

Annex G: Matters to which we have had regard

The OfS's general duties

1. In setting out the proposals in this consultation, we have had regard to its 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,
 - aa. the need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers,
 - ab. the need to protect the academic freedom of academic staff at English higher education providers,
 - b. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,
 - c. the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers,
 - d. the need to promote value for money in the provision of higher education by English higher education providers,
 - e. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,
 - f. the need to use the OfS's resources in an efficient, effective and economic way, and
 - g. so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be:
 - i. transparent, accountable, proportionate and consistent.
 - ii. targeted only at cases in which action is needed.
2. In making our proposals, we have given particular weight to (b), (e), (f) and (g). A summary of our reasoning is set out in paragraphs 3 to 16 of this annex.
3. Our general duty to have regard to the need to promote quality, and greater choice and opportunities for students, underpins the proposals that we have set out. The decisions we have taken following the stage one consultation, and the proposals in this consultation for the development of the future quality system, are intended to enable us to better achieve our aims for the quality system to:
 - a. Ensure that students benefit from high-quality and continuously improving provision.

- b. Provide clear information about the level of quality delivered by different providers to help inform student choice.
 - c. Support and incentivise providers to deliver the highest levels of quality for their students, and ensure improvements are made where quality falls short.
4. In general, we have made proposals that we consider will deliver our primary aim of driving improvement across the sector, for the benefit of all students, wherever they are studying.
 5. We consider that our proposals concerning the alignment of the assessment criteria with revised B conditions and the strengthening of incentives and consequences for assessment outcomes, including TEF ratings, will help deliver our aims of encouraging providers to deliver high quality materially above our minimum requirements and for growth in student recruitment to take place at high-quality providers. We also consider that our publication of the proposed criteria would promote quality and student awareness of our assessment of quality, so that more students benefit from high-quality provision.
 6. We have had regard to the need to support greater student choice in terms of a diverse range of providers, courses and means of delivery, through taking forward an assessment approach that recognises the diversity of provision in the sector and the need for incentives to apply across all of this. Our assessment approach seeks not only to avoid disincentivising delivery of some types of provision or courses, but to achieve improvements in quality across all types of provision, thereby improving the range of high-quality choices that are available to students. We have proposed to place weight on qualitative evidence and external reports for quality in apprenticeship and small or specialist provision, because we think that this will help to ensure that these providers are appropriately represented. We have also made proposals for the assessment of subcontracted and validated partnership provision that we think will ensure that information for students is immediately relevant to the teaching and learning they should expect to experience at a provider.
 7. We have also had regard to our duty to support student choice when proposing that all providers will receive a TEF rating or minimum requirements outcome, so that future students can access information about the quality that past students have experienced at any registered provider where they might choose to study.
 8. In formulating our proposals, we have had regard to provider autonomy and have proposed that providers will be responsible for selecting the range of evidence that they consider relevant to the quality that their students experience and the format for presenting this evidence. This means that different sizes and shapes of provider will be able to present the evidence most relevant to their individual context. Additionally, in drafting the proposed guidance for providers concerning what we would expect provider student experience submissions to cover, we have had regard to balancing autonomy with our duty to ensure that our regulation is transparent, accountable and consistent.
 9. We have considered our general duty to have regard to the need to promote equality of opportunity and consider our proposals for the design of the quality system will support this through:

- a. Explicit consideration of the experience and outcomes of different groups of students, through the continued consideration of 'split' indicators for groupings such as disability and combined measures of disadvantage.
 - b. Ratings criteria, which require that consistent levels of quality are delivered for all student groups and that the provider effectively tailors its academic support to its particular mix of students.
10. Providers will need to demonstrate that they are delivering among the best experience and outcomes in the sector for all their students to gain the highest rating and the associated incentives, and we consider this will incentivise providers to improve the experience and outcomes of all student groups. We have also set out our proposals to deliver greater alignment between the TEF and access and participation plans, which we consider will drive a more coherent and effective approach in both the TEF and access and participation plans.
11. We have sought to design proposals for our future assessment approach that balance consideration of our duty to have regard to the need to use our resources in an efficient, effective and economic way with:
 - a. Our duty to promote quality, which is supported by the extension of assessments to all registered providers.
 - b. Recognition of the diversity of the sector and institutional autonomy, and the need to vary our assessment approach if we are to effectively assess all providers.
12. We think our proposals represent an efficient way to assess providers effectively, while reducing burden and cost on the sector, and on us, wherever possible. We have designed the proposed assessment processes to be risk-based and minimise the duplication of burden, for providers and us, including in areas such as apprenticeship and higher technical qualification (HTQ) provision, while ensuring that the system has broad coverage of diversity in the sector. We also consider that our proposed approaches to assessment visits and representations have appropriately balanced the need to use our resources in an efficient, effective and economic way with our intention to create a robust, accountable system.
13. We have taken forward the principle applied in the stage one consultation and decisions that we should reduce burden, cost and complexity where it is appropriate in the making our proposals.
14. In designing proposals for the next steps for the future system, we have considered the principles of best regulatory practice, including the principles that regulatory activities should be:
 - transparent, accountable, proportionate and consistent
 - targeted only at cases in which action is needed.
15. This has been particularly relevant when considering how we should integrate our quality assessment activities. Our proposals set out how we will operate assessments with further engagement, investigation or regulatory action where concerns or increased risks to quality are identified, either before or after a scheduled assessment. We have set out proposals that

we consider would give transparency around when and how providers are scheduled for assessment and ensure that providers receive sufficient advance notice of their assessment. We have also set out how we will target our use of assessment visits to address risk.

16. We have drafted guidance concerning the practicalities of assessment and applying for TEF ratings, including assessment cycles, visits, benchmarking, criteria, assessment methodologies and page limits. We will publish this guidance for consideration alongside this consultation. By inviting comments on the draft guidance in our consultation process, we aim to ensure that the development of the finalised system is transparent, accountable, proportionate and consistent.
17. We have also considered the duty to have regard to the need to encourage competition between providers where this is in the interests of students. We consider that providers being able to apply for a TEF assessment and gain access to the proposed incentives for Silver and Gold TEF ratings will encourage competition by rewarding providers that deliver high-quality courses.
18. We have also had regard to our general duty relating to value for money, and consider that improvements in the quality of the student experience and outcomes across the higher education sector will result in better value for money for students and taxpayers. Our proposals include the use of a broader set of employment and further study indicators in our assessments. This would help ensure that assessments take account of a wider range of positive outcomes that students may achieve through higher education, creating incentives for providers to improve performance across a broader range of areas that matter to students and deliver value for money for them.
19. We have also had regard to our general duties to promote freedom of speech and secure academic freedom, but consider these to be less pertinent to our proposals.

The public sector equality duty

20. We have had regard to Schedule 1, paragraph 21 of HERA, which extends the Equality Act 2010, and therefore the public sector equality duty, to the OfS. This requires the OfS to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity.
21. Our proposals aim to ensure that all students, whatever their background and characteristics, receive a high-quality student experience and achieve positive outcomes. By designing the ratings criteria in a way that requires providers to demonstrate consistently high levels of quality for all student groups to gain the highest ratings, we hope to incentivise improvements for groups that typically experience less good experience and outcomes.
22. Through this consultation we are seeking views on any unintended consequences of our proposals, for example for particular types of provider or student groups. We are also seeking views about the potential impact of our proposals on individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.

Guidance issued by the Secretary of State

- 23. We have had regard to guidance issued to the OfS by the Secretary of State under Section 2(3) of HERA.
- 24. We will have regard to any further guidance from the Secretary of State once issued.

The Regulators' Code

- 25. We have had regard to the Regulators' Code and consider Section 1 and Section 3 to be particularly relevant to our proposals:
 - a. Section 1 says that regulators should carry out their activities in a way that supports those they regulate to comply and grow, including using proportionate approaches and avoiding unnecessary burdens.
 - b. Section 3 discusses the need to base regulatory activities on risk.
- 26. Our proposals for the methodology of the future quality system represent a risk-based approach, with regulatory activity increased where risk is greatest, and we have sought to design future assessments in a way that streamlines what is required of providers while ensuring the system drives improvements in quality across the sector.