

Consultation

**Office for
Students**



OfS

Proposals for reforms to OfS registration requirements

**Consultation on proposals for two new
initial conditions of registration
(treating students fairly and effective
governance) and changes to registration
application requirements**

This consultation runs from **6 February to 23
April 2025.**

Reference OfS 2025.03

Enquiries to regulation@officeforstudents.org.uk

Publication date 6 February 2025

The Office for Students is the independent regulator for higher education in England. We aim to ensure that students from all backgrounds benefit from high quality higher education, delivered by a diverse, sustainable sector that continues to improve.

Our four regulatory objectives

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

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

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About this consultation

The Office for Students (OfS) is reviewing its approach to assessing providers seeking registration. This consultation sets out the background to our proposals, the reasons we are proposing to make changes and what we expect those changes to achieve.

Timing

Start: **6 February 2025**

End: **23 April 2025**

Who should respond?

Anyone with an interest in consumer and student protection, or governance in English higher education. Anyone with an interest in the OfS's registration process.

We are particularly (but not only) interested in hearing from **students, staff, academics and leaders at higher education providers** that are interested in applying to register with the OfS. We welcome the views of all types and sizes of provider but are particularly interested in hearing from:

- any provider that may want to offer courses funded by the Lifelong Learning Entitlement (LLE)
- any provider currently teaching higher education courses on behalf of another provider through a subcontractual (franchise) arrangement
- registered providers that have, or are thinking about, subcontracting any of their higher education courses to another provider through a subcontractual (franchise) arrangement
- registered providers that may wish to change their category of registration in the future.

We are interested in the views of **further education colleges, employers, third sector organisations, policy bodies**, and others with an interest in the areas on which we are consulting.

We would also welcome views from students or prospective students, particularly those studying at (or considering study at) providers that are not currently registered with the OfS.

How to respond

Please respond by **23 April 2025**.

- Introduction proposal - how we would implement the proposals in this consultation:
<https://survey.officeforstudents.org.uk/s/registration-introduction/>
 - Part 1: <https://survey.officeforstudents.org.uk/s/condition-C5/>
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- Part 2: <https://survey.officeforstudents.org.uk/s/condition-E7/>
 - Part 3: <https://survey.officeforstudents.org.uk/s/registration-requirements/>
-

How we will treat your response

We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details.

If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy).¹

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

Next steps

We will publish a summary of responses to this consultation in summer 2025. Subject to the responses to this consultation, we will decide whether and how to implement the proposals in this consultation. We will explain how and why we have arrived at our decisions, and how we have addressed any points made by respondents.

Enquiries

Email regulation@officeforstudents.org.uk

Alternatively, call our public enquiry line on 0117 931 7317.

We are holding a consultation briefing event in February and a feedback event in March. These events will provide an opportunity for you to hear about our proposals and the thinking behind them, to ask questions and then to give us your feedback. The dates and details on [how to join these are on our website](#).

If you require this document in an **alternative format**, or you need assistance with the online form, contact digitalpublishing@officeforstudents.org.uk. (**Please note:** this email

¹ Available at [OfS privacy - Office for Students](#).

address should **not** be used for submitting your consultation response.)

For more information about our work to date on the subjects of this consultation, please visit the OfS website:

- [Consumer protection for students](#)
- [Consultation on OfS strategy for 2025 to 2030](#)
- [Registering with the OfS](#)

Executive summary

One of the OfS's roles is to decide which higher education providers should and should not join our Register. Providers on our Register gain access to significant public funding through various mechanisms.

There are and will be many high quality, innovative providers that want to enter the regulated higher education sector in England. We want to make the entry process as smooth as possible for these providers because they enrich the system and offer choice and value for students. There are also some providers that should not be registered. This might be because the quality of their education is too low, we cannot be confident that they will treat students fairly, or they lack institutional resilience. For these providers we want to make the rejection process as quick and clear as possible.

We are proposing changes to our entry tests for registration relating to consumer protection and governance, as well as to our registration process. These proposals are intended to:

- make our registration assessments more efficient to allow well-prepared providers to register as quickly as possible
- ensure that the process for registering well-prepared providers is not overly burdensome, by asking them for information they already have
- ensure our registration requirements are clear
- make our refusal process quicker and more effective at identifying and refusing applications from providers that are not ready to join the Register.

Consultation proposals

To achieve our aims, we propose to replace four of our initial conditions of registration with two new initial conditions, setting out requirements for a provider to treat students fairly and have effective governance arrangements in place. 'Initial conditions' are used to assess providers when they first register with the OfS. The proposed new conditions are:

- **Proposed new initial condition C5: Treating students fairly:** this condition would require a provider to treat students fairly, for example, in relation to the terms and conditions attached to the provision of higher education. This new initial condition would replace initial condition C1 (guidance on consumer protection law) and initial and ongoing condition C3 (student protection plan). This means a provider would no longer need to demonstrate at registration how it has considered consumer law in developing its policies. Instead, it would submit the policies and processes which it would use to manage its relationships with students for assessment by the OfS. Taken together, this suite of student-facing documents would constitute a provider's student protection plan and it would be expected to publish these on its website after it is registered.
- **Proposed new initial condition E7: Effective governance:** this condition would require a provider to have effective governance arrangements in place for the purposes of being a higher education provider, including specific arrangements to prevent fraud and the inappropriate use of public funds, and a business plan that covers key parts of its

operation. Relevant documents would be assessed directly by the OfS as part of the application process, removing the need for a provider to carry out a self-assessment. The condition would also set out requirements to ensure that the leaders of a provider have appropriate knowledge and expertise and are fit to carry out their role. This condition would replace the existing initial conditions E1 (public interest governance) and E2 (management and governance).

We have also identified some ways in which the efficiency of our registration processes could be improved. We frequently see registration applications that are not complete or lack the detail we require. We want to make changes to our registration process to ensure our requirements are clear, that they incentivise submission of complete, high quality applications, and avoid inefficiencies and delays in our processes. We also want to gain further assurance over providers' financial viability and sustainability at registration.

We propose to make some changes to the information that a provider must submit as part of a registration application, which includes collection of more detailed financial information. The proposals would also enable us to make quicker decisions to refuse registration applications that do not contain all the required information. We are not proposing to make any significant changes to the assessment stages and sequence of the registration process.

We are also consulting on the changes to our guidance and the OfS regulatory framework that would be needed to implement our wider proposals.

Reasons for this consultation

There have been changes in the context for higher education as well as the types of providers seeking registration that we think mean it is appropriate for us to make changes to our entry tests and registration processes now. Our financial sustainability report (May 2024) and financial analysis (November 2024) highlight the significant financial challenges currently facing the sector.² These reports emphasise the importance of effective management and governance in ensuring that providers manage these risks appropriately and in a way that delivers good student outcomes.

The National Audit Office (NAO) investigation into student finance for study at franchised higher education providers, emphasised the increased risks to students and public funds that have arisen where management and governance are weak.³ This report looked into concerns relating to subcontractual partnership arrangements where lead providers do not have sufficient oversight of their delivery partners and where delivery partners are not effective in managing these risks.

The financial challenges facing the sector increase risks of students not being treated fairly by their providers. Where providers are making tough financial decisions, they must continue to meet the commitments they have made to students. Our engagement with students shows that being treated fairly is very important to them and too often this does not happen. This is why our draft

² See [Financial sustainability of higher education providers in England: 2024](#) and [Financial sustainability of higher education providers in England: November 2024 update](#).

³ See [Investigation into student finance for study at franchised higher education providers](#).

strategy includes our intention to work with providers to ensure that students receive the higher education experiences they were promised.⁴

There have also been changes in the types of providers seeking registration. Providers that are registering now are less likely to have a strong track record of providing higher education compared with those registered when our registration processes were first established. We want to make sure that new entrants are able to manage the increased risk the sector is facing. The government is now consulting on proposals to require delivery providers with more than 300 students to register with the OfS. If this change is made, we would expect an increase in registration applications to the OfS. Some providers that this would affect will be delivering high quality higher education in a well-governed institution. However, others may be delivering higher education within the partnership models where concerns have been flagged by the NAO. We also anticipate that the sector will expand when the government introduces the Lifelong Learning Entitlement (LLE).⁵

What we want to achieve

In this context it is essential that providers can only join the OfS Register if they:

- treat their students fairly
- have effective management and governance arrangements in place
- appropriately manage public funds and ensure value for money for taxpayers.

Our view is that these things are necessary for students to have a high quality academic experience and to maintain an effective approach to equality of opportunity.

We consider our proposals, if implemented, would give students, the public and the sector confidence that we are efficiently registering providers that can navigate the current challenges. They would also ensure students benefit from higher education and give taxpayers confidence that public funding is used appropriately.

Next steps

Students, staff at universities and colleges, and sector bodies are invited to join us at one of [our consultation events](#) to hear more about our proposals, ask questions and give feedback.

The consultation will close on 23 April 2025. We will then analyse and consider the consultation responses and make decisions about our proposals.

We are proposing that the new initial conditions would come into force immediately when we publish our final decisions. We expect this to be in August 2025.

⁴ See [Consultation on OfS strategy for 2025 to 2030](#).

⁵ See [Lifelong Learning Entitlement](#).

Introduction

Overview of this consultation

1. This consultation is structured as follows:
 - Introduction
 - Part 1: a new initial condition relating to treating students fairly (condition C5)
 - Part 2: a new initial condition relating to effective governance (condition E7)
 - Part 3: changes to the requirements for a registration application.
2. The introduction sets out the background to our proposals. It explains the context for each of the three separate following parts and why we think it is appropriate to focus on the registration requirements for new providers, including the tests we apply in relation to consumer protection and governance. The introduction also explains how we would implement these proposals and invites the views of respondents on this.
3. In each of Parts 1, 2 and 3, we explain in more detail the changes we are proposing, the reasons we are proposing to make those changes and what we expect them to achieve. We also set out the alternatives we have considered in formulating our proposals.
4. Respondents can read and respond on each part separately and can comment on all, or some, of the questions. Where respondents make points that are relevant to more than one proposal in the consultation, we will take these points into account wherever they appear. For example, we will consider comments relevant to the registration proposals in Part 3 if they appear in response to a question about one of the proposed initial conditions, or vice versa.
5. This consultation constitutes our consultation for the purposes of sections 5(5) and 75(8) of the Higher Education and Research Act 2017 (HERA). When formulating our proposals, we have had regard to relevant matters including:
 - our general duties under section 2 of HERA
 - the Public Sector Equality Duty
 - statutory guidance from the Secretary of State
 - the Regulators' Code.
6. We are running this consultation in accordance with the government's consultation principles.⁶
7. Annex A sets out a list of all the questions in the consultation. Annex B sets out in more detail matters to which we have had regard in formulating our proposals.

⁶ See [Consultation principles - GOV.UK](#).

What we are consulting on

8. We are consulting on changes to our initial (entry) conditions of registration relating to consumer protection and governance.
 - a. **Part 1** of this consultation proposes a new initial condition of registration – Condition C5: Treating students fairly.
 - b. **Part 2** of this consultation proposes a new initial condition of registration – Condition E7: Effective governance.
9. In proposing to introduce these two new initial conditions of registration, we are also proposing to remove four existing initial conditions. These are set out in Table 1 below. We are also proposing that we would disapply ongoing condition C3 for a provider that has been registered after being successfully tested against new proposed initial condition C5.
10. **Part 3** of this consultation proposes changes to the requirements for a registration application.
11. Table 1 below sets out the existing initial conditions and the changes we are proposing.

Table 1: Summary of proposed changes to the initial conditions of registration

Current initial condition	Applies to	Proposed changes to initial conditions
A1 Access and participation plan	Providers applying in the Approved (fee cap) category intending to charge fees above the basic amount to qualifying persons on qualifying courses	Remain the same
A2 Access and participation statement	Providers applying in the Approved category, or the Approved (fee cap) category intending to charge fees up to the basic amount to qualifying persons on qualifying courses	Remain the same
B3 Student outcomes	All providers	Remain the same
B7 Quality and B8 Standards	All providers	Remain the same
C1 Guidance on consumer protection law	All providers	Replaced by new initial condition C5
C3 Student protection plan	All providers	Replaced by new initial condition C5 (and condition C3 not retained as ongoing condition for providers registered under C5)

Current initial condition	Applies to	Proposed changes to initial conditions
D Financial viability and sustainability	All providers	Remain the same, but providers would need to submit additional information for our assessment
E1 Public interest governance	All providers	Replaced by new initial condition E7 (but retained as ongoing condition)
E2 Management and governance	All providers	Replaced by new initial condition E7 (but retained as ongoing condition)

12. The ongoing requirements for providers that are already registered with the OfS will remain unchanged. However, during the current strategy period we will engage with the sector to discuss the features of effective governance and consider where standards need to be raised. As part of this work we may consider whether any changes to the ongoing conditions relating to management and governance are necessary. Similarly, we plan to consider our approach to student protection for registered providers and will want to ensure a consistent level of protection for students at all providers. Proposals to align ongoing requirements for all registered providers, to ensure that all students are treated fairly on an ongoing basis, would form part of a future consultation.

Why we are focusing on registration and entry requirements

13. English higher education providers may choose to register with the OfS to access the benefits of registration. Depending on the category of registration, these include:
- students studying at the provider being able to access the student finance system
 - access to OfS public grant funding
 - eligibility to apply for a UK Visas and Immigration student sponsor licence to recruit international students.
14. Registration therefore sets the bar for entry to the regulated sector and access to significant public and student funding. It is essential that the regulatory tests we set at registration protect students and taxpayers and effectively identify those providers not yet ready to enter the regulated sector. It is also important that they facilitate efficient entry to the regulated sector for high quality, sustainable and innovative institutions that increase the diversity of the sector and the options on offer for students.
15. Since 2018 we have revised some of our initial and ongoing conditions of registration, including those relating to quality and standards, to more appropriately reflect the context for a provider that may not yet have delivered higher education. We have seen the benefits of these changes in how we assess quality and standards for providers seeking registration. However, many elements of our registration tests, including our initial conditions of

registration for consumer protection and management and governance, have not changed. These are the focus of this consultation.

16. We explain below why the key risks now affecting the higher education sector, the changes in the providers seeking registration, and what we have learned from registering and regulating new providers, have led us to develop the proposals in this consultation.

Key risks affecting the higher education sector

17. Financial sustainability is the most significant, growing, challenge for the English higher education sector. In November 2024, the OfS published an analysis of the financial sustainability of higher education providers in England which suggested that up to 72 per cent of providers could be in deficit in the 2025-26 financial year if they fail to make changes in response to student recruitment patterns.⁷ This worsening financial position is driven by a number of factors, including a decline in the real-terms value of income from UK undergraduates against increasing costs, and changes in student recruitment, particularly for international students.
18. We have also seen an increase in the scale of provision being delivered through subcontractual partnerships, including as lead providers explore new business models to manage financial risks. We have seen an increase in risks of public and student funding being misused or not providing value for money. These risks have primarily arisen in relation to subcontractual (also known as franchise) arrangements. This is where a registered provider (lead provider) subcontracts delivery of its teaching to a partner (delivery provider). The delivery provider may or may not be registered with the OfS. The NAO investigation into student finance for study at franchised higher education providers⁸ and Public Accounts Committee report on the same subject,⁹ emphasised the risk to students and public funds where there is inadequate management and governance of partnerships and other relationships, such as third-party recruitment agents. These risks would be significantly reduced if a lead provider and delivery provider have appropriate management and governance arrangements in place.
19. The OfS's Insight brief into subcontractual arrangements in higher education¹⁰ published in September 2024, identified over 100 unregistered providers delivering higher education on behalf of registered providers, accounting for almost a third of delivery providers with such arrangements. We have seen increased regulatory risks in this area, including risks to quality, that public funds are not used appropriately and that students receive inadequate support to enable them to access and succeed on their course. These risks often occur in conjunction with inappropriate advertising, marketing and recruitment of students.
20. Meanwhile, students continue to face challenges. The cost of living continues to rise, which affects students' ability to access and benefit from their higher education. The effects of

⁷ OfS website, [Financial sustainability of higher education providers in England: November 2024 update](#).

⁸ See [Investigation into student finance for study at franchised higher education providers](#).

⁹ See [Student loans issued to those studying at franchised higher education providers](#).

¹⁰ OfS website, [Subcontractual arrangements in higher education](#).

disruption to students' studies in recent years, from the coronavirus pandemic and associated lockdowns, and industrial action in the sector, also remain with us.

21. As we set out in our recent strategy consultation,¹¹ students deserve to receive what they are promised by their provider when they choose their course. Many students we talked to over the summer of 2024 expressed this as the most basic condition of fair treatment. The National Student Survey shows that most students have positive experiences of higher education.¹² However, the growing number of complaints submitted to the Office of the Independent Adjudicator supports evidence from our student insight work that not all students benefit in the ways they expected.¹³ Through our regulation, we have seen unclear and unfair contractual terms and conditions, providers charging additional fees and misleading information, all of which can compromise students' experience of, and ability to engage in, higher education.
22. As risks in their operating environment increase, providers will need different capabilities to manage challenging circumstances and affect positive change. In an environment of increased risk, effective governance is therefore critical to serving the interests of students, and critical too for ensuring universities and colleges are secure guardians of the public funding they receive.

Providers seeking registration

23. When the OfS was first created, most providers seeking registration were established universities and colleges. These providers often had many years of experience delivering higher education and interacting with some regulatory requirements. Several years later, we are now much more likely to receive applications from providers new to regulation. Some, though not all, do not have a track record of delivering higher education. Our experience is that the requirements set out in our original initial conditions are not as well suited to the circumstances of these providers and so we need different, more tailored, tools to address the risks to students at these providers.
24. Wider developments in the English higher education sector mean that we are expecting an increased number of providers to seek registration in the coming years.
25. The Lifelong Learning (Higher Education Fee Limits) Act 2023 introduces significant changes to the student finance system, giving eligible learners access to tuition fee and maintenance loans for modules and short courses, as well as full courses such as degrees.
26. The OfS will regulate all provision funded by the LLE. This means that any provider wanting to offer courses funded by the LLE from January 2027 will need to be registered. This requirement is likely to increase the number of providers seeking registration. While some of these providers will have a track record of delivery and models of provision similar to those of currently registered providers, some may have models that are quite different. We need to ensure that our initial conditions provide an appropriate test for registration for these providers.

¹¹ OfS website [Consultation on OfS strategy for 2025 to 2030](#).

¹² OfS website, [National Student Survey data: provider-level data for 2024, all modes of study](#).

¹³ OIA, [Annual report 2023](#).

27. The Department for Education is consulting on proposals that would see some delivery providers in subcontractual relationships required to register with the OfS. Some delivery providers will be offering high quality education in well governed and managed institutions and it is important that these providers are able to register without undue barrier. In view of the known risks relating to some subcontractual provision though, it is essential that our registration tests can identify any provider that is not set up in a way that can and will mitigate these risks.

What we have learned from registering and regulating new providers

28. Since 2018 we have registered more than 400 providers. New entrants have enriched the sector, and introduced high quality courses, innovative approaches and extended choice for students.
29. However, we have encountered issues where newly registered providers are not sufficiently prepared to comply with the requirements in place after registration. In a small but significant minority of cases, providers have been unable to compile important financial information in a timely manner, or return accurate data to the designated data body or the Student Loans Company (SLC). This creates risks for students where the OfS is unable to properly fulfil its monitoring role to identify financial risks or poor quality courses, and cannot put in place timely interventions to manage these risks.
30. We have also seen governing bodies that lack the skills and experience to navigate the challenges facing their organisation and to act in the interests of students. Weaker governing bodies are less able to anticipate and respond to risks, putting their students' education at risk.
31. We have seen evidence of optimism bias in the financial forecasts providers submit with their registration application, which assume, for example, that once registered a provider will substantially increase student numbers. In practice we find that many providers, particularly those that have not previously delivered higher education, significantly underrecruit against their forecasts. An increasingly adverse financial position after registration may compromise the staffing and resources a provider needs to deliver high quality education and, if it is not well managed, may result in the provider closing.
32. In some cases, we have seen providers presenting governance arrangements at registration which appear to meet our requirements for transparency and external scrutiny, but which turn out to not represent how the provider takes decisions in practice nor who is responsible for those decisions.
33. It is therefore essential that our initial conditions more explicitly test whether a provider is ready to meet our ongoing regulatory requirements and ensure that only well-prepared providers can register. Taking into account these factors, we are proposing changes to our initial conditions to respond to the increasing risks we are seeing in the sector, and the increasing diversity of providers seeking registration.
34. It is also important that the registration process itself is set up in the best way for the different types of providers that are now seeking registration. We know many providers invest considerable time and effort in applying for registration and demonstrating that they meet the OfS's requirements. However, we continue to spend considerable time assessing applications

that are not well prepared, and this affects our ability to focus resources on those applications that are. We are therefore proposing changes to the requirements for a registration application to improve the overall quality of applications and thereby improve the efficiency of the registration process.

Summary of proposals

Summary of Part 1

35. Part 1 of this consultation sets out our proposal to introduce a new initial condition C5 (treating students fairly) that would replace existing initial conditions C1 (guidance on consumer protection law) and C3 (student protection plan). Initial condition C5 would test whether a provider applying to register will treat students fairly.
36. We propose to focus the assessment criteria for the condition on identifying any behaviours that constitute unfair treatment of students. The proposed condition includes a list of behaviours that we propose should always be considered unfair.
37. Our assessment would focus on documents we would expect a provider to already have available, rather than on documents and self-assessments created solely for the OfS's purposes.
38. We also propose to disapply ongoing condition of registration C3 for a provider that has been registered under proposed initial condition C5. We propose instead to strengthen consumer protection for students by ensuring that, following registration, the suite of student-facing documents that we have assessed through the registration process would constitute a provider's student protection plan. We would expect this material to be published on the provider's website so it is accessible and visible to students. This would ensure that students have access to detailed and consistent information about their contractual rights, and the steps their provider will take to protect their interests on an ongoing basis. Ongoing condition C4 will continue to apply to all relevant registered providers to ensure that additional robust protections for students can be deployed where a provider is facing a material risk of market exit.
39. Full details of these proposals are set out in Part 1 of this consultation.

Summary of Part 2

40. Part 2 of this consultation sets out our proposals to introduce a new initial condition E7 (effective governance) that would replace existing initial conditions E1 (public interest governance) and E2 (management and governance). Initial condition E7 would test the effectiveness of a provider's governance arrangements for the purpose of being a registered higher education provider.
41. The proposed initial condition is divided into five separate, but connected, requirements:
 - a. Requirement 1 (set of governing documents): requiring a provider to submit a set of documents that would enable effective governance of the provider in practice.

- b. Requirement 2 (business plan): requiring a provider to submit a five-year business plan setting out its strategy and demonstrating that it has a sound understanding of the context in which it will operate.
 - c. Requirement 3 (knowledge and expertise): requiring a provider to have key individuals who have sufficient knowledge and expertise to enable it to comply with the OfS's ongoing conditions of registration and deliver in practice its business plan and its fraud and public money arrangements. The proposed condition also sets out what knowledge and expertise we would expect key individuals at the provider to have.
 - d. Requirement 4 (fit and proper persons): requiring that relevant individuals must be fit and proper persons for the purposes of ensuring the provider is suitable to: access and receive public funds; maintain public trust and confidence in higher education; and protect the interests of students.
 - e. Requirement 5 (fraud and the inappropriate use of public funds): requiring a provider to have in place comprehensive arrangements for detecting, preventing and stopping fraud and the inappropriate use of public funds. If a provider has received or accessed public funds in the last five years, its track record must be satisfactory.
42. Our assessment would focus on documents we would expect a provider to already have available, rather than on documents and self-assessments created solely for the OfS's purposes.
43. We are not proposing any changes to ongoing conditions E1 and E2. They will remain an important part of our regulatory framework that applies to all registered providers including those registered under proposed initial condition E7.

Summary of Part 3

44. Part 3 of this consultation sets out our proposals to impose new requirements for registration applications. This would be done by issuing a notice under section 3(5) of HERA. We propose to set out clearly and in one place the information that needs to be submitted at registration. We propose that a provider would need to submit all required information as part of its registration application or the application would be refused.
45. As part of this we are proposing the inclusion of some additional information not currently required, including:
- enhanced submission requirements relating to financial information
 - requirements to submit information in connection with the new proposed initial conditions C5 and E7 (if they are adopted)
 - a requirement to notify the OfS of any investigations to which a provider, or relevant individuals connected with the provider, has been subject in the last five years
 - a requirement to keep the OfS updated if certain matters occur during the application process.

46. We also propose to increase the support we offer providers to help ensure they have understood the OfS's requirements before submitting an application.
47. Finally, we propose a restriction preventing a provider reapplying for registration within 18 months of having a previous registration application finally refused by the OfS.
48. Full details of these proposals are set out in Part 3 of this consultation.

Proposal: how we would implement the proposals in this consultation

49. In this section we seek respondents' views on how we would implement the proposals set out in this consultation. Respondents are advised to return to this question once they have read Parts 1, 2 and 3 of the consultation.

We propose to bring new initial conditions C5 and E7 and the majority of the changes to the requirements for a registration application into force as soon as the OfS publishes its final decisions following this consultation, in August 2025.

This excludes Proposal 5 in Part 3 of our consultation, which would prevent a provider from reapplying within 18 months of receiving a final decision by the OfS to refuse registration on the basis of a previous application. This proposal would come into force on 1 January 2026.

Timing of implementation

50. Our initial view is that it would be appropriate to implement these proposals as soon as possible after any decisions are made to introduce them.
51. Our proposal is to adopt the following timetable. This timetable is subject to change and the outcome of the consultation:
 - a. The consultation closes on 23 April 2025.
 - b. We aim to publish our decisions about whether to adopt these proposals, with or without amendment, in August 2025.
 - c. We aim to implement the majority of these proposals in this consultation (with or without amendments) at the same time i.e. the proposals would come into force at the same time as decisions are published.
 - d. To smooth the transition for providers, we currently intend to delay implementing Proposal 5 in Part 3 of the consultation. This proposes that a provider could not apply for registration where it has had a previous application rejected within the past 18 months. This proposal would instead take effect for registration applications received on or after 1 January 2026. We discuss the reasons for this in more detail in Part 3, Proposal 5.

52. We propose that in August 2025, when the OfS publishes its decisions following this consultation, the following would happen:
- a. We would take a decision about the new initial conditions of registration which would mean that:
 - i. The new initial conditions C5 and E7 and associated guidance would come into effect.
 - ii. Existing initial conditions C1, C3, E1 and E2 and associated guidance would cease to be in effect.
 - iii. We would change how condition C3 applies. It would not apply for any provider registered on the basis of an application assessed against new initial condition C5.
 - iv. We would make consequential changes to the regulatory framework to add new initial conditions C5 and E7, and their associated guidance.
 - b. We would decide to establish certain requirements for an application for registration with the OfS which would mean that:
 - i. The new requirements for a registration application would come into effect. This excludes Proposal 5 in Part 3 of our consultation, which would prevent a provider from reapplying within 18 months of receiving a final decision by the OfS to refuse registration on the basis of a previous application.
 - ii. We would make consequential changes to the guidance for registration (Regulatory advice 3) and some of its annexes.
 - iii. We would make consequential changes to the guidance for providers about the financial information to submit with a registration application.
53. We propose that Proposal 5 in Part 3 of the consultation would come into effect on 1 January 2026. This means that a provider could not submit a registration application within 18 months of receiving a final decision by the OfS to refuse registration on the basis of a previous application, where the previous application was also made on or after 1 January 2026.
54. In December 2024 we announced that we will not accept new applications for registration for a temporary period, to refocus our resources on the financial pressures facing the sector. We expect to reopen for new applications in August 2025. The effect of this is that, if we implement the proposals set out in this consultation, the changes would apply to all applications for registration that have not yet been submitted. Providers seeking registration could submit applications under any newly adopted requirements from August 2025.
55. We have considered whether this is reasonable given the current pause. Our initial view is that the changes we are proposing are important in ensuring that only well-prepared providers can register with the OfS. Given the risks to students and taxpayers that could arise if providers are not appropriately managed and governed and do not treat their students fairly, we consider that it would be appropriate for these new tests (if implemented) to apply with immediate effect from the date of decision. If we had not already had a pause in registration

applications in place, we would have been likely to consider a pause in registration applications during the period of this consultation while we consulted on these proposals to strengthen the way we assess providers at the point of registration. We want to help providers that are ready to apply when we reopen for new applications in August 2025. So, we are proposing some transitional measures, as set out in paragraphs 61-64.

Which providers would these proposals apply to?

New applications for registration

56. We propose that the new initial conditions C5 and E7 would apply to any new application for registration, including any application for registration in a different category of the OfS Register, made after publication of our decisions following this consultation.
57. We propose that the proposals relating to requirements for a registration application from a provider not currently registered with the OfS (described in Part 3 of the consultation) would apply as follows:
 - a. Proposals 1-4 of Part 3, relating to requirements for a registration application, would apply to any new application made after publication of our decisions following this consultation.
 - b. Proposal 5 of Part 3, relating to the fixed-term resubmission restriction for registration refusal, would apply to any new application made on or after 1 January 2026, where the application on the basis of which the OfS made the final decision to refuse registration was also made on or after 1 January 2026.
58. The proposals relating to the requirements for a registration application would not apply to any application by a registered provider for registration in a different category of the OfS Register. We propose instead to establish the application requirements for applications to change category of registration by issuing a bespoke section 3(5) notice to any relevant provider. This is discussed in more detail in each of the proposals in Part 3 of this consultation.

Existing applications for registration

59. We propose that the proposals in this consultation would not generally apply to any application for registration made before the date that we publish our decisions following this consultation. This includes applications that we are currently assessing or that are currently paused.
60. We consider on an ongoing basis whether the initial or ongoing conditions applied to any individual provider are proportionate to the regulatory risk posed by that provider. This means that if we identified particular regulatory risks posed by a provider, including a provider with an application currently paused, we may consider whether to apply either or both of the proposed new initial conditions, or parts of these conditions, to that provider. If we proposed to do this, we would consult on an individual basis with the provider affected.

Applications from August 2025 onwards

61. If we decide to adopt the proposals in this consultation (with or without amendments), providers will need time to understand and comply with any new requirements before they

submit an application. If we decide to adopt the proposals, we therefore anticipate holding engagement events for providers from August 2025. These will help them to understand any new requirements introduced following the consultation, and prepare registration applications that will meet these requirements.

62. We recognise that because we temporarily stopped accepting new registration applications in December 2024, there may be some providers that have prepared applications according to our existing requirements and that may have been ready to apply for registration immediately in August 2025.
63. We encourage any provider in this position to contact us to discuss how we could facilitate its application. Once the temporary pause on accepting new registration applications has ended, we may for example exceptionally allow a provider to submit information relevant to any application requirements that have not changed, for example an access and participation plan, quality plan, financial tables and audited accounts. We could begin our assessment of these and set a later deadline for the submission of the information required to assess new initial conditions C5 and E7 and financial scenario modelling. These arrangements could be set out in a bespoke section 3(5) notice issued to a provider to confirm the information it needed to submit with its registration application and the deadlines for submission.
64. Operating in this bespoke way for all new registration applications would be complex and likely to cause increased inefficiency and delay, rather than improving efficiency. We would therefore consider these types of arrangements only for a provider that, other than in respect of any new requirements, had a substantively complete registration application prepared and was ready for the assessment process, and where we had capacity to start looking at that application. We would set out the likely sequencing and timeline for a provider's assessment and any associated risks. We would also seek the provider's confirmation that it had understood and agreed to these before proceeding.

Alternative implementation proposals considered

65. We considered whether to delay the adoption of any new requirements until a few months after the publication of our final decisions following this consultation. As we propose to start accepting new registration applications in August 2025, this would, in practice, mean accepting new applications according to existing requirements for a couple of months, then switching to any new requirements adopted following this consultation later.
66. Our initial view is that this would delay us in achieving the regulatory objectives we set out in this consultation and would lead to added complexity for the OfS in managing different cohorts of applications. Should we adopt new requirements following this consultation, we will wish to focus our resources on engaging with providers about new requirements and embedding an effective system for assessing providers against them as quickly as possible.

Consultation question

Question 1

Do you agree or disagree with the proposals for the implementation of the new initial conditions and new requirements for registration?

If you disagree, do you have alternative suggestions?

Documents referred to in this consultation

In this consultation we refer to the following documents:

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

Consultation on OfS strategy for 2025 to 2030. This consultation on the OfS's strategy for 2025 to 2030 runs from 12 December 2024 to 20 February 2025.

Regulatory advice 3: Registration of English higher education providers with the OfS. This regulatory advice sets out guidance for providers of higher education in England that want to apply to register with the OfS.

Guidance for providers about the financial information to submit with a registration application and **Template for financial and student number tables** (available alongside Regulatory advice 3). These documents explain what financial information must be submitted as part of an application to register with the OfS.

Annex A: List of consultation questions

Introduction

Do you agree or disagree with the proposals for the implementation of the new initial conditions and new requirements for registration? If you disagree, do you have alternative suggestions?

Part 1

Question 1

Do you agree or disagree with the proposal to introduce a new initial condition to replace initial condition C1? If you disagree, please give reasons for your answer.

Question 2

With reference to the concept of fairness:

- a. Do you agree or disagree with our proposal to focus initial condition C5 on this concept? If you disagree, please give reasons for your answer.
- b. Is there an alternative concept you think would be more appropriate?

Question 3

Do you agree or disagree with our proposal to focus on negative indicators (or the absence of negative indicators)? (I.e. if there is evidence that a provider does not treat students fairly, it would not satisfy proposed initial condition C5. If there is no such evidence, the provider would satisfy the condition). If you disagree, please give reasons for your answer.

Question 4

What are your views on:

- a. The proposed OfS prohibited behaviours list (including the way we are proposing to use consumer protection legislation and CMA guidance to inform it)?
- b. The way we propose to consider detriment to students (including the non-exhaustive factors we propose to consider to determine whether detriment is 'reasonable in all the relevant circumstances')?
- c. The adverse findings we propose to consider and the way in which we propose to consider them?
- d. The way we propose to consider undertakings by enforcement bodies and applications for enforcement orders?
- e. The way we propose to consider a provider's removal of concerning terms or information from its documents?

Question 5

What are your views on:

- a. The definition of students in the proposed condition (to include current, prospective and former students)?
- b. The inclusion and definition of ancillary services?
- c. The definition of 'information for students'?
- d. Our proposed approach to providers delivering higher education through partnerships?

Question 6

What are your views on:

- a. Our proposed document submission requirements?
- b. Our proposed approach to providers that do not intend to charge fees or register students?

Question 7

Do you agree or disagree with our proposal to remove initial condition C3 (student protection plan) and replace it with the requirements of proposed initial condition C5? If you disagree, please give reasons for your answer.

Question 8

Do you agree or disagree with our proposal that, following successful registration, a provider should be expected to publish the student-facing documents it submits as part of its application to register? If you disagree, please give reasons for your answer.

Question 9

Do you agree or disagree with our proposal to change the applicability of ongoing condition C3 such that it would not apply to a provider registered under proposed initial condition C5? If you disagree, please give reasons for your answer.

Question 10

How clear are the requirements of proposed initial condition C5 as drafted at Annex C? If any elements of the proposed initial condition are unclear, please specify which elements and provide reasons.

Question 11

How clear and helpful is the guidance as drafted at Annex C? If any elements of the draft guidance are unclear or could be more helpful, please specify which elements and provide reasons?

Question 12

Do you foresee any unintended consequences resulting from the proposals in this consultation? If so, please indicate what you think these are and the reasons for your view.

Question 13

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

Question 14

In your view, are there ways in which the policy objectives discussed in this consultation could be delivered more efficiently or effectively than proposed here?

Question 15

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

Part 2

Question 1a

Do you agree with the proposal to introduce a new initial condition that would require a provider to have effective governance arrangements for the purpose of being a registered higher education provider?

Question 1b

Do you agree that this new initial condition should replace the current initial conditions E1 (public interest governance) and E2 (management and governance)?

Question 2a

Do you agree with the proposal that there would not be a direct reference to the OfS's public interest governance principles in initial condition E7?

Question 2b

Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a set of documents which would enable the effective governance of the provider in practice? Please give reasons for your answer.

Question 2c

Do you agree with proposals for the governing documents that would be considered as part of the proposed requirement, and the information these should contain? These are:

- Governing body documents
- Any other documents that contain rules administering the operation of the provider's governing body
- Risk and audit documents
- A conflict of interests policy.

Question 2d

Do you agree with the proposed requirements for each of the governing documents that would be considered in relation to this requirement? These are:

- Arrangements should be 'appropriate' to the size, shape and context of the provider
- Documents should be clear and consistent

- Documents should be deliverable in practice.

Question 2e

Do you have any additional comments on this proposal?

Question 3a

Do you agree with the proposal that initial condition E7 should include a requirement for a provider to have a business plan which describes the provider's business, sets out its objectives over the medium term, and its strategy for achieving them?

Question 3b

What is your view of the proposed requirements of the plan?

Question 3c

Do you agree with the proposal that the business plan should cover a five-year time period?

Question 3d

If you think another time period is more appropriate, please explain what this time period is and why.

Question 3e

Do you agree with the proposed approach to considering a provider's ability to deliver its business plan in practice?

Question 3f

Do you agree with the proposal that the business plan should include significant consideration of the interests of students? Please give reasons for your answer.

Question 3g

Do you agree that requiring a provider set out its plans for ensuring compliance with the OfS's ongoing conditions of registration would provide assurance that the provider is adequately prepared to deliver higher education and has an understanding of the regulatory requirements?

Question 3h

Do you agree with the proposed information that would need to be included in the business plan?

Question 3i

Is there any additional information you think should be included as part of the business plan?

Question 3j

Do you have any further comments about this proposal?

Question 4a

Do you agree with the proposal that initial condition E7 should include a requirement for key individuals to have sufficient knowledge and expertise to ensure the provider, if registered, would be able to:

- deliver its business plan,
- comply with the OfS's conditions of registration, and
- deliver its arrangements for preventing fraud and protecting public money?

Please give reasons for your answer.

Question 4b

Do you agree with the proposed knowledge and expertise requirement for each of the individuals that would be covered by this test?

If you think there are any requirements that should be added or removed, please explain your reasons.

Question 4c

Do you agree that holding interviews with key individuals would be the most efficient and effective way of testing this requirement?

Question 4d

Do you have any additional comments in relation to this proposal?

Question 5a

Do you agree that the overarching test should be based on an assessment of relevant individuals' track record in relation to the protection of public money, the maintenance of the good reputation of the higher education sector and the protection of the interests of students?

If you agree, please explain why. If you disagree, please explain why and any alternative approach you would recommend.

Question 5b

Do you agree that a provider should retain responsibility for appointing relevant individuals against a published fit and proper test and related criteria?

Question 5c

Do you agree that the non-exhaustive list of matters in the proposed condition are matters which should be considered in the fit and proper test?

If you agree, please explain why. If you disagree, please indicate which matters you believe are not matters that should be considered and why, or which other matters should be included.

Question 5d

Do you agree with the proposed factors to which we will give weight?

If you agree, please explain why. If you disagree, please indicate which other matters you believe should be included in this approach.

Question 5e

Do you agree that the list of matters in Table 3 and draft condition E7D.4 are matters which should be considered as meaning an individual is more likely to not meet the fit and proper test, except in exceptional circumstances?

If you agree, please explain why. If you disagree, please indicate which matters you consider should not be considered and why, or which other matters should be included.

Question 5f

Do you agree that the fit and proper test should be applied to a specific list of relevant individual roles and interests, rather than a more general definition such as 'beneficial owners' or 'senior managers'? Please explain the reasons for your answer.

Question 5g

Do you agree that the list of roles contained in the definition of relevant individuals in the proposed condition is appropriate?

If you agree, please explain why. If you disagree, what roles would you remove or add and why?

Question 6a

Do you agree that initial condition E7 should include the two proposed tests (relating to arrangements a provider would need to have in place and evidence that the provider has a satisfactory track record in relation to fraud and public funds) in its requirements?

Question 6b

Do you have any comments about the proposed requirements for the arrangements that a provider would need to have in place to prevent, detect and stop fraud and the inappropriate use of public funds?

Question 6c

Do you think we have identified the correct minimum requirements to be considered as 'comprehensive arrangements'? What else should be included?

Question 6d

Do you agree that a provider should have a satisfactory track record in relation to receiving or accessing public funds in order to be registered with the OfS?

Question 6e

Do you agree with the proposed factors that the OfS would use to establish a provider's track record?

Question 6f

Do you have any additional comments on this proposal?

Question 7

How clear are the requirements of proposed condition E7 as drafted at Annexes C to G? If any elements of the proposed condition are unclear, please specify which elements and provide reasons.

Question 8

How clear and helpful is the guidance as drafted at Annexes C to G? If any elements of the draft guidance are unclear or could be more helpful, please specify which elements and provide reasons.

Question 9

Do you foresee any unintended consequences resulting from the proposals in this consultation? If so, please indicate what you think these are and the reasons for your view.

Question 10

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

Question 11

In your view, are there ways in which the policy objectives discussed in this consultation could be delivered more efficiently or effectively than proposed here?

Question 12

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

Part 3

Question 1a

Do you agree or disagree with the proposal that the OfS should issue a decision under section 3(5) of HERA, which would establish the requirements for an application for OfS registration? Please give reasons for your answer.

Question 1b

Do you have any comments on the proposed section 3(5) Notice set out in Annex A of Part 3 of this consultation?

Question 1c

Do you agree or disagree that the proposed pre-application support would be beneficial to a provider applying for OfS registration? Please explain why.

Question 1d

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 1, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 2a (i)

Do you agree or disagree with the proposal to require a provider to submit additional scenario planning, commentary and mitigation plans as part of the OfS registration application? Please give reasons for your answer.

Question 2a (ii)

Do you agree or disagree that the proposed financial scenario parameters for a provider **already delivering** higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

Question 2a (iii)

Do you agree or disagree that the proposed financial scenario parameters for a provider **not yet delivering** higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

Question 2a (iv)

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 2a of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 2b (i)

Do you agree or disagree with the proposal to require a provider, during the registration process, to submit updated financial and student number tables and commentary? Please give reasons for your answer.

Question 2b (ii)

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2b, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 2c (i)

Do you agree or disagree with the proposal to require a provider, during the registration process, to submit audited financial statements for any financial years that are completed after the provider's initial submission of its registration application, and before the OfS makes a final decision about the provider's registration? Please give reasons for your answer.

Question 2c (ii)

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2c, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 2d (i)

Do you agree or disagree with the proposal to require a provider, as part of its registration application, to submit a diagram showing its corporate structure and ownership as described in this proposal? Please provide reasons for your view.

Question 2d (ii)

Do you support the alternative option outlined in Part 3, Annex C, Proposal 2d of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 3a

Do you agree or disagree with the proposal to introduce a requirement for a provider to submit information about historical or current investigations? Please give reasons for your answer.

Question 3b

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

Question 3c

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 3 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 4a

Do you agree or disagree with the proposal to require a provider to report to the OfS specified matters that may affect a provider's application to register? Please give reasons for your answer

Question 4b

We would welcome views on the list of specified matters set out in Table 6. Are there other specified matters you think should be included, or matters listed that should be excluded? Please give reasons for your answer.

Question 4c

Do you agree or disagree with the proposed reporting deadline of 28 days for all the specific matters proposed to be reported to the OfS? Please give reasons for your answer.

Question 4d

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

Question 4e

Do you support any of the alternative approaches we have outlined in Part 3, Annex C, Proposal 4 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 5a

Do you agree or disagree with the proposal to apply a resubmission restriction period to a provider with an application that was previously refused? Please give reasons for your answer.

Question 5b

Is there any other impact of this proposal or potential unintended consequences that we have not considered? If yes, please explain and provide reasons for your view.

Question 5c

Do you agree or disagree with the proposal that the time frame for the resubmission restriction period is 18 months? Please explain and provide a reason for your view.

Question 5d

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 5 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

Question 5e

We are interested in respondents' views on a 12-month resubmission restriction. Do you think this is a better option than the proposed 18-month resubmission restriction? Please explain and provide reasons for your view.

Question 6

Do you have any comments about the impact the proposals in this consultation may have on the timeline for a registration assessment outlined in Part 3 of this consultation?

Question 7

Do you foresee any unintended consequences resulting from the proposals in Part 3 of this consultation? If so, please indicate what you think these are and the reasons for your view.

Question 8

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

Question 9

In your view, are there ways in which the objectives discussed in Part 3 of this consultation could be delivered more efficiently or effectively than proposed here?

Question 10

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

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

The OfS's general duties

1. In formulating these proposals, the OfS has had regard to its general duties as set out in section 2 of HERA. These are:
 - a. the need to protect the institutional autonomy of English higher education providers,
 - b. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,
 - c. the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers,
 - d. the need to promote value for money in the provision of higher education by English higher education providers,
 - e. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,
 - f. the need to use the OfS's resources in an efficient, effective and economic way, and
 - g. so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
 - i. transparent, accountable, proportionate and consistent, and
 - ii. targeted only at cases in which action is needed.
2. In formulating these proposals, we have given particular weight to (b), (d), (e), (f) and (g).

Quality, choice and opportunities

3. These proposals seek to ensure that students can choose from a range of providers that are able to deliver a high quality higher education by setting out proposed minimum requirements that providers must meet (at the point of registration) with respect to consumer protection and management and governance if they are to be successfully registered. We consider that strong management and governance at a provider underpin effective delivery of its higher education provision as a whole, including ensuring that the courses delivered to students are of high quality. This is because a provider's management and governance determine its culture and decision-making throughout all levels of its organisation and the effectiveness of the delivery of its business objectives or mission. To have a positive overall experience of higher education, students must also be treated fairly as consumers. They should receive the higher education experience they are promised, delivered by a provider that takes consumer protection seriously.

4. Where a provider seeking registration is not meeting these minimum requirements for its students, it is important that the OfS can intervene to ensure that current and future students are not exposed to unacceptable risks by not registering that provider. Students making choices about what and where to study need to be confident that the regulatory system ensures that they can choose from a range of providers that can comply with minimum regulatory standards. Opportunities for study are not meaningful if a student is able to choose, or continue on, courses which will result in a poor overall experience of higher education, because the regulatory system has permitted such performance, or if a student's course or provider closes because of financial pressures in the sector. Our provisional view is that these proposals will have a positive effect on the quality of higher education options available for students to choose, because providers offering poor quality are less likely to become registered under these proposals.

Value for money

5. Value for money in the provision of higher education is important for both students and the taxpayer. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs, and student loans are taxpayer-backed. The investment of students and taxpayers in higher education is less likely to represent value for money where providers do not have effective governance arrangements that underpin delivery of high quality education or do not deliver the higher education experience that it promises to students. Our proposals also require providers to have effective arrangements for detecting and preventing the inappropriate use of public funds and enable the OfS to test these arrangements at registration to ensure that students' and taxpayers' monies are used appropriately by any provider that is registered.

Equality of opportunity

6. The OfS's overall approach to regulation is designed to promote equality of opportunity in connection with access to, and participation in, higher education. This means that we are concerned with ensuring that students from disadvantaged or underrepresented backgrounds can access higher education, and succeed on and beyond their courses.
7. Our proposed conditions of registration seek to ensure that students from all backgrounds can choose to study at a range of registered providers that deliver high quality higher education and are effectively governed. Effective governance that enables providers to successfully navigate the challenges facing the sector protects students from potential risks to their study.
8. The OfS's Equality of Opportunity Risk Register¹⁴ identifies the risk that students may not have equal opportunity to access a sufficiently wide variety of higher education course types. This may result in restricted choice for students with certain characteristics, and subsequently to lower rates of progression to higher education, as well as lower continuation rates and lower course attainment for these students. It is therefore important that providers that can increase the types of higher education courses or the mode of course delivery delivered in a particular region, where this provision will be of high quality and effectively governed, can register without delay to expand the range of positive higher education choices for students. Our proposals seek to ensure this.

¹⁴ See Risk 5, [Equality of Opportunity Risk Register](#).

9. The government's proposals to require some delivery providers in subcontractual arrangements to register may increase the number of such providers seeking registration in future. Students studying through subcontractual arrangements are more likely to be mature, from the most deprived areas of the UK, or living locally before entering higher education. They are somewhat more likely to be from a minority ethnic background or from an area of England where fewer young people go on to higher education.¹⁵ Although subcontractual arrangements can offer alternative routes into higher education for students from disadvantaged or underrepresented backgrounds, such routes only aid equality of opportunity where these students receive a high quality education, and are supported to engage in it fully. The proposals in this consultation will help the OfS to explicitly assess a provider's ability to effectively manage, oversee and deliver higher education within subcontractual arrangements and to comply with regulatory requirements designed to protect students' interests once registered. In refusing registration to providers that cannot do these things, we seek to limit the growth of providers that would represent poor choices for students.
10. We also think it is particularly important to champion the consumer rights of students from disadvantaged and underrepresented backgrounds. Students from these backgrounds may have fewer choices available to them, may not have access to the information, advice and guidance needed to make the right choice for them and may be targeted by unscrupulous providers seeking to recruit students for financial gain rather than because it is in the students' best interests. The cost to a student in financial and personal terms of being recruited to a course which is unsuitable for them is significant. It may particularly affect students from disadvantaged or underrepresented backgrounds who may stand to lose more and experience a greater opportunity cost by making the wrong choice of higher education course. For this reason, we have deliberately set a high bar in our proposed requirements for providers to treat students fairly and in some cases our proposals go further than the requirements of consumer law to attempt to better balance the consumer dynamic between students and providers.

Efficient, effective and economic use of the OfS's resources

11. We have considered the need to use the OfS's resources in an efficient and effective way. We are currently spending too long assessing registration applications that are not adequately prepared. This leads to inefficiency as providers frequently need to submit updated information to the OfS where the assessment of their applications lasts for an extended period. This can result in lengthy delays to the registration process that negatively impact providers that have met our application requirements and delay the provision of higher education by innovative well-prepared providers. We consider that our proposals would enable the OfS to use its resources more efficiently and effectively by incentivising all providers, not just some, to submit well-prepared registration applications and reduce the number that are poorly prepared.

The principle that regulatory activities should be proportionate

12. We have considered the principles of best regulatory practice, in particular of proportionality. Our proposals seek to ensure that the OfS can protect the interests of students while balancing this with the interests of providers. We have aimed to propose requirements that would be relatively straightforward for well-prepared providers to comply with but that enable

¹⁵ See [Subcontractual arrangements in higher education](#).

us to identify and refuse providers that present risks to students and taxpayers. We have considered carefully whether less intrusive options would achieve our regulatory aims. Where we propose universal requirements for all providers to submit information as part of their registration applications, our initial view is that this information would be necessary in all cases for the OfS to accurately assess providers against the existing and proposed initial conditions of registration. However, we recognise that there will be a cost to providers in terms of staff time to understand the OfS's regulatory requirements and prepare registration applications accordingly.

13. As part of our general consideration of proportionality, we have considered the impact of our proposals on small providers, or those with small numbers of higher education students. We recognise that smaller providers would have a smaller number of staff available to consider and address the OfS's regulatory requirements. This means that such providers may experience a disproportionate regulatory burden when compared to larger providers.
14. We currently take the view that it is necessary to require all providers to comply with minimum requirements in relation to consumer protection and management and governance arrangements, regardless of their size. This ensures a minimum level of regulatory protection for all students, notwithstanding that it may be more burdensome for some providers to comply than others.
15. We are proposing to impose new initial conditions of registration, at the same time as imposing new requirements to submit information as part of a provider's registration application and in parallel with increasing the potential consequences for providers that do not submit required information (because their application may be refused). We think this could most impact providers that have been considering submitting registration applications for some time, including those that have not been able to submit applications in light of the OfS's decision not to allow new registration applications between December 2024 and August 2025. We have set out proposals to help mitigate this possibility of delay.

The principle that regulatory activities should be transparent

16. We have considered the need for our requirements and approach to be transparent, another principle of best regulatory practice. The proposals in the current consultation seek to be transparent by including definitions of key terms in the proposed conditions and setting out detailed guidance for how they will be assessed, including where relevant the particular factors or circumstances the OfS will place weight on its assessment. We also think this will ensure consistency in the approaches taken by providers and decisions made by the OfS.

The public sector equality duty

17. We have had due regard to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between groups and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
18. We consider that the proposals in this consultation may particularly impact current and prospective students of unregistered providers that may in future seek to register with the OfS. In general, we have sought to design our proposed regulatory requirements to have a

positive impact on all students, including students with protected characteristics. We propose they would secure minimum requirements at the point of registration for consumer protection and management and governance at providers that are successfully registered. We consider that these proposals will increase the range of positive higher education choices for students by enabling effectively governed providers whose higher education provision is of high quality to register without delay, while limiting the growth of providers that would represent poor choices for students.

19. This will have positive impacts for some groups of students with protected characteristics¹⁶ because we know that at a national level these students may not have equal opportunity to access a sufficiently wide variety of higher education course types and may be less likely to succeed on courses where the course type or delivery style is not suited to their situation.
20. Students studying through subcontractual arrangements are more likely than students in general to be mature and somewhat more likely to be from a minority ethnic background.¹⁷ We consider that our proposals would over time increase the likelihood that these students are enrolled at providers that can effectively manage, oversee and deliver higher education within subcontractual arrangements.
21. This consultation gives stakeholders an opportunity to inform the development of our proposals. Through this consultation we are seeking views on any unintended consequences of our proposals, for example for particular types of provider or student, or for 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

22. We have had regard to guidance issued to the OfS by the Secretary of State¹⁸ under section 2(3) of HERA, including the following guidance:
 - a. Guidance to the OfS on strategic priorities for FY22-23 (31 March 2022).
 - b. Guidance to the OfS on the future of access and participation (23 November 2021).
23. In the March 2022 guidance the Secretary of State sets out the need to 'ensure that the LLE is supported by an appropriate regulatory regime, fully equipped to support radically different, flexible arrangements'. In introducing these initial conditions now, we aim to ensure that future expansion is supported by a regulatory regime which remains rigorous, while being designed to test arrangements at the point of registration for management and governance and student protection that take account of the diverse types of providers seeking registration. Our regulatory requirements are designed so that providers with different governance structures and models can meet them. However, we recognise that these proposals set out at the registration stage a greater degree of prescriptiveness in the governance arrangements that would be required to ensure compliance with the OfS's conditions of registration, and we

¹⁶ See [Risk 5: Limited choice of course type and delivery mode](#).

¹⁷ See OfS Insight Brief [Subcontractual arrangements in higher education](#).

¹⁸ All statutory guidance cited is available at [Guidance from government](#).

welcome comments about these proposals from providers that may in future seek to register to access LLE funding.

24. The same guidance notes that to address potential 'cold spots' in higher education provision, the OfS should 'explore ways of encouraging the expansion of HE provision into new areas, while ensuring that high quality provision is maintained'. We believe that our proposals will make the registration process simpler for well-prepared providers that will increase choice and opportunity in new areas, while improving our ability to identify and refuse applications from providers that are not ready.
25. From the same guidance, we continue to have regard to the need to reduce regulatory burden, including the comments from the Secretary of State and the Minister of State to consider what more can be done to 'reduce the burden on providers of responding to the OfS's requirements. In particular... ways [the OfS] can work with the sector to communicate more clearly its expectations'. The section on proportionality above sets out how we have sought to reduce burden for well-prepared providers through these proposals. We have also proposed where possible to reduce ongoing regulatory requirements on providers (such as proposing to remove ongoing condition C3) where these are effectively replaced by compliance with the new proposed initial condition. We have sought in some proposals to refer to existing legislation and guidance rather than creating our own parallel requirements, to avoid duplication. And we have included guidance on the proposed conditions and how they would be assessed to try and give providers as much clarity as possible about how to comply with the requirements, to reduce the potential for misunderstanding or wasted work. From the guidance on 'the future of access and participation' issued on 23 November 2021, we have given regard to the Secretary of State's view that 'there should be a shift away from marketing activities which serve to benefit the institutions and not students'. Our focus on setting a higher bar for protecting students as consumers includes ensuring that, in marketing their higher education courses, providers supply clear and accurate information and do not mislead students about the benefits of studying with that provider.
26. The same guidance states that 'Providers should not be incentivised, nor rewarded, for recruiting disadvantaged students onto courses where too many students drop out or that do not offer good graduate outcomes.' 60.6 per cent of students studying in subcontractual arrangements – where registered lead providers have subcontracted the delivery of provision to either registered or unregistered delivery providers – live in areas in the bottom two quintiles of the Index of Multiple Deprivation (the most deprived), compared with 33.9 per cent of full-time taught or registered undergraduate students at the same providers.¹⁹ We know from our recent published data dashboard on subcontractual provision that the continuation rates for students studying in subcontractual partnerships are below the OfS's threshold.²⁰ We therefore consider that the aim of strengthening regulatory requirements to address the risks in relation to subcontractual provision, and ensuring that delivery providers in subcontractual partnerships that do not meet our proposed higher bar for entry, means that such providers will not be able to access the benefits of registration and therefore will not be able to recruit students, including disadvantaged students, onto courses where too many students drop out.

¹⁹ See [Size and shape of provision data dashboard: Data dashboard](#).

²⁰ Based on 2021-22 data, see [Subcontractual partnership student outcomes dashboard: Data dashboard](#).

The Regulators' Code

27. We have had regard to the Regulators' Code.²¹ Section 3 of the code is particularly relevant, which discusses the need to base regulatory activities on risk. Paragraph 3.1 provides for regulators to use an evidence-based approach to determine priority risks and allocate resources where most effective while paragraph 3.5 provides for regulators to review the effectiveness of their activities and make necessary adjustments accordingly. We have reflected on the effectiveness of our arrangements for assessing, at the point of registration, providers' ability to deliver a high quality higher education experience for students underpinned by effective management and governance arrangements and an approach that treats students fairly. We have proposed the changes in this consultation in light of our experiences, in particular in light of the evidence of increased risks posed by the growth of subcontractual provision, and to introduce elements of a more prescriptive approach to achieve greater regulatory certainty at the registration stage for providers.
28. Section 5 of the code is also relevant, in that it discusses the need for regulators to ensure that clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. Our general approach in all three parts of the consultation is to set out in detail what providers must do to meet the requirements of the new proposed initial conditions, or the requirements of a registration application. We have included templates and checklists where appropriate, such as templates for relevant declarations in relation to the new proposed initial conditions. Paragraph 5.2 provides for regulators to publish guidance, and information in a clear, accessible and concise format. We have developed the quick reference guide to this consultation to facilitate understanding our proposals.

²¹ See [Regulators' Code - GOV.UK](#)



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