in E10.5, and ensure delivery of a provider's stated strategic rationale for engaging in subcontractual relationships.

    d. When considering whether the provider's oversight mechanisms and policies and/or procedures would enable it to meet the overarching obligation contained in E10.5, as above, the OfS may consider any regulatory intelligence or information that suggests the provider may not have met the overarching requirement to effectively identify and address risks to the interests of students and taxpayers posed by its relevant subcontractual arrangements.

    e. The OfS may also consider whether an oversight mechanism or policy and/or procedure is consistent with a provider's ability to comply with the overarching obligation of the condition. For example, the OfS would be unlikely to consider that a generic complaints policy, intended for students taught directly by the provider, and lacking specific provisions for subcontracted delivery, would be sufficient to meet the overarching obligation contained in E10.5. In particular, the OfS would likely to be concerned where a policy does not address how data about complaints is incorporated into the provider's contract management

process and key performance indicators (KPIs) for a delivery partner, or how complaints are shared and escalated between the lead provider and delivery partner.

f. When considering whether the provider's oversight mechanisms or policies and/or procedures would ensure the delivery of its stated strategic rationale, the OfS may consider whether the documentation provided in the SIS is consistent with the rationale set out. For example, a provider's strategic rationale for subcontracting might be to increase access to higher education for students with a diverse set of experiences and academic backgrounds. In this case, the OfS would expect that the provider's process for assessing and approving delivery of courses provided by its delivery partner would include significant detail on how the lead provider's governing body ensures that the courses are suitable for a breadth of student experiences and academic backgrounds.. Where this is not the case, the OfS may have concerns about the oversight and control mechanisms in place to ensure delivery of the strategic rationale.

Operating in accordance with the SIS

62. If the OfS decides to assess whether a provider is operating in accordance with its SIS, the OfS may consider the following non-exhaustive list of factors:

a. As above, any information or regulatory intelligence, that suggests the provider may not have met the overarching requirement.

b. Any information or regulatory intelligence that suggests that a provider may not, in practice, be able to operate in line with its SIS. For example, if a provider's SIS states that the lead provider must have access to student data held by a delivery provider within 48 hours, and the lead provider has been unable to retrieve that data in that time in order to share it with the OfS promptly, this may indicate that the lead provider's arrangements are not working effectively and as designed in practice.

c. Whether the provisions in a provider's SIS are reflected in its new contracts (or variations to existing contracts) with delivery partners, and whether a provider has taken all reasonable steps to ensure that existing contracts reflect provisions in a provider's SIS. Each contract does not need to explicitly include all content from the SIS, but if contracts do not support compliance with the SIS, this may suggest that the provider is not operating in accordance with it. It may also suggest that the provider is not meeting:

i. the requirement as set out in E10.9 that the terms and conditions of the provider's new contracts enable it to operate in accordance with the SIS

ii. the requirement in E10.10 for the provider to take all reasonable steps to ensure that the terms and conditions of its existing contracts enable it to operate in accordance with the SIS.

Capacity and resources

63. If the OfS decides to assess whether a provider has the capacity and resources necessary to operate in accordance with the SIS it may consider the below non-exhaustive list of factors:

a. As above, any regulatory evidence or intelligence, that suggests the provider may not have met the overarching requirement.

b. the scale and nature of controls set out in the provider's SIS and the scale and nature of the provider's subcontractual arrangements.

64. A provider may wish to subcontract to widen access to higher education. For example, it may wish to support students who do not have traditional entry qualifications (e.g. A levels). In this scenario, the OfS would expect the provider to have a clear and detailed process for applying any exemptions or exceptions to its admissions criteria. This process should enable the provider to assess potentially large numbers of applicants who fall into these categories.

65. The provider must also ensure it has the capacity and resources to implement this process effectively. If the process requires large numbers of manual, qualitative reviews of applicants' work histories, the provider must ensure that the team responsible for this work is appropriately staffed. Team members should have the skills and experience needed to make and assess these judgements reliably.

Annex D: List of abbreviations

Abbreviation	Meaning
CMA	Competition and Markets Authority
DfE	Department for Education
FTE	full-time equivalent
HERA	Higher Education and Research Act 2017
HESA	Higher Education Statistics Agency
ILR	Individual Learner Record
ITT	initial teacher training
NHS	National Health Service
OfS	Office for Students
SCD	subcontractual arrangement direction
SIS	subcontracting information source (previously called comprehensive source of information)
SLC	Student Loans Company
SPP	Student Protection Plan
TNE	transnational education