

Office for  
Students



# Regulatory advice 15: Monitoring and intervention

Guidance for providers registered with  
the Office for Students

**Reference** OfS 2019.39

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# Introduction

## The OfS's regulatory framework

1. The Office for Students (OfS) is the independent regulator for English higher education providers, established by the Higher Education and Research Act 2017 (HERA). The OfS registers and monitors higher education providers to ensure that conditions of registration are satisfied. It has a range of powers to intervene where there is or has been a breach of a condition, or where there is an increased risk of such a breach. It has enforcement powers that include the power to impose a financial penalty, to suspend aspects of a provider's registration and to deregister a provider. This document provides additional information for registered providers on how the OfS conducts its monitoring and intervention activities.
2. The OfS's regulatory framework, required by section 75 of HERA, was published in February 2018<sup>1</sup>. It sets out how the OfS intends to perform its functions and provides guidance for registered higher education providers on the ongoing conditions of registration.
3. The OfS is a principles-based, rather than a rules-based, regulator. This means that it requires registered providers to meet the baseline requirement set out in each condition of registration, but it allows for different providers to meet this baseline in different ways.
4. In performing its functions, the OfS must have regard to its general duties as set out in section 2 of HERA, and will also have regard to other relevant factors.
5. All registered providers should be familiar with the content of the regulatory framework as this sets out the requirements placed on them and the OfS's approach to ensuring that these are satisfied.
6. Providers are expected to read the regulatory framework in its entirety. In particular:
  - The regulatory framework (paragraphs 112 to 201) gives an overview of how the OfS monitors and assesses compliance with the ongoing conditions of registration from 1 August 2019 onwards.
  - Additionally, Part V of the regulatory framework sets out each general ongoing condition of registration and guidance in relation to each of these.

## Navigation of this document

7. This regulatory advice document is intended to assist registered providers in understanding how the OfS will monitor compliance with the ongoing conditions of registration.
8. It provides additional information on how particular sections of the regulatory framework will operate in practice and how a provider can demonstrate that it complies with its conditions of registration. Where sections of the regulatory framework are reproduced here they are highlighted in yellow text boxes. Paragraph numbers (marked RF) corresponding to the location of this text in the regulatory framework are included to assist with cross referencing

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<sup>1</sup> See [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/)

between the two documents. Where appropriate, the legislative basis for the OfS's activities is highlighted. Quotations from HERA and related secondary legislation are highlighted in blue text boxes.

9. This regulatory advice document includes three sections.
  - **Section I** provides more detail about how the OfS will interact with registered providers.
  - **Section II** sets out how the OfS will monitor and assess compliance with the ongoing conditions of registration.
  - **Section III** provides some additional guidance about regulatory requirements for registered providers.

# I. Interactions with registered providers

## The regulatory framework, regulatory notices and regulatory advice

10. The OfS communicates its regulatory requirements through a range of publications with which all providers should be familiar. The hierarchy of the documents that set out the regulatory functions of the OfS and how these will be performed is set out in the table below:

The Higher Education and Research Act 2017 (HERA)	HERA is the primary legislation setting out most of the functions, powers and duties of the OfS.
Secondary legislation	Secondary legislation relating to HERA is available at <a href="http://legislation.gov.uk">legislation.gov.uk</a> , including: <ul style="list-style-type: none"><li>• Cooperation and information sharing <a href="http://www.legislation.gov.uk/ukxi/2018/607/pdfs/ukxi_20180607_en.pdf">[http://www.legislation.gov.uk/ukxi/2018/607/pdfs/ukxi_20180607_en.pdf]</a></li><li>• Monetary penalties and refusal to renew an access and participation plan <a href="http://www.legislation.gov.uk/ukdsi/2019/9780111185353/pdfs/ukdsi_9780111185353_en.pdf">[http://www.legislation.gov.uk/ukdsi/2019/9780111185353/pdfs/ukdsi_9780111185353_en.pdf]</a></li><li>• Registration fees <a href="http://www.legislation.gov.uk/ukxi/2019/543/pdfs/ukxi_20190543_en.pdf">[http://www.legislation.gov.uk/ukxi/2019/543/pdfs/ukxi_20190543_en.pdf]</a></li></ul>
The OfS's regulatory framework (RF)	The regulatory framework is required under section 75 of HERA. It states how the OfS intends to perform its various functions, and provides guidance for registered higher education providers on the ongoing conditions of registration. The OfS is required to have regard to it when performing its functions.
Regulatory notices	The OfS will publish regulatory notices that provide additional information about its regulatory requirements.
Regulatory advice	The OfS also publishes regulatory advice to support providers in understanding and meeting its regulatory requirements.

11. This document falls into the category of regulatory advice.

## How the OfS will interact with contacts in registered providers

12. The regulatory framework sets out the approach the OfS will take to its interactions with registered providers, reflecting its role as a regulator.

RF 24. The OfS's risk-based approach is central to how it will interact with providers. The OfS's engagement with an individual provider is intended to allow the OfS to make appropriate regulatory decisions about managing risks associated with that provider. It is not to provide support for improvement activities, or to require the provider to take actions the OfS would like to see, unless there is a risk of the provider breaching its conditions of registration.

13. The OfS will not conduct routine engagement with individual providers. However it may choose to undertake dialogue with a provider where there is an increased risk of the provider breaching one or more of the ongoing conditions of registration.

RF 26. Dialogue will focus on specific regulatory issues rather than the general circumstances and activities of the provider. The OfS may alert a provider where there may be issues with the provider's compliance with a condition of registration, but it will not provide advice to providers about how they should run their organisation. Providers should look to other sources, for example to sector bodies, for such advice and support.

14. It is the responsibility of the governing body<sup>2</sup> of a registered provider to ensure that it continues to satisfy the ongoing conditions of registration. Providers should not look to the OfS for support with meeting regulatory requirements.
15. The OfS monitoring and intervention team is responsible for the ongoing monitoring of registered providers, including where enhanced monitoring requirements are in place. Registered providers will not be allocated a named contact within this team. However, in order to ensure that issues particular to a provider can be dealt with effectively and efficiently, the monitoring and intervention team is organised into smaller teams each with responsibility for a group of registered providers.
16. The OfS provides a portal for the secure, confidential and timely provision of information to it by a provider. Reportable events must be reported through the OfS portal. Other matters relating to regulation should be communicated to the OfS via email [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) or telephone 0117 931 7305.

## The role of the accountable officer

17. The accountable officer is the key point of contact between the OfS and a provider. The OfS has published regulatory advice providing more detailed guidance about the role and responsibilities of an accountable officer.<sup>3</sup>
18. Ongoing condition E3 requires a provider to nominate to the OfS a senior officer as its accountable officer. The OfS normally expects to deal directly with the accountable officer

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<sup>2</sup> Governing body is defined in the glossary to the regulatory framework as: 'Persons responsible for the management of the provider. As defined in section 85 of HERA, this will be any board of governors of the institution or any equivalent controlling body, for example the board of a company, the trustees of a charity, etc.'

<sup>3</sup> See [www.officeforstudents.org.uk/publications/regulatory-advice-10-accountable-officers-guidance-for-providers-on-the-responsibilities-of-accountable-officers/](http://www.officeforstudents.org.uk/publications/regulatory-advice-10-accountable-officers-guidance-for-providers-on-the-responsibilities-of-accountable-officers/)

about regulatory matters as the person appointed by the provider's governing body and agreed by the OfS to act in that capacity.

19. During the registration process, the OfS considered the suitability of the individual nominated by a provider as accountable officer. The OfS confirmed the name and post of the accountable officer when a provider was successfully registered.
20. A provider's governing body must inform the OfS of a proposed change to its accountable officer as a reportable event. If no concerns are identified with the suitability or fitness and propriety of the nominated individual, the OfS will confirm in writing that it accepts the new accountable officer.
21. In the event of a prolonged absence from work or a sudden departure on the part of an accountable officer, the governing body must ensure that the OfS is made aware immediately of the identity of the interim accountable officer using the reportable events process. The interim accountable officer will be subject to the same assessment and approval process as an individual being proposed as a permanent appointment.
22. The accountable officer of a registered provider is:
  - a. Personally responsible for the funding received by the provider from the OfS and, where relevant, from UK Research and Innovation (UKRI) via Research England. This responsibility extends to the following relevant elements of HM Treasury's requirements in relation to public funding, which are regulated by the OfS through the additional public interest governance principles that apply to those providers receiving financial support from the OfS or from UKRI:
    - i. Independent members of the governing body.
    - ii. Regularity, propriety and value for money.
  - b. Personally responsible for the taxpayer-backed student loans received on behalf of the provider's students to cover their tuition fee payments. This includes ensuring that the provider is meeting the service agreement with the Student Loans Company (SLC) and that only eligible courses are uploaded onto the SLC's course database.
  - c. Responsible for ensuring that the governing body understands its regulatory responsibilities and acts on them. This includes the accountable officer:
    - i. Receiving communications from the OfS on behalf of the governing body and alerting the governing body to these.
    - ii. Representing the governing body in all matters relating to accountability and regulation by the OfS.
    - iii. Delegating authority appropriately within the provider to provide information to the OfS. This includes providing the OfS with data returns, notifying the OfS of reportable events and providing any other information that the OfS, or a person nominated by the OfS, specifies, at the time and in the manner and form specified.

- d. Required to appear before the Public Accounts Committee, if it requests their attendance, alongside the OfS's chief executive in matters relating to the registration and funding of the provider.

## **Requests for information from a registered provider (condition F3)**

23. Section 8 of HERA requires the OfS to impose a mandatory general ongoing condition of registration that requires the governing body of a provider to provide information to the OfS, or to a body acting on behalf of the OfS. This is condition F3 and the OfS makes requests for information relating to any of the OfS's purposes or conditions of registration under this condition by issuing an F3 Notice to a registered provider.
24. The statutory basis for condition F3 does not provide any exemptions in relation to the type of information that the OfS may request and that must therefore be provided. For example, a provider would be required to submit information to the OfS relating to named individuals that would normally be subject to the provider's own data processing notices. Information that a provider may consider to be commercially confidential would also need to be submitted in response to an F3 Notice.
25. The OfS makes routine information requests to all registered providers as part of its general monitoring activity, for example:
  - a. routine data submissions, such as the audited financial statements and financial forecasts that providers must submit each year, or the Unistats data return
  - b. the enduring requirement placed on each registered provider to report to the OfS reportable events<sup>4</sup>
  - c. a requirement to submit information in relation to enhanced monitoring requirements, either in relation to a single submission, or on an enduring basis.
26. The OfS may also request information from a provider when a particular issue or concern emerges. In such instances, the OfS will issue an F3 Notice to the accountable officer, or another appropriate person, setting out specific requirements.
27. Whether on a routine basis or in relation to a particular issue, condition F3 states that the governing body must provide requested information to the 'at the time and in the manner and form specified'. This means that a provider must follow the submission requirements and deadlines set out by the OfS in an F3 Notice. The timely submission of complete and accurate information is an essential component of the OfS's regulatory system and a registered provider's obligation to provide information to the OfS under condition F3 constitutes a legally binding requirement. Where this requirement is not met in full, it is likely to constitute a breach of this condition of registration. The OfS has enforcement powers that it may use in response to a breach of a condition of registration, including the ability to impose a monetary penalty (see [Sanctions](#), paragraphs 72-80).
28. The OfS does not offer extensions to deadlines for information requirements made under condition F3. When considering regulatory action in response to a late submission, the OfS will

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<sup>4</sup> As set out in the F3 notice issued to all registered providers on 15 October 2019.



consider the circumstances in an individual case and act proportionately in considering its regulatory response. A provider that is late submitting information should explain the reasons for such lateness and set out the actions it will take to prevent future late submission. If a provider believes a deadline set by the OfS is unreasonable it may make representations. These should be done on behalf of the Chair of the provider's governing body and submitted to [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk).

## Sharing information about a registered provider

29. In performing its functions the OfS may share information about a registered provider with other bodies, as well as receiving information about the registered provider from other bodies. Information about the OfS's relationship with other regulators and bodies can be found in paragraphs 34–37 of the regulatory framework.

RF 34. Section 63 of HERA gives the OfS powers to cooperate and share information with other bodies. Section 112 gives the OfS a more specific power to cooperate and share information with UKRI, and section 113 empowers the OfS to work with the devolved administrations and their funding bodies, and with UKRI. The OfS may wish to use its powers under sections 63, 112 and 113 in a range of circumstances and, where necessary, will put in place collaboration agreements to achieve this.

30. HERA gives the OfS significant cooperation and information sharing powers.

31. Section 63 of HERA states that the OfS may cooperate with and provide information to any 'person'<sup>5</sup> if a disclosure is made for the purposes of performing a function of the OfS. This means that the OfS is permitted to share the information it holds about a registered provider if it considers it is necessary to do so to perform one of its functions. For example, the OfS may exchange information about a further education college with the Education and Skills Funding Agency (ESFA), or it may share information about a potential breach of consumer protection law with the Advertising Standards Agency. In deciding whether to disclose information in a particular case, the OfS will have regard to its general duties.

32. Section 63 of HERA also permits the OfS to cooperate with and provide information to a 'relevant person' if the disclosure is made for the purposes of the performance of a relevant function of the 'relevant person'. Such relevant persons are listed in The Higher Education and Research Act 2017 (Cooperation and Information Sharing) Regulations 2018<sup>6</sup>. This means that the OfS is permitted to share information it holds about a registered provider if one of these organisations is able to demonstrate that the information is needed to perform one of its functions. For example, the OfS may share with the Office of the Independent Adjudicator (OIA) information about a provider's planned closure of a campus to allow the OIA to put in place arrangements to handle any complaints made by students; or it may share information with Ofsted about the OfS's assessment of a provider's apprenticeship provision. In deciding

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<sup>5</sup> A legal 'person' may be either a natural person or a juridical person such as a government agency or corporation.

<sup>6</sup> The list of persons specified in this way by the Secretary of State can be found at: [http://www.legislation.gov.uk/uksi/2018/607/pdfs/uksi\\_20180607\\_en.pdf](http://www.legislation.gov.uk/uksi/2018/607/pdfs/uksi_20180607_en.pdf). Details of the information sharing agreement between the OIA and the OfS is available at: <https://www.oiahe.org.uk/media/1890/collaboration-agreement-oia-ofs-may-2018.pdf>.

whether to disclose information in a particular case, the OfS will have regard to its general duties.

33. Where the OfS shares information under the provisions of section 63 of HERA, the OfS is not bound by any confidentiality claimed by a provider, or any other restriction on the provision of information. Sometimes a provider, or an agent such as an audit firm working on behalf of a provider, asks the OfS to sign a release form that contains confidential requirements in relation to information to be submitted to the OfS. The OfS is not able to sign such agreements because section 63 of HERA does not allow the OfS to be constrained in this way. The OfS does, however, remain bound by the Data Protection Act 2018.
34. The OfS sets out further information on its approach to data sharing in its data strategy.<sup>7</sup>

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<sup>7</sup> Available at: [www.officeforstudents.org.uk/publications/office-for-students-data-strategy-2018-to-2021/](http://www.officeforstudents.org.uk/publications/office-for-students-data-strategy-2018-to-2021/)

## II. Monitoring and assessing compliance with the ongoing conditions of registration

### The OfS's risk-based approach to regulation

35. The regulatory framework sets out how the OfS monitors the compliance of registered providers with the ongoing conditions of registration.
36. The OfS's approach to monitoring is informed by its principles-based approach to regulation. This approach is explained in more detail in the regulatory framework.

RF 8. The regulatory approach is designed to be principles-based because the higher education sector is complex, and the imposition of a narrow rules-based approach would risk leading to a compliance culture that stifles diversity and innovation and prevents the sector from flourishing. This regulatory framework does not therefore set out numerical performance targets, or lists of detailed requirements for providers to meet. Instead it sets out the approach that the OfS will take as it makes judgements about individual providers on the basis of data and contextual evidence.

37. The OfS requires each registered provider to meet the regulatory baseline set out in each condition of registration. This baseline represents the minimum level of performance necessary to protect the interests of students and taxpayers. The OfS recognises that different providers may be able to meet those baselines in different ways. Where the OfS's regulatory advice in this and other documents sets out approaches which may demonstrate compliance with the ongoing conditions of registration, providers may where appropriate be able to achieve compliance with those conditions by other means.
38. Risk assessment, specifically assessment of the risk that a registered provider will breach a condition of registration in the future, is central to the monitoring and assessment of registered providers.

RF 128. The OfS will monitor registered providers to ensure that any increased risk of a breach of one or more ongoing conditions of registration can be identified and decisive action taken before the risk crystallises into a breach, allowing the OfS to limit the exposure of students and taxpayers.

39. From a provider's date of registration, the OfS monitors it for indications that it may be at risk of breaching one or more of the general ongoing conditions of registration and any specific ongoing conditions that have been imposed. The OfS's risk assessment for a provider is expressed in a risk profile covering each of the general ongoing conditions applicable to that provider.

RF 121. Individual providers, that become aware of areas of increased risk, will be expected to bring these to the attention of the OfS before it becomes aware of these through its own monitoring processes. This includes the requirement to notify the OfS of particular 'reportable events' but also extends to any area in which the risk of a breach of an ongoing condition of registration has increased. The provider would not be expected to highlight all risks but to demonstrate sound judgement about when it considers that mitigation may not be sufficient to prevent a breach of an ongoing general or specific condition. If a provider fails to behave transparently the OfS will take the provider's behaviour into account in the context of the provider's ongoing management and governance condition.

40. The regulatory framework is clear that each provider has an obligation to notify the OfS of areas of increased risk and that lack of transparency on the part of a provider in this regard will be taken into account when considering the provider's compliance with the E conditions (management and governance).
41. Where its monitoring suggests there may be an increased risk of a future breach of a condition, the OfS will conduct an assessment of that risk. This includes where a provider has submitted information to the OfS on a routine basis or to comply with requirements of enhanced monitoring or a specific condition of registration. Part of this assessment of risk will be a consideration of whether a provider holds degree awarding powers or university or university college title, and whether the increased risk identified may affect a provider's powers or title. Guidance about the assessment process is set out in the next section of this regulatory advice.
42. The regulatory framework (paragraphs 129-130) sets out the main sources of information which inform the OfS's monitoring activities:

RF 129. There are two levels of monitoring activity to allow the OfS to respond proportionately to the regulatory risks posed by regulated providers and enable early identification of changes in risk levels:

a. General monitoring of all providers, based on:

- i. Lead indicators (indicators constructed from data and information flows, in as near real time as possible, that will assist the OfS to identify trends and anticipate future events).
- ii. 'Reportable events' (a requirement to notify the OfS of material decisions/issues/changes).
- iii. Other intelligence and information obtained by the OfS, such as from whistleblowing or student complaints.

b. Enhanced monitoring and/or engagement in areas in which:

- i. Increased risk has been identified through an initial risk assessment or a revision to a risk assessment as a result of general monitoring.
- ii. There has been a suspected or actual breach of one or more conditions of registration.

RF 130. In addition, the OfS will use findings from its activities to monitor the higher education sector more broadly to inform its risk assessment for an individual provider or groups of providers.

43. The OfS uses a range of information sources to conduct general or enhanced monitoring. Further information about the OfS's use of these different information sources is set out below.

## Lead indicators

RF 136. The OfS will identify a small number of lead indicators that will provide signals of change in a provider's circumstances or performance. Such change may signal that the OfS needs to consider whether the provider is at increased risk of a breach of one or more of its ongoing conditions of registration. These indicators will be based on regular flows of reliable data and information from providers and additional data sources, and will include information about outcomes for students from different backgrounds.

44. As set out in the glossary to the regulatory framework, lead indicators are constructed from data and information flows, in as near real time as possible, in order to allow the OfS to anticipate future events. Lead indicators feed into the determination of whether a provider is compliant with baseline requirements for conditions of registration, but are not the sole determinant of compliance as a provider's context will also be relevant.

## Student data

45. Student data is an important source of lead indicator information and is used to monitor the ongoing conditions of registration, especially condition A1 (access and participation plan) and the B (quality and standards) and C (consumer protection law) conditions. The student data that the OfS uses is drawn from the data returns that registered providers are required to make under ongoing conditions F3 (provision of information to the OfS) and F4 (provision of information to the Designated Data Body)<sup>8</sup>. These data returns include, but are not limited to:

- Student return<sup>9</sup>
- Aggregate offshore record
- Graduate outcomes survey
- Individual learner record (ILR)
- National Student Survey (NSS)

46. A summary of information providers are required to submit to the OfS, which includes these student data returns, is available on the OfS website.<sup>10</sup>

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<sup>8</sup> Further education colleges currently return student data to the ESFA in the ILR return.

<sup>9</sup> Currently also the alternative provider student return.

<sup>10</sup> See [www.officeforstudents.org.uk/advice-and-guidance/deadlines-events-and-publications/](http://www.officeforstudents.org.uk/advice-and-guidance/deadlines-events-and-publications/)

47. When using student data as part of its consideration of a provider's compliance with the ongoing conditions of registration, the OfS assesses the actual performance of the provider over time rather than its performance when compared to a sector-adjusted benchmark.

## Financial data

48. Ongoing condition D (financial viability and sustainability) requires a registered provider to submit audited financial statements and financial tables, including forecast financial information, annually within five months of the provider's financial year end.<sup>11</sup> The OfS uses this data to confirm the provider's performance and position in relation to previous forecasts and to generate lead indicators that relate to financial viability and sustainability. The regulatory framework defines these terms as follows:

RF 399. 'Financially viable' means that the OfS judges that there is no reason to suppose the provider is at material risk of insolvency within a period of three years from the date on which the judgement is made.

RF 408. 'Financially sustainable' means the OfS judges that the provider's plans and protections show that it has sufficient financial resources to fulfil conditions D(iii) and D(iv) for the period of five years from the date on which the judgement is made, and that it is likely to be able to operate in accordance with these plans and projections over this period.

49. The composite financial viability and sustainability indicators that the OfS uses to inform its monitoring activity include measures of how much cash a provider holds relative to its needs, whether the provider is making deficits, and the extent to which a provider's assets exceed its liabilities.
50. The OfS expects to assess the financial performance of all providers to fulfil its duty under section 68 of HERA to monitor the financial sustainability of registered higher education providers. The monitoring process is designed to be risk-based and to allow the OfS to focus its attention on those providers that are at increased risk of breaching condition D.
51. Where a provider is a further education college or a sixth form college under the primary regulation of the ESFA, it is not required to submit financial data to the OfS. For such providers, the OfS works closely with the ESFA to ensure that it is able to undertake appropriate monitoring of financial viability and sustainability.

## Reportable events

52. The OfS's regulatory framework (paragraph 494) sets out the changes or events that a provider must submit to the OfS as a reportable event.
53. Guidance about the submission of reportable events can be found on our website.<sup>12</sup>

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<sup>11</sup> The OfS will publish a new version of the accounts direction and further guidance on financial returns in 2019-20.

<sup>12</sup> Available at: [www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/](http://www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/)

RF 144. Reporting of such changes or events may prompt the OfS to undertake a reassessment of risk in relation to one or more of a provider's ongoing conditions of registration. The OfS will then use this risk assessment to determine whether any further regulatory action is required, such as the imposition of specific conditions of registration and/or increased monitoring.

54. Further information about how the OfS will undertake reassessments of risk in the context of a reportable event or other trigger can be found in paragraphs 63 and 64 below.

## Notifications

55. The OfS may receive information from students, staff members and other people and organisations that tell it something material about a provider's compliance with the ongoing conditions of registration. This type of information is called a 'notification'. Notifications may include complaints about a provider and whistleblowing, as well as general allegations or concerns that people want to report.
56. When the OfS receives a notification, it will consider which conditions of registration it may relate to and whether it might signal a change in the risk of a breach of one or more of these conditions. Where there is a possible change in this risk assessment, the OfS will undertake a reassessment of risk. As part of this reassessment, the OfS may also consider the potential impact of a notification on a provider's degree awarding powers or university title.
57. Any individual wishing to notify the OfS about a provider that it regulates should contact [notifications@officeforstudents.org.uk](mailto:notifications@officeforstudents.org.uk). The OfS may contact the individual or organisation that made the notification again if further information is required. The OfS does not normally provide updates on the progress or outcome of notifications to the source of the notification.

## Evidence from compliance with other conditions

58. There are some conditions where concerns about an increased risk of a future breach, or an actual breach, will be identified through the OfS's monitoring of other conditions, or from other evidence that the OfS holds. For example, the OfS's assessment of the adequacy and effectiveness of a provider's management and governance arrangements (for condition E2) may be informed by any breach or increased risk of a future breach of the B conditions, where this suggests inadequate or ineffective control or oversight of quality and standards matters by the provider. Similarly, any breach, or increased risk of a future breach, of condition B3 (relating to student outcomes) may lead to further consideration of a provider's compliance with condition B2 (relating to provision of support to students to succeed).
59. The OfS will monitor compliance with some conditions of registration by drawing on the information held within the OfS itself. For example, condition F3 requires timely submission of accurate information to the OfS. The OfS will monitor the extent to which a provider is satisfying this condition by tracking submissions made by the provider and the timeliness and quality of those submissions.
60. The OfS is also likely adopt such an approach to deliver its objectives in relation to access and participation. For example, when considering the risk that a provider may breach condition A1

because it has not complied with the provisions of its approved access and participation plan, the OfS may consider information it holds about the provider's management and governance arrangements more generally. Consideration of information held in relation to a provider's access and participation plan may also inform the OfS's assessment of other conditions. For example, a provider's access and participation commitments may be considered when assessing the risk of a future breach of conditions B1 and B2 (quality and standards).

## Random sampling

61. In addition to its general monitoring activities, the OfS will consider an individual provider's compliance with its ongoing conditions of registration through the process of random sampling. The OfS's general approach to random sampling is set out in paragraphs 147-152 of the regulatory framework.<sup>13</sup>

## Use of information sources to monitor compliance with the ongoing conditions of registration

62. The table below provides a non-exhaustive list of information sources that the OfS uses to monitor compliance with the ongoing conditions of registration<sup>14</sup>.

Ongoing condition of registration	Lead indicators	Reportable events	Notifications	Evidence from other conditions	Random sampling
A1: Access and participation plan	✓	✓	✓	✓	✓
A2: Access and participation statement	x	x	✓	x	✓
B1: Quality and standards	x	✓	✓	✓	✓
B2: Quality and standards	✓	✓	✓	✓	✓
B3: Quality and standards	✓	✓	✓	✓	✓
B4: Quality and standards	✓	✓	✓	✓	✓

<sup>13</sup> Further information about random sampling will be published during 2019-20.

<sup>14</sup> This table is not an exhaustive summary of the information sources which the OfS may use or its approach to their use in the context of its general or enhanced monitoring of providers. The OfS will always consider on a case-by-case basis the relevant material for each decision and will consider that material if relevant. For example, the context in which a provider operates will always be relevant when considering the provider's student outcomes for condition B3.



Ongoing condition of registration	Lead indicators	Reportable events	Notifications	Evidence from other conditions	Random sampling
B5: Quality and standards	x	✓	✓	✓	✓
B6: TEF participation	✓	✓	x	x	✓
C1: Guidance on consumer protection law	✓	✓	✓	✓	✓
C2: Student complaints scheme	✓	x	✓	✓	✓
C3: Student protection plan	✓	✓	✓	✓	✓
D: Financial viability and sustainability	✓	✓	✓	x	✓
E1: Public interest governance	x	✓	✓	x	✓
E2: Management and governance	✓ <sup>15</sup>	✓	✓	✓	✓
E3: Accountability	✓	✓	✓	✓	✓
E4: Notification of changes to the Register	x	✓	✓	x	✓
E5: Facilitation of electoral registration	x	x	✓	x	✓
F1: Transparency information	x	x	✓	✓	✓
F2: Student transfer arrangements	✓	x	✓	✓	✓

<sup>15</sup> Lead indicators for condition E2 are currently in development.

Ongoing condition of registration	Lead indicators	Reportable events	Notifications	Evidence from other conditions	Random sampling
F3: Provision of information to the OfS	✓	✓	✓	✓	✓
F4: Provision of information to the designated data body	✓	x	✓	x	✓
G1: Mandatory fee limit	x	✓	✓	✓	✓
G2: Compliance with terms and conditions of financial support	x	✓	✓	✓	✓
G3: Payment of OfS and designated body fees	x	✓	✓	✓	✓

## Assessment

63. Where its monitoring activities identify reason to consider that there may be or may have been a breach of one or more conditions of registration, or a change in the risk of a future breach of one or more condition, the OfS will undertake an assessment to ensure that it understands the risk and is acting proportionately in relation to this.
64. During an assessment, the OfS may undertake the following activities (this is not an exhaustive list):
- a. A deeper analysis of information that it already holds, such as that previously submitted by a provider and from which it has developed lead indicator(s), or from a reportable event
  - b. Request additional information from a provider to enable it to understand more fully the risk of a breach, including the impact of any potential breach on the provider's degree awarding powers or university title
  - c. An investigation
  - d. A management and governance review
  - e. Request the Designated Quality Body (DQB) to undertake a quality and standards review (QSR)
  - f. A data audit

- g. Enter and search a provider's premises under a magistrate's warrant.

## Making decisions about compliance with conditions of registration

- 65. The OfS's scheme of delegation sets out how it makes decisions about individual providers. Decisions are normally taken by the OfS board itself, by the Provider Risk Committee<sup>16</sup>, or through delegations to the chief executive, directors and staff. The scheme of delegation is a publicly available document and can be accessed on the OfS website<sup>17</sup>.
- 66. In making decisions under the scheme of delegation, the OfS will have regard to its general duties as set out in section 2 of HERA and, where relevant, the intervention factors listed in paragraph 167 of the regulatory framework. The OfS will consider the circumstances of an individual case and act proportionately in determining its response to a breach of a condition of registration, or an increased risk of such a breach.
- 67. In reaching a decision about a provider, the OfS will first determine whether there is evidence of a breach of one or more conditions, or of an increased risk of a breach. The OfS then determines whether any further regulatory action is necessary to remedy the breach or mitigate increased risk.
- 68. In determining the actions to take, and the timing of these, the OfS may consider any actions being taken by the provider itself to investigate or remedy the matters of concern. Where appropriate, and where a provider is fully cooperating with the OfS, the OfS may seek to resolve its compliance concerns without recourse to its statutory powers.

## Actions to remedy a breach or mitigate increased risk

- 69. If the OfS considers there to be an increased risk of a provider breaching a condition, it may take regulatory action to mitigate that risk. Such actions are referred to as 'mitigations' and may take different forms depending on the nature and extent of the risk. Mitigations will be imposed as set out in paragraphs 161-166 of the regulatory framework.
- 70. Mitigations can broadly be characterised in the three categories below. The OfS does not normally publish the names of providers where a formal communication has been issued or where enhanced monitoring requirements are in place. The OfS will normally publish a specific condition and the reasons this has been imposed but, in considering whether to do so, will take account of the potential impact of publication.
  - a. **Formal communication:** The OfS will write to a provider where it considers that there is evidence that indicates an increased risk of a future breach of a condition and where the OfS may wish to intervene in future if action is not taken by the provider to reduce this risk, for example to draw a provider's attention to concerns the OfS has about the provider's continuation or completion rates. The formal communication draws a provider's attention to an issue but there is no requirement for the provider to take any particular action in response. The OfS does, however, expect the governing body of a provider to carefully consider the content of a formal communication. If there is subsequently evidence that the risk of a future breach of a condition has increased and a

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<sup>16</sup> For more information see: [www.officeforstudents.org.uk/about/who-we-are/our-board-and-committees/](http://www.officeforstudents.org.uk/about/who-we-are/our-board-and-committees/)

<sup>17</sup> Available at: [www.officeforstudents.org.uk/about/who-we-are/our-board-and-committees/](http://www.officeforstudents.org.uk/about/who-we-are/our-board-and-committees/)

provider took no action in response to the OfS's formal communication, the OfS is more likely to consider it necessary to escalate its regulatory interventions.

- b. **Enhanced monitoring:** This type of mitigation includes any requirement for a provider to submit additional information to the OfS that extends beyond the information requirements placed on all providers as part of general monitoring. The purpose of gathering additional information is to provide the OfS with a fuller understanding of facts in relation to a provider's risk of a breach of a particular condition and to provide assurance that the risk of a breach is not increasing. These requirements for information are underpinned by an F3 Notice and so have statutory force (see paragraphs 23-28 above) and can vary significantly in their complexity and duration. For example, a provider may be required to:
- i. submit by a certain date an action plan setting out the steps it will take to improve student outcomes
  - ii. notify the OfS at any time if there is any material change to its student recruitment position and therefore its financial forecasts
  - iii. submit evidence that planned changes to its governing documents have been completed
  - iv. submit the outcomes from an evaluation of new access and participation measures and detail resulting revisions to activities and targets.
- c. **Specific ongoing condition of registration:** A specific condition sets out any requirement placed on a provider under section 6 of HERA. For example, a requirement that a provider submit an improvement plan setting out how it will deliver a material improvement in continuation and completion rates for specific groups of students. More information is set out in paragraphs 174-177 of the regulatory framework. Where the OfS makes a provisional decision to impose a specific condition, it is required by section 6 of HERA to invite representations from the provider before reaching a final decision. A registered provider is required to satisfy any specific ongoing condition that is imposed and a failure to do so may result in a sanction being imposed.

71. Where the OfS considers that there is a potential breach of a condition of registration, it will inform a provider of its provisional decision that a breach has occurred. The provider will be invited to make representations which the OfS will take into account in reaching its final decision.

## Sanctions

### The OfS's powers and duties

72. The OfS may impose a sanction on a registered higher education provider if it appears to the OfS that there is or has been a breach of one of its ongoing registration conditions.
73. On 1 August 2019 the OfS assumed the power to impose a monetary penalty on a registered provider as set out in section 15 of HERA. This power now sits alongside the powers to suspend aspects of a provider's registration or to deregister a provider as set out in sections 16 and 18 of HERA.

## Section 15 of the Higher Education and Research Act 2017

### *Enforcement of ongoing registration conditions*

#### **Power to impose monetary penalties**

- (1) The OfS may impose a monetary penalty on a registered higher education provider if it appears to the OfS that there is or has been a breach of one of its ongoing registration conditions.
- (2) A “monetary penalty” is a requirement to pay the OfS a penalty of an amount determined by the OfS in accordance with regulations made by the Secretary of State.
- (3) The Secretary of State may by regulations make provision about matters to which the OfS must, or must not, have regard in exercising its powers under subsection (1)
- (4) Schedule 3 contains provision about—
  - (a) the procedure for imposing a monetary penalty,
  - (b) rights of appeal,
  - (c) the recovery of the penalty and interest,
  - (d) the retention of sums received.

74. The regulations referred to in section 15 (2) and (3) were set out in The Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019.<sup>18</sup> These regulations set out the maximum amount for a monetary penalty determined by the OfS, the meaning of “qualifying income”, and the matters to which the OfS must have regard in exercising its power to impose such a penalty. The latter is considered further in paragraph 78 below.

## Section 2 of the Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019

### *Enforcement of ongoing registration conditions*

#### **Monetary penalties: maximum amount**

The amount of a penalty determined by the OfS under section 15 (2) of the Act must not exceed the higher of—

- (a) 2% of the qualifying income of the registered higher education provider on whom the penalty is to be imposed; or
- (b) £500,000

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<sup>18</sup> See [http://www.legislation.gov.uk/uksi/2019/1026/pdfs/uksi\\_20191026\\_en.pdf](http://www.legislation.gov.uk/uksi/2019/1026/pdfs/uksi_20191026_en.pdf)

75. The OfS will have regard to its general duties and the principles of best regulatory practice when it considers using its sanction powers. It will also have regard to the provisions of the regulatory framework, particularly paragraphs 178–181 on monetary penalties, 182–187 on suspension of registration, and 188–196 on deregistration.

### The OfS’s approach to imposing sanctions

76. The regulatory framework sets out when the OfS is likely to use different types of sanction.

Type of sanction	Relevant paragraph(s) in the regulatory framework
Monetary penalty	Paragraph 178
Suspension of registration	Paragraphs 182–183, 186
Deregistration	Paragraphs 188–189
Refusal to approve an APP	Paragraph 197

77. HERA also gives the OfS powers to vary or revoke degree awarding powers and to revoke authorisation for a provider to use the legally protected term ‘university’ in its name. The OfS will publish guidance about its approach to the variation and revocation of degree awarding powers in autumn 2019.

### The intervention factors

78. The regulatory framework sets out factors the OfS will consider when deciding whether and how to intervene in response to a breach or an increased risk of a breach:

RF 167. The OfS will consider a range of factors before deciding whether to intervene, and if so, which form that intervention should take. Not all factors will be relevant in every circumstance, and the OfS will consider the relevant factors in the round when making its decision. The factors include:

- a. How significant the risk of a breach is, on the basis of its likelihood and the severity of the impact of the breach should it occur. An intervention is more likely where the OfS considers the risk of breach to be significant, or when a breach has already occurred.
- b. The actual or likely severity of the impact of a breach (either from a single instance or a number of instances). An intervention is more likely where: the impact on students is significant (e.g. student study is disrupted, there are breaches to the student contract, a large number of students are affected); the taxpayer’s interests have been severely affected (costs have increased affecting value for money); or there is reputational damage to the sector as a whole (and considering fairness to providers that did comply).

- c. The impact of an intervention on students. Where the use of an intervention would have a materially negative impact on students and their experience, the OfS is more likely to decide to use enhanced monitoring or a specific ongoing conditions of registration to address the issue.
- d. The nature of the increased risk or breach and whether a particular intervention would be effective in mitigating the risk or remedying the breach.
- e. How the OfS became aware of the increased risk or breach. An intervention is more likely where the provider has not notified the OfS and the OfS has become aware from other sources, such as through its own regulatory activity, whistleblowing, or media reporting.
- f. How long the underlying causes of the increased risk or the breach have existed and the extent to which these occurred deliberately or recklessly, or whether there is dishonesty involved. An intervention is more likely where the issues are longstanding, the provider has been deliberate or reckless or where issues have been concealed.
- g. Steps taken by the provider to mitigate the increased risk or remedy the breach. An intervention is more likely to be used where a provider has not provided sufficient evidence that it has taken reasonable steps to mitigate an increased risk or prevent or remedy a breach.
- h. The likelihood that a breach could happen again, including the provider's history of regulatory compliance. An intervention is more likely to be used where a provider has a history of non-compliance or the OfS has concerns that a breach could happen again.
- i. The extent to which the provider cooperates with the OfS's investigations and enquiries. An intervention is more likely where a provider does not fully cooperate with the OfS.
- j. Any gain (financial or otherwise) made by the provider as a result of the increased risk or the breach. An intervention is more likely where a provider has gained from increased risk or non-compliance.
- k. The provider's behaviour. An intervention is more likely when increased risk of a breach or a breach is as a result of the provider acting deliberately or recklessly; failing to act, or acting dishonestly or seeking to cover-up information.
- l. The action that the regulator has taken in previous similar cases. An intervention is more likely where the OfS has intervened in a previous similar case.
- m. Any action taken by another regulator to remedy the increased risk or breach. An intervention is more likely to be used where an increased risk or a breach is not being remedied by another regulator's actions.
- n. The extent to which any increased risk or breach has created a lack of confidence in the higher education sector. An intervention is more likely where action taken by a provider or a group of providers has undermined confidence in the higher education sector and therefore affected providers that have complied.

79. The intervention factors apply in a broad range of circumstances. They apply to any decisions the OfS makes about whether and how to intervene. There are also factors that the OfS is required to have regard to in the narrower set of circumstances where it is considering applying a monetary penalty. When deciding whether to impose a monetary penalty and the scale of any such penalty, the OfS is required to have regard to the factors set out in section 4 of The Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019 (see below).

## **Section 4 of the Higher Education (Monetary Penalties and Refusal to Renew and Access and Participation Plan) (England) Regulations 2019**

### **Monetary penalties: matters to which the OfS must have regard**

(1) In exercising its power to impose a monetary penalty on a registered higher education provider under section 15 (1) of the Act, in addition to any other matters it considers appropriate, the OfS must have regard to—

- (a) the nature, seriousness, duration and impact of the relevant breach;
- (b) any financial or other gain made by the provider as a result of the relevant breach which benefits the provider;
- (c) any financial or other loss avoided as a result of the relevant breach which benefits the provider;
- (d) where any gain described in sub-paragraph (b) or avoided loss described in sub-paragraph (c) can be quantified, the amount of any such gain or avoided loss;
- (e) any previous breach of the provider's ongoing registration conditions;
- (f) any steps taken by the provider following the relevant breach to avoid a breach in the future of its ongoing registration conditions;
- (g) the impact that imposing a monetary penalty on the provider is likely to have on—
  - (i) students on higher education courses at the provider,
  - (ii) students generally, or students of a particular description, on higher education courses provided by registered higher education providers.

## **Procedures**

80. The procedures relating to the imposition of a monetary penalty, suspension and deregistration are set out in sections 15-20 of HERA and paragraphs 178-196 of the regulatory framework. Procedures relating to the OfS's power to vary or revoke degree awarding powers will be set out in guidance to be published in autumn 2019.



## Voluntary deregistration

81. The regulatory framework sets out the process the OfS will follow when a registered provider asks to be removed from the Register on a voluntary basis:

RF 191. A provider may request to be removed from the Register on a voluntary basis, as set out in section 22 of HERA, for example, where a provider chooses to exit the market. In such cases, the governing body of the provider must formally apply to the OfS, setting out why it wishes to be deregistered and when it would like the deregistration to come into effect. The OfS will normally deregister the provider on the date requested, unless such a date gives insufficient time to deregister the provider in an orderly fashion and without impact on the provider's students. If the OfS is minded to alter the date of deregistration from that requested, it will usually seek to agree this with the provider. Under section 22 of HERA, the OfS must then remove the provider from the Register, but is obliged to keep a list of providers removed from the Register in this way. This will be part of other, historic information the OfS will make available.

82. A provider wishing to make a request to be removed from the Register on a voluntary basis should contact [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk). The OfS will consider the facts of each case, including any ongoing regulatory action, when determining its response to requests for voluntary deregistration.
83. Where the OfS intends to suspend registration, or has reached a provisional decision to deregister a provider, and the provider requests deregistration on a voluntary basis, the OfS may determine that the provider should not be permitted to deregister on a voluntary basis. Any decision by the OfS to prevent the voluntary deregistration of a provider will consider the facts of a provider's individual case.

### III. Maintaining registered status

84. This section of this advice document provides additional information about regulatory requirements for registered providers.

#### Continuing to meet eligibility requirements

85. During the registration process the OfS assessed whether a provider satisfied the definition of an 'English higher education provider' in HERA and as explained in the regulatory framework. These requirements are set out in the regulatory framework:

RF 75. Only a provider that is, or intends to become, an English higher education provider, as defined in section 83 of HERA, can apply to register with the OfS. There are three elements in determining whether an entity is an English higher education provider:

a. Provision of higher education. This is defined as delivering a course of any description listed in Schedule 6 to the Education Reform Act 1988.

b. English provider. This is defined as a provider whose activities are carried on, or principally carried on, in England. 'Principally carried on in England' will be taken to mean that more than 50 per cent of a provider's higher education activities are carried on in England. In assessing where a provider's activities are carried on, the OfS will take 'activities' to mean the activities that support the provision of higher education, i.e. the delivery of teaching, designing of courses etc., not the learning (it is the location of the provision, not the location of students that will usually be the defining factor).

c. Institution. A provider can only be registered if it is an institution providing higher education.

86. More detailed definitions of these eligibility requirements can be found in paragraphs 74-82 of the regulatory framework.

87. A provider must continue to meet the eligibility requirements in order to maintain its registered status. The OfS must be notified at the earliest opportunity of any changes to a provider's circumstances which may mean it no longer meets the eligibility requirements<sup>19</sup>.

#### The ongoing conditions of registration

88. HERA requires the OfS to publish, as part of its regulatory framework, guidance for registered higher education providers on the general ongoing conditions of registration. Detailed guidance about these conditions is set out in Part V of the regulatory framework, including information about how the OfS will assess a provider's compliance with each condition and examples of behaviours that may indicate compliance or non-compliance.

89. The conditions applicable to an individual provider will depend on the category in which the provider is registered. Providers should refer to the regulatory framework in the first instance

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<sup>19</sup> For more information about how to submit reportable events to the OfS, see [www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/](http://www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/)

when seeking guidance on the ongoing conditions of registration. The table below highlights relevant sections of the regulatory framework, as well as other advice and guidance that has been published by the OfS and other bodies<sup>20</sup>.

Condition	Applies to	Additional guidance
A1: Access and participation plan	All Approved (fee cap) providers charging above the basic amount	Paragraphs 311-322 of the regulatory framework Regulatory notice 1 <a href="http://www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/">[www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/]</a> Regulatory advice 6 <a href="http://www.officeforstudents.org.uk/publications/regulatory-advice-6-how-to-prepare-your-access-and-participation-plan-effective-practice-advice/">[www.officeforstudents.org.uk/publications/regulatory-advice-6-how-to-prepare-your-access-and-participation-plan-effective-practice-advice/]</a>
A2: Access and participation statement	All Approved (fee cap) providers charging fees up to the basic amount and all Approved providers	Paragraphs 332-331 of the regulatory framework Regulatory advice 7 <a href="http://www.officeforstudents.org.uk/publications/regulatory-advice-7-advice-on-preparing-your-2019-20-access-and-participation-statement/">[www.officeforstudents.org.uk/publications/regulatory-advice-7-advice-on-preparing-your-2019-20-access-and-participation-statement/]</a>
B1, B2, B3, B4 and B5: Quality and standards	All registered providers	Paragraphs 332-335 of the regulatory framework For conditions B1, B2, B4 and B5, providers are reminded that the OfS may ask the designated quality body to conduct a Quality and Standards Review. Guidance about such reviews can be found on the QAA's website <a href="https://www.qaa.ac.uk/en/reviewing-higher-education/types-of-review/quality-and-standards-review/providers-registered-with-the-ofs">[https://www.qaa.ac.uk/en/reviewing-higher-education/types-of-review/quality-and-standards-review/providers-registered-with-the-ofs]</a>
B6: Teaching Excellence and Student Outcomes Framework (TEF) participation	All registered providers with more than 500 students on higher education courses	Paragraphs 356-363 of the regulatory framework TEF pages of OfS website <a href="http://www.officeforstudents.org.uk/advice-and-guidance/teaching/">[www.officeforstudents.org.uk/advice-and-guidance/teaching/]</a>

<sup>20</sup> This table is not exhaustive. The OfS amends its guidance from time to time and it is the responsibility of a registered provider to ensure it is using the most up to date guidance. The OfS does not control guidance published by other bodies and such third party guidance may be subject to change.

Condition	Applies to	Additional guidance
C1: Guidance on consumer protection law	All registered providers	<p>Paragraphs 364-374 of the regulatory framework</p> <p>Providers are reminded that the regulatory framework states that 'relevant guidance' in this context is the CMA's publication 'UK higher education providers: advice on consumer protection law'</p> <p><a href="https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers">[https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers]</a> or other guidance that the provider can demonstrate is equally authoritative.</p>
C2: Student complaints scheme	All registered providers	<p>Paragraphs 375-380 of the regulatory framework</p> <p>Providers are reminded that the OIA publishes a good practice framework <a href="https://www.oiahe.org.uk/resources-and-publications/good-practice-framework/">[https://www.oiahe.org.uk/resources-and-publications/good-practice-framework/]</a> for providers, which offers guidance about how to handle complaints and academic appeals.</p>
C3: Student protection plan	All registered providers	<p>Paragraphs 381-396 of the regulatory framework</p> <p>The OfS intends to publish further guidance for providers about student protection plans.</p>
D: Financial viability and sustainability	All registered providers	<p>Paragraphs 397-423 of the regulatory framework</p> <p>The OfS will publish a new version of the accounts direction and further guidance on financial returns in 2019-20.</p>
E1: Public interest governance	All registered providers	<p>Paragraphs 424-434 of the regulatory framework</p> <p>The OfS intends to publish additional guidance on the public interest governance principles. The OfS expects that registered providers will review their governing documents on publication of this guidance to ensure that they continue to uphold the applicable public interest governance principles.</p>

Condition	Applies to	Additional guidance
E2: Management and governance	All registered providers	Paragraphs 435-451 of the regulatory framework
E3: Accountability	All registered providers	Paragraphs 452-460 of the regulatory framework Regulatory advice 10: Guidance for providers on the responsibilities of accountable officers <a href="http://www.officeforstudents.org.uk/publications/regulatory-advice-10-accountable-officers-guidance-for-providers-on-the-responsibilities-of-accountable-officers/">www.officeforstudents.org.uk/publications/regulatory-advice-10-accountable-officers-guidance-for-providers-on-the-responsibilities-of-accountable-officers/</a> The OfS will publish a new version of the accounts direction in 2019.
E4: Notification of changes to the Register	All registered providers	Paragraphs 461-467 of the regulatory framework <a href="http://www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/">www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/</a>
E5: Facilitation of electoral registration	All registered providers	Paragraphs 468-473 of the regulatory framework Regulatory advice 11 <a href="http://www.officeforstudents.org.uk/publications/regulatory-advice-11-guidance-for-providers-about-facilitating-electoral-registration/">www.officeforstudents.org.uk/publications/regulatory-advice-11-guidance-for-providers-about-facilitating-electoral-registration/</a>
F1: Transparency information	All registered providers	Paragraphs 474-484 of the regulatory framework Regulatory advice 8 <a href="http://www.officeforstudents.org.uk/publications/regulatory-advice-8-guidance-for-providers-about-condition-of-registration-f1-transparency-information/">www.officeforstudents.org.uk/publications/regulatory-advice-8-guidance-for-providers-about-condition-of-registration-f1-transparency-information/</a> Technical guidance <a href="http://www.officeforstudents.org.uk/publications/guidance-for-providers-on-submitting-the-transparency-return-2019/">www.officeforstudents.org.uk/publications/guidance-for-providers-on-submitting-the-transparency-return-2019/</a>
F2: Student transfer arrangements	All registered providers	Paragraphs 485-488 of the regulatory framework

Condition	Applies to	Additional guidance
F3: Provision of information to the OfS	All registered providers	Paragraphs 489-495 of the regulatory framework <a href="http://www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/">[www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/]</a>
F4: Provision of information to the DDB	All registered providers	Paragraphs 496-497 of the regulatory framework
G1: Mandatory fee limit	Approved (fee cap) providers	Paragraphs 499-503 of the regulatory framework
G2: Compliance with terms and conditions of financial support	All registered provider in receipt of financial support from the OfS or UKRI	Paragraphs 504-510 of the regulatory framework Terms and conditions of OfS funding for 2019-20 <a href="http://www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-2019-20/">[www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-2019-20/]</a> Terms and conditions of Research England grant funding <a href="https://re.ukri.org/news-events-publications/publications/terms-and-conditions-of-research-england-grant1/">[https://re.ukri.org/news-events-publications/publications/terms-and-conditions-of-research-england-grant1/]</a>
G3: Payment of OfS and designated body fees	All registered providers	Paragraphs 511-519 of the regulatory framework Technical guidance about the payment of annual registration fees <a href="http://www.officeforstudents.org.uk/publications/payment-of-annual-ofs-registration-fees-and-initial-fees/">[www.officeforstudents.org.uk/publications/payment-of-annual-ofs-registration-fees-and-initial-fees/]</a>

## Partnership arrangements

90. A substantial number of registered providers deliver courses in partnership with other providers. Such partnerships can take a variety of forms.
91. The regulatory framework provides information about the approach that the OfS will take to the regulation of partnerships:
- Paragraphs 63-66 of the regulatory framework are concerned with validation and subcontractual arrangements between partners.
  - The glossary to the regulatory framework provides definitions of the terms ‘validation agreement’ and ‘subcontractual arrangement’ as they are used by the OfS.

- Guidance on reportable events relevant to partnerships can be found in paragraph 494 of the regulatory framework and also in the advice on reportable events, published separately<sup>21</sup>.
- Other guidance on partnerships, validation agreements and subcontractual arrangements can be found throughout the regulatory framework. Information relating to partnerships and transnational education can be found in this document (see paragraphs 94-98 below).

92. Each registered provider will need to understand the extent of its obligations to the OfS in relation to its partnerships, including in relation to condition A1 (where applicable) and condition C3. It should ensure it is meeting each of its ongoing conditions of registration with reference to all of its relevant partnership activity, and be prepared to provide information about this to the OfS when requested to do so.

93. A provider holding degree awarding powers should also consider the impact of any new partnership arrangement on these powers and its ability to continue to meet the criteria for degree awarding powers. The OfS may also request further information in this context.

## **Registered providers with higher education activity outside England**

94. The regulatory framework (paragraph 88) sets out the OfS's position on the regulation of providers with activities outside England (often referred to as 'transnational education' or 'TNE').

RF 88. A provider that is based in England and meets the definition of an English higher education provider may also carry on some activity overseas, for example, by operating an overseas campus where it awards its own English degrees or by delivering distance learning provision to students based outside England. The OfS will regulate such overseas activity on the basis that the obligations of the registered provider extend to students for whom it is the awarding body wherever and however they study. The OfS would not regulate overseas activity where the registered provider is not the awarding body for students based outside England, for example, if it works in partnership with another awarding body that is not itself registered with the OfS. Where such unregulated activity exists, the OfS would, however, take into account any income or costs, or risks to management and governance, to which the registered provider is exposed in relation to any such activities or entities for the purposes of determining whether the registered provider satisfies its ongoing conditions of registration.

95. Where the overseas activities of a registered provider falls within the scope set out in paragraph 88 of the regulatory framework, the OfS will apply the same general approach to risk-based monitoring and intervention for these activities as it does to the England-based activities of that provider. This includes the use by the OfS of lead indicators, reportable events and intelligence from whistleblowing and student complaints as sources of information regarding these activities, as set out in paragraph 129 of the regulatory framework.

<sup>21</sup> See [www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/](http://www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/)

96. The OfS therefore expects a registered provider to be exercising appropriate oversight of its overseas activities, including monitoring of student outcomes, as part of a responsible approach to the quality assurance of its full portfolio of provision.
97. Providers should note the behaviours that may indicate compliance with the conditions of registration relating to partnerships, set out in paragraph 355 of the regulatory framework, and consider whether and how these can be demonstrated for their overseas activities.
98. The OfS is the body that can give statutory regulatory information and assurance to other UK and non-UK bodies regarding the quality and standards of the higher education delivered by registered English higher education providers. The OfS is able to provide confirmation to overseas stakeholders about the status of the OfS's Register as a single, authoritative reference for students, businesses, providers, other regulators and members of the public about the regulatory status of each registered provider.

### **Change of registration category**

99. Information about the two registration categories and the corresponding benefits offered by each category can be found in paragraphs 59-60 of the regulatory framework. A registered provider that wishes to change its registration category from the Approved category to the Approved (fee cap) category, or vice versa, should contact [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) at the earliest opportunity. Providers should note that a request to change registration category will be subject to assessment by the OfS and is likely to involve submission of further information.

### **Change of statutory fee limit**

100. A provider registered in the Approved (fee cap) category that wishes to change the statutory fee limit that applies to its courses, for example from the basic fee limit to the higher fee limit, should contact [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk) at the earliest opportunity. Providers should note that a request to change fee limit will be subject to assessment by the OfS and is likely to involve submission of further information.

### **Exempt charities**

101. The regulatory framework sets out the OfS's functions as these relate to exempt charities.

RF 159. Most higher education providers hold charitable status. Some are registered with, and regulated directly by, the Charity Commission. However, many are 'exempt charities', exempt from registration with and direct regulation by the Charity Commission. Exempt charities have a Principal Regulator appointed whose duty is to promote compliance with charity law by the charities they regulate.



102. The OfS is the principal regulator for charities that are higher education providers and are exempt from registration with the Charity Commission.<sup>22</sup> Under paragraph 28 of Schedule 3 to the Charities Act 2011, the OfS is also the principal regulator for exempt charities that are closely connected with exempt higher education charities for which it is the principal regulator.
103. Charities that are registered with, and regulated by, the Charity Commission continue to be regulated by the Charity Commission.
104. As an exempt charity, a provider will still have to comply with charity law and if the OfS has concerns that it may not be doing so, it can ask the Charity Commission to use its powers to investigate. The government has issued guidance on exempt charities. The guidance sets out what an exempt charity is, the responsibilities of exempt charities and its trustees, and the regulatory powers the commission has for exempt charities. The OfS has published regulatory advice 5<sup>23</sup>, which sets out guidance for providers that are exempt charities. The advice sets out the legally required disclosure requirements for exempt charities regulated by the OfS.
105. Where matters of concern come to the attention of the OfS as the principal regulator for exempt charities, the OfS may also use its powers as the regulator for higher education in England to investigate whether those matters also raise concerns about a provider's compliance with its conditions of registration.

## **Prevent duty**

106. From 1 April 2018, the OfS became the 'monitoring authority' of the 'Prevent duty' in the higher education sector as set out in the Counter Terrorism and Security Act 2015 (CTSA).
107. A 'qualifying institution' that is subject to the Prevent duty (set out in section 11 of the Higher Education Act 2004) refers to 'an institution in England which is a registered higher education provider' (as defined under section 85 of HERA). This definition applies to all providers registered with the OfS.
108. The Prevent duty also applies to those providers not registered with the OfS, but that have over 250 higher education students, and all the autonomous colleges, schools and halls of the universities of Cambridge, Durham and Oxford.
109. Further information about reporting requirements and the action that will be taken if a provider fails to comply are set out in the Prevent duty framework for monitoring in higher education in England.<sup>24</sup>

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<sup>22</sup> See section 25 of the Charities Act 2011.

<sup>23</sup> See [www.officeforstudents.org.uk/publications/regulatory-advice-5-exempt-charities/](http://www.officeforstudents.org.uk/publications/regulatory-advice-5-exempt-charities/)

<sup>24</sup> See [www.officeforstudents.org.uk/publications/prevent-duty-framework-for-monitoring-in-higher-education-in-england-2018-19-onwards/](http://www.officeforstudents.org.uk/publications/prevent-duty-framework-for-monitoring-in-higher-education-in-england-2018-19-onwards/)

## Abbreviations

CTSA	Counter Terrorism and Security Act 2015
ESFA	Education and Skills Funding Agency
HERA	Higher Education and Research Act 2017
OfS	Office for Students
OIA	Office of the Independent Adjudicator
RF	Regulatory framework
SLC	Students Loan Company
TNE	Transnational education
UKRI	UK Research and Innovation



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