

Description of governing documents

September 2026

Purpose

1. The judicial review between the Office for Students (OfS) and the University of Sussex included a judgment from the Honourable Mrs Justice Lieven about the statutory definition of the term ‘governing documents’ for the purposes of ss.13(1)(b) and 14 of the Higher Education and Research Act 2017 (HERA).¹
2. By the end of the year we expect to publish and lay before parliament an updated version of the OfS regulatory framework, which would include a description of ‘governing documents’ in line with the judgment. In the interim, this document sets out how we will use the phrase ‘governing documents’ in advance of formal updates to the regulatory framework.

Summary

We will be using the phrase ‘governing documents’ to mean ‘documents that have some governing effect, which goes to the constitution or governance of the higher education provider’.

In practical terms we consider that this description would include the documents defined in initial condition E7.

Background

3. In the judgment of the University of Sussex judicial review, Mrs Justice Lieven ruled that our previous definition of the term ‘governing documents’ (as set out in Condition E1 at paragraph 424 and in the Glossary of our regulatory framework) is too wide for the purposes mentioned in paragraph 1 above. The conclusions in the judgment can be summarised as ‘governing documents’ mean documents that have some governing effect, which goes to the constitution or governance of the higher education provider.
4. The OfS uses the phrase ‘governing documents’ in several places in the regulatory framework and in all cases we will be using the phrase to mean ‘documents that have some governing effect, which goes to the constitution or governance of the higher education provider’. The conditions this has a substantive impact on are E1 and E2.
5. The OfS will be formally updating its regulatory framework to align the definition of governing documents with this judgment in due course.

¹ See [The University of Sussex -v- The Office for Students - Courts and Tribunals Judiciary](#).

6. In the interim, we want to make it clear that the statutory definition of governing documents is now being used in our regulatory assessments and communications.
7. In practical terms, we consider that this description would include, but not be limited to, foundational documents and the set of governing documents defined in condition E7, as below:
 - a. documents which establish the provider as an institution, including (where applicable to the provider's legal form) its Royal Charter, memorandum and articles of association or trust deed;
 - b. documents which set out the following information in relation to the provider's governing body:
 - i. its purposes or objectives
 - c. the number of governing body member and the roles of each of its members
 - d. processes for appointing members
 - i. roles and responsibilities of the body
 - ii. procedures for its decision making
 - iii. arrangements for meeting of the body (including meeting frequency)
 - iv. arrangements for reviewing the body's effectiveness or performance
 - e. risk and audit documents
 - f. decision making documents
 - g. a conflicts of interest policy; and
 - h. any other documents (including shareholder agreements) which contain rules which govern the operation of the provider's governing body.

What does this mean practically for providers?

8. We are not calling for any proactive activity from providers in response to this publication. We are sharing this information for your awareness. If there are any actions we need from individual providers on this topic, we will contact them directly. However, we do not currently foresee the need for this.
9. This does not change the process for any provider applying for or planning to apply for registration under Regulatory advice 3. Please see the specific registration information on our website.²

² See [Registering with the OfS - Office for Students](#).

Next steps

10. We expect to update the regulatory framework with this updated description by the end of the year.