



Department
for Education

Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education

Government consultation on behalf of the Office for Students – Approach to transition, provider roadmaps

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Approach to transition – transition roadmaps

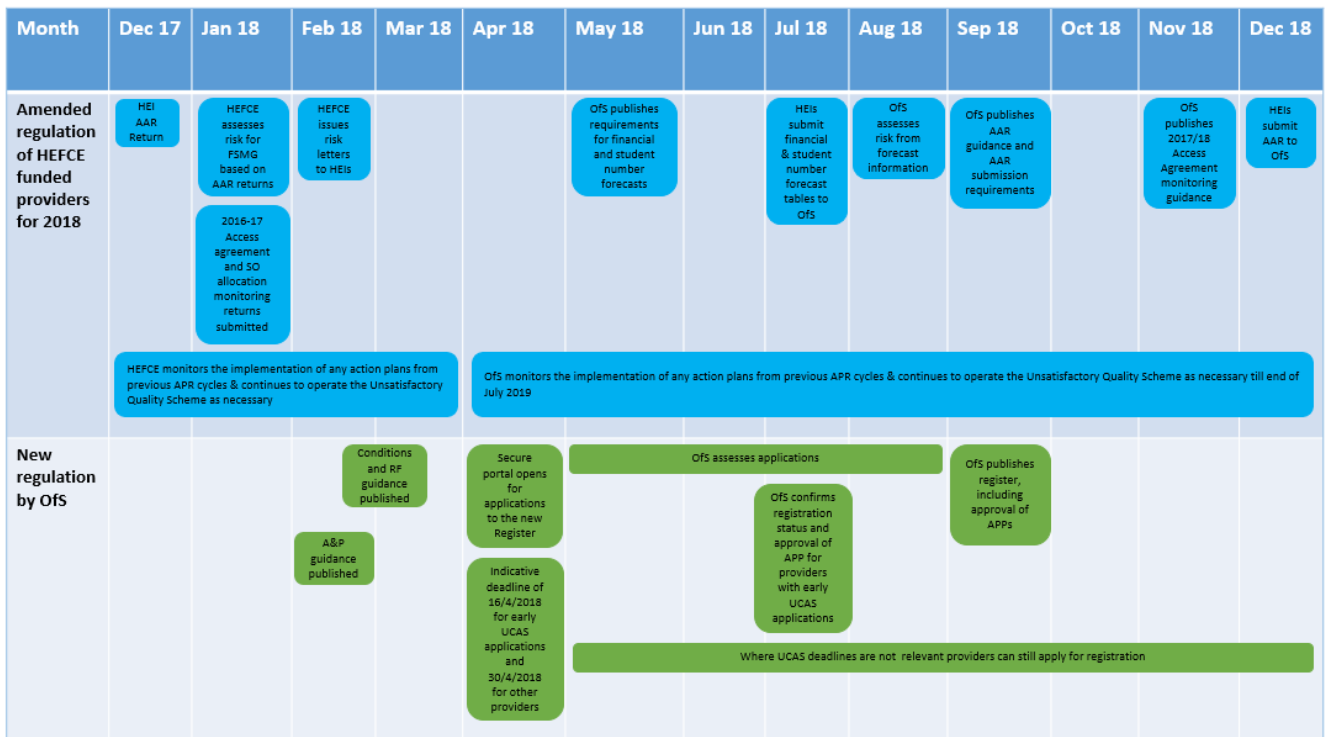
1. The OfS will operate a transition period from 1 April 2018 to 31 July 2019 as it moves from the existing approach to regulating providers to the full implementation of its new regulatory functions (as set out in the consultation document “Delivering positive outcomes for students – the new risk-based approach to regulation in higher education”).
2. We expect the commencement order necessary to operationalise the OfS and its regulatory framework to make provision to carry over the current legal framework for use by the OfS during the transition period. This needs to happen because the powers under the Higher Education and Research Act 2017 (HERA) cannot be fully implemented until the OfS register is populated. This means that current HEFCE funded providers will continue to be funded and regulated under the Further and Higher Education Act 1992 (FHEA); the Secretary of State will continue to designate Alternative Providers for student support purposes; and the powers and duties given to the Director of Fair Access by the Higher Education Act 2004 will continue to be used.
3. During the transition period the OfS will therefore operate existing regulatory arrangements. In parallel, the OfS will invite and assess applications for registration from current and new providers. The registration process for current providers will take place between April to September 2018 and will ensure that providers are able to access funding and/or the student support system from 1 August 2019.
4. This document sets out the proposals outlined in Chapter 9 of the document “Delivering positive outcomes for students – the new risk based approach to regulation in higher education” in more detail. It includes transition roadmaps for different types of providers. These roadmaps are not exhaustive, and are intended to illustrate:
 - a. what providers will be required to do to register with the OfS, and an indication of the evidence providers could use to support an application for registration
 - b. the regulatory arrangements in place during the 2018/19 academic year, including access to funding and the student support system, the use of ongoing conditions of registration, the approach to monitoring, and the use of sanctions

- c. how the OfS transition process relates to the requirements of other regulators (e.g. ESFA for colleges and the Home Office for Tier 4 licence renewals).

Transition roadmap – existing HEFCE funded provider

5. Timeline 1 below shows the key milestones for current HEFCE funded providers (which includes Higher Education Institutions¹, Further Education Colleges, and Sixth Form Colleges) during the transition period. It shows how a provider will be regulated by the OfS using existing HEFCE and OFFA (via the Director of Fair Access and Participation) powers, and alongside this, OfS’s registration process.

Timeline 1



¹ Higher Education Institution (HEI) is a term from FHEA. According to the Act, it means any provider, which is one or more of the following: a UK university; a higher education corporation; a designated institution.

Month	Jan 19	Feb 19	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19
Amended regulation of HEFCE funded providers for 2019	OfS operates APR							Transition Period Ends
	2017/18 access agreement monitoring returns to OfS							
	OfS monitors the implementation of any action plans from previous APR cycles & continues to operate the Unsatisfactory Quality Scheme as necessary till end of July 2019							
New regulation by OfS	Typically providers will want to have registered by end of January 2019 for academic year 2019/20							

Alignment of HEFCE’s regulatory requirements with the OfS registration process for HEFCE funded providers in 2017/18

6. HEFCE’s current regulatory approach and requirements are set out in the Memorandum of Assurance and Accountability (MAA)² and the Operating Model for Quality Assessment³. A core element of these arrangements is the Annual Provider Review (APR)⁴ process, which was introduced in 2016/17 to bring together in a structured way assessments of financial sustainability, good management and governance (FSMG) and the scrutiny of student outcomes data.
7. If HEFCE were to initiate and operate the APR process on the same timetable as in the previous year (from January to July 2018) it would significantly overlap with the timeline set out above in Timeline 1 for the registration of current providers with the OfS (see line “new regulation by the OfS”). This means that a provider could be responding to HEFCE APR concerns and any necessary follow-up scrutiny at the same time as preparing its application for registration with the OfS under the new regulatory framework and engaging with any OfS queries. In addition, all quality and standards judgements from APR would not be available to the OfS in time for these to be used as evidence for its registration process.

² HEFCE’s Memorandum of Assurance and Accountability: www.hefce.ac.uk/pubs/year/2017/201708/

³ HEFCE’s Operating Model for Quality Assessment: www.hefce.ac.uk/pubs/year/2016/201603/

⁴ HEFCE’s Annual Provider Review process: www.hefce.ac.uk/pubs/year/2016/201629/

8. We propose to remove this duplication of regulatory activity for providers in the following way:

December 2017 to March 2018

- HEFCE will undertake its assessment of the Annual Accountability Returns (AAR), consider data and information relating to FSMG matters, and send out the normal 'risk letter' to each HEI.
- As part of this process, HEFCE will identify any provider that it considers to be 'at higher risk' on the basis set out in the MAA and, for this very small number of providers, HEFCE will continue to operate its engagement strategy.
- HEFCE will continue to monitor the implementation of any action plans required from individual providers in relation to quality and standards matters from the 2016/17 APR cycle. In addition, HEFCE will ensure that any significant material worsening of the quality and standards position of those providers without action plans can be identified and addressed as necessary.
- HEFCE's Quality Committee will complete its oversight of review activity for the small number of providers with previously scheduled quality review visits.
- HEFCE will continue to operate its Unsatisfactory Quality Scheme⁵ as necessary during this period.

April to July 2018

- From the beginning of April 2018, the OfS will take on HEFCE's functions under FHEA. In addition, the OfS begin the registration of providers under its new HERA powers.
- The OfS will use the information provided in the AAR by an individual provider, and HEFCE's assessment of FSMG matters, to make its own assessment and reach decisions about the provider in relation to conditions D, E1 and E2.
- The OfS will draw on the outcomes of the 2016/17 APR cycle, and any additional concerns raised by HEFCE in relation to quality and standards matters during the spring of 2018, as it reaches decisions about a provider in relation to conditions B1 and B2. The OfS will assess, as part of its

⁵ HEFCE's Unsatisfactory Quality Scheme: www.hefce.ac.uk/pubs/year/2013/201330/

registration process, the student outcomes indicators associated with condition B3.

- The OfS’s judgement about a provider in relation to the quality and standards conditions B1, B2, B3, C1 and C2 will constitute the quality and standards APR outcome for that provider for 2017/18 and will be published on the HEFCE register (not the OfS register) and will be used for TEF eligibility.
- The OfS will continue to operate the Unsatisfactory Quality Scheme as necessary during this period.

Evidence required for HEFCE funded providers for initial registration with the OfS (for the academic year 2019/20)

9. Each current HEFCE funded provider is required to register with the OfS if it wishes to receive grant funding and access to the student support system from 1 August 2019. The table below sets out the initial conditions of registration that a provider will need to meet in order to be registered, the evidence that the OfS will use to assess the provider, and the extent to which these evidence requirements will be met from existing sources. This example assumes a provider will wish to apply to be registered as an Approved (fee cap) provider.

Initial conditions of registration	Would existing evidence be suitable?	What evidence will be used/ required?
BASELINE INITIAL CONDITIONS		
Objective: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education		
Condition A1: “An Approved (fee cap) provider intending to charge fees above the basic amount for qualifying courses must have an access and participation plan approved by the OfS in accordance with HERA, and for any period in which the provider charges fees above the basic amount, the plan must be in force and the provider must take all reasonable steps to comply with the provisions of the plan.”	No	Providers will need to produce a new access and participation plan that the OfS approves in order for the provider to be registered.

Condition A2: “An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount must publish an access and participation statement and must update and re-publish this on an annual basis.”	N/A	Providers, which do not charge above the basic amount, will need to produce an access and participation statement in order to be registered.
Objective: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards		
Condition B1: “The provider must deliver well-designed courses that provide a high quality academic experience and enable a student’s achievement to be reliably assessed.”	Yes	The OfS will use the outcomes of the 2016/17 APR cycle, and any outcomes of an Unsatisfactory Quality Scheme investigation, to assess compliance with conditions C1, C2, B1 and B2.
Condition B2: “The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience.”		For condition B3 providers will be assessed against the following indicators:
Condition B3: “The provider must deliver successful outcomes for its students and these are recognised and valued by employers, and/or enable further study.”		<ul style="list-style-type: none"> • Non-continuation and non-completion rates.
Condition C1 “The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards”		<ul style="list-style-type: none"> • Degree and other higher education outcomes, including differential outcomes for students with different characteristics.
Condition C2: “The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher.”		<ul style="list-style-type: none"> • Graduate employment and, in particular, progression to professional jobs and postgraduate study. <p>The OfS will consider the data in absolute terms, taking account of provider context, rather than in the form of benchmarked metrics.</p>
Objective: that all students, from all backgrounds, have their interests as consumers protected while they study, or in the event of provider, campus, or course closure.		
Condition D: “The provider must be financially viable and financially sustainable and must have appropriate resources to provide and fully deliver the higher education courses as advertised (thus enabling students to complete their courses), and enable the provider to continue to comply with all conditions of its registration”	Yes, returns made to HEFCE	<p>For Higher Education Institutions:</p> <ul style="list-style-type: none"> • The OfS will use the information submitted to HEFCE in the AAR to assess this condition. <p>For Further Education Colleges and Sixth Form Colleges:</p> <ul style="list-style-type: none"> • The OfS will use information provided by the ESFA to assess this condition.

		<p>Where relevant, the OfS will also seek information regarding:</p> <ul style="list-style-type: none"> • The provider’s business plan (in particular, where there are concerns about the provider’s financial viability or sustainability). • Legally binding parental guarantee or other legally binding deed of undertaking, including evidence that the guarantor can fulfil the guarantee (if a provider is relying on such a guarantee to meet the condition) – this may include audited financial statements where the guarantor is a company or similar entity (see the Guidance document for what guarantees are acceptable). • Any other relevant supporting evidence, such as endorsement by a validating body for any student number forecasts.
<p>Condition E1: “The provider must have in place adequate and effective management and governance arrangements to provide and fully deliver the higher education courses advertised, and to continue to comply with all conditions of its registration.”</p>	<p>Partially. Evidence may be included in the corporate governance statement or statement of internal control in the audited accounts submitted as part of the AAR.</p>	<p>Higher Education Institutions will need to submit a short self-assessment, describing the relevant provisions in their governing documents, the arrangements for implementing the requirements and an explanation of their appropriateness.</p>
<p>Condition E2: “The provider must adhere to its governing documents, which must be consistent with the public interest principles that are applicable to the provider.”</p>	<p>Only evidence not already submitted to HEFCE will need to be provided</p>	<p>Each provider must also submit or make available a copy of its governing documents (where not already provided). Supporting evidence may include:</p> <ul style="list-style-type: none"> • Details of ownership and control that demonstrate that the provider is owned and controlled by fit and proper persons. • Details of corporate form and any group structures that demonstrate transparency of inter-relationships between companies / organisations. • Membership and terms of reference of the governing body and any relevant committees, e.g. audit committee (where appropriate).

		<ul style="list-style-type: none"> • Evidence regarding risk management tools and processes (e.g. a risk register) (where appropriate). • Audit Committee annual report (where appropriate). • Internal audit plan and annual report (where appropriate). • Recent effectiveness review report of the governing body and any committees (where appropriate). • Information about governor (or equivalent) recruitment and induction (where appropriate). <p>Where a provider is still subject to Privy Council oversight of its governing documents in the academic year 2018/19, but needs to make some changes in order to bring these fully in line with the OfS's Public Interest Principles, the OfS will be able to agree such changes in draft at the point of registration. This will be on the understanding that the agreed changes are made in the provider's governing documents once Privy Council oversight has ceased in August 2019. This will avoid the need for providers to go through the Privy Council process for minor changes prior to registration (see paragraphs 70-73 for further detail).</p> <p>For Further Education Colleges and Sixth Form Colleges:</p> <ul style="list-style-type: none"> • The OfS will consider assurances provided by the ESFA to assess this condition.
<p>Condition E4: "Providers should demonstrate in developing their policies and procedures governing their contractual and other relationships with students that they have given due regard to relevant guidance as to how to comply with consumer law."</p>	<p>No</p>	<p>Providers will need to submit a short self-assessment, describing how they comply with condition E4.</p> <p>The provider may find it helpful to take account of the compliance checklists at</p>

		Annex A of the CMA's advice (p. 55 – 59) ⁶
Condition F: “The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students’ continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan.”	No	<p>Higher Education Institutions will be required to submit a student protection plan. In considering the plan for approval, the OfS will assess the appropriateness of the plan in the context of its risk assessment to the extent to which a provider may in future breach its conditions of registration and may need to implement the provisions of its plan. For example, for a provider assessed as at an increased risk of a future breach of ongoing registration conditions, more extensive provisions for student protection will be required.</p> <p>For Further Education Colleges and Sixth Form Colleges, the OfS will take assurance from the ESFA regarding its arrangements to protect students in the event of provider closure.</p> <p>They will also be required to produce a student protection plan covering other aspects of student protection (course closure, campus closure, etc.).</p>

General ongoing registration conditions for HEFCE funded providers in 2018/19

10. Once registered by the OfS in 2018, all current HEFCE funded providers will be subject to the following general ongoing registration conditions under the OfS’s HERA powers:

Student protection plan

- Condition F: The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students’ continuation of study should the provider discontinue the course, subject, discipline or exit the market

⁶ CMA’s consumer protection law advice for higher education providers:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf

completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan.

Notification of changes to register to maintain accuracy

11. Condition I: The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the register.

- **Provision of information the OfS and designated bodies require to perform their functions**

12. Condition J1: For the purposes of assisting the OfS in performing any function conferred on the OfS under any legislation, the governing body of a provider must:

- a. provide the OfS or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified by the OfS;
- b. permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified by the OfS and notify the OfS of the outcome of any independent verification at the time and in the manner and form specified by the OfS;
- c. take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular (but not limited to) providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet to the OfS or a person nominated by it.

The requirements in paragraphs b and c do not affect the generality of the requirement in paragraph a.

- **Accountability**

13. Condition O: The governing body of the provider accepts responsibility for its interactions between the provider and the OfS, and the provider's compliance with all of its registration conditions. To assist and enable it to discharge this responsibility, the governing body must designate a senior officer as the 'accountable officer' who shall act as the principal contact for the OfS, and must notify the OfS accordingly.

- **The conditions of funding as currently expressed in the HEFCE MAA**

14. This general ongoing registration condition will be in place only during the transition period up to 31 July 2019. This is to ensure that there is a regulatory link between the transition requirements under FHEA powers and the sanction powers provided by HERA. If a provider fails to meet the requirements imposed on it under FHEA arrangements during 2018/19, the OfS can take action, in the interests of students and the taxpayer to either suspend or deregister a provider from the new register. The availability of these powers are important given that a provider will be recruiting students for 2019/20 on the basis of its new registration status.
15. During 2018/19, the OfS will take action should any of these general ongoing conditions be breached, and this may include suspension or deregistration of the provider. As part of its registration process, the OfS may also impose one or more specific conditions of registration on an individual provider. During 2018/19, the OfS will monitor any specific conditions and may similarly take action should these be breached.
16. The full set of general ongoing conditions of registration and any specific conditions for an individual provider will be in force from 1 August 2019.
17. As above, the OfS will not impose the full suite of ongoing registration conditions during 2018/19, which would lead to double regulation of providers under the new powers within HERA and FHEA, this approach balances minimising the duplication whilst ensuring students and the taxpayer remain protected.

Monitoring of HEFCE funded providers, including those with an access agreement during 2018/19

18. As the OfS will be operating under FHEA powers to regulate current HEFCE funded providers during 2018/19, conditions of funding and the regulatory approach and requirements are as set out in the current HEFCE MAA and in the Operating Model for Quality Assessment.
19. We expect no material changes to the MAA for operation in 2018/19. We propose to operate the APR process, with the following adjustments for 2018/19:
 - a. The OfS will require submission of, and will undertake an assessment of, the AAR on the same basis as in 2017/18.
 - b. The APR process will begin in January 2019 with preparation of APR dashboards once key data sets become available. We expect this to include the student outcomes indicators associated with the OfS condition

B3 and the financial viability and sustainability indicators associated with the OfS condition D.

- c. The process that the OfS will use to reach APR judgements will be amended to take into account its organisational design and governance arrangements. This means that it is likely that the OfS Quality Committee will not be involved in reaching APR decisions for individual providers.
 - d. Risk letters (or quality assessment letters for Further Education Colleges) will be issued in late spring 2019 on the same basis as in 2016/17 and these will set out any actions required by an individual provider and the engagement from the OfS necessary to achieve this.
20. The OfS will publish detailed guidance on the operation of APR during 2018/19 in the autumn of 2018.
21. During the 2018/19 academic year, the OfS will continue to monitor the implementation of any action plans required from individual providers from previous APR cycles and will continue to operate the Unsatisfactory Quality Scheme as necessary.
22. In addition, it is necessary to provide clarity about which elements of the current HEFCE MAA are applicable to the funding dispersed by UKRI/Research England during 2018/19. We expect the current arrangements to continue to apply, but HEFCE will consult with the relevant sector representative bodies in early 2018 on the separation, where required, of terms and conditions of funding. The OfS and Research England will publish the updated version of the MAA that results from this process in April 2018.
23. Providers with approved access agreements for 2017/18 and 2018/19 will continue to be monitored in line with the requirements set out in the Higher Education Act 2004. Providers that do not have an access agreement in 2017/18 or 2018/19, but received funding from HEFCE to support widening access and successful student outcomes will also need to submit information:
- a. Providers will be required to submit a monitoring return in January 2018 to OFFA and HEFCE relating to the 2016/17 academic year. Assessment of these returns will be completed by HEFCE and OFFA who will communicate the individual outcome to providers before 31 March 2018.
 - b. The OfS will publish a report of monitoring outcomes from the 2016/17 monitoring exercise in May 2018.

- c. In late 2018 the OfS will publish guidance on the approach it intends to take to monitoring 2017/18 access agreements and relevant HEFCE funding. It will indicate in this guidance how a risk-based approach to monitoring will be implemented in line with its wider practices.

Other forms of regulation

Tier 4 licence

24. All providers with an existing Tier 4 licence will need to continue to have educational oversight checks conducted during 2018/19 to maintain their licence and, as necessary, will need to reapply for their Tier 4 licence if it expires in 2018/19. The OfS will seek to de-conflict these educational oversight checks with those being carried out by the OfS for entry to the register to reduce the administrative burden upon providers. The terms and duration of a licence will remain extant during transition unless the provider fails to meet either the existing educational oversight checks, the conditions for joining the OfS register, or does not comply with other Tier 4 requirements.

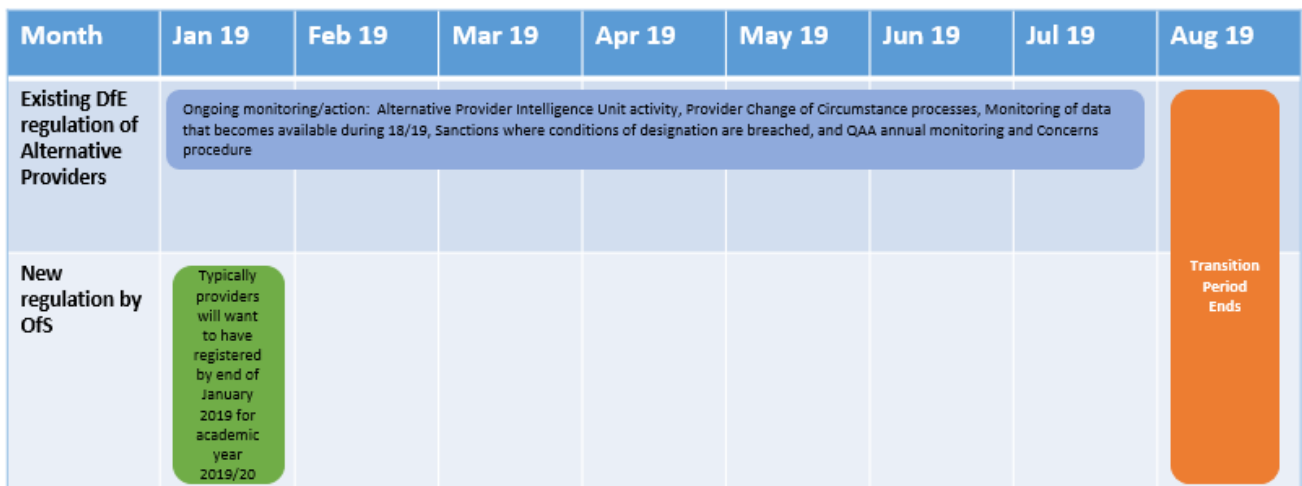
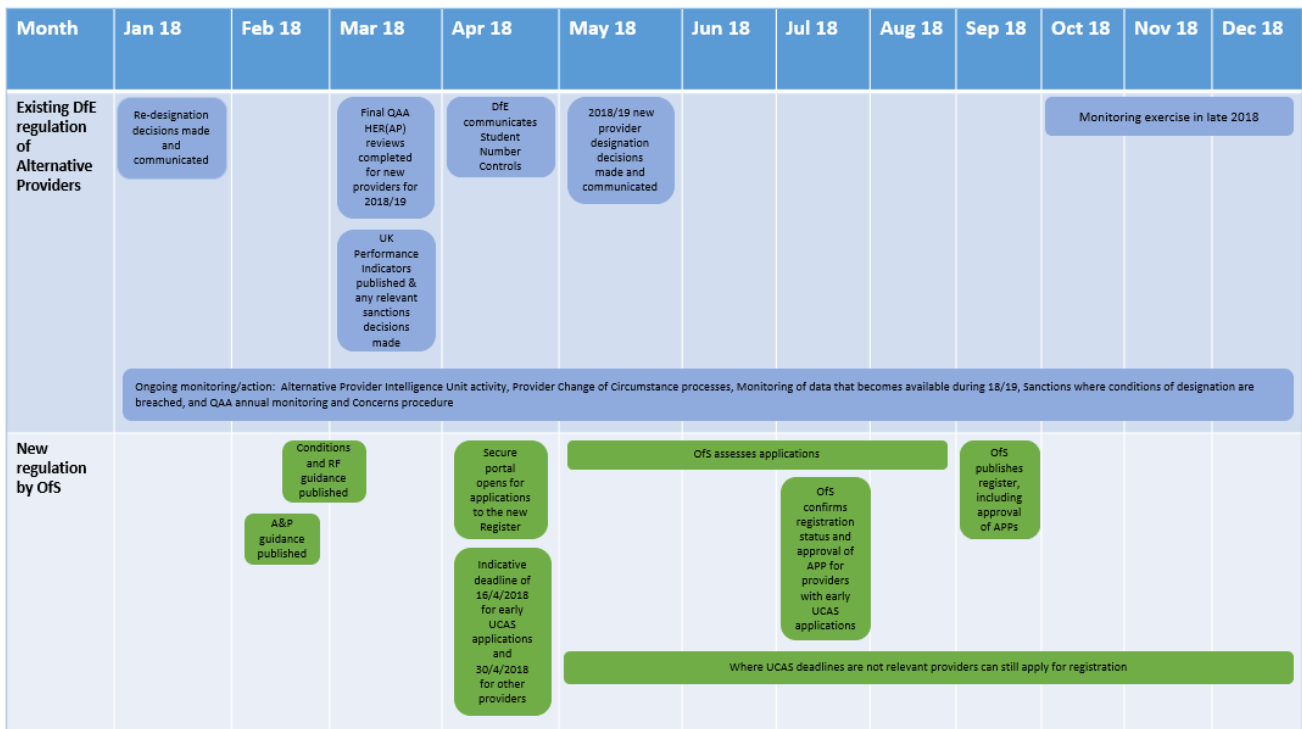
Prevent

25. Providers will continue to be required to comply with the Prevent statutory duty during and after the transition period.

Transition roadmap – Alternative Providers regulated by DfE using the Secretary of State’s powers to designate institutions for student support

26. Timeline 2 below shows the key milestones for current Alternative Providers during the transition period. It shows how a provider will be regulated by DfE using the Secretary of State’s existing powers and, alongside this, OfS’s registration process.

Timeline 2



DfE's regulatory requirements for Alternative Providers in 2017/18

27. Alternative Providers will be expected to meet the requirements for course designation as set out in the July 2017 DfE "Specific course designation guidance policy and guidance for Alternative Providers of higher education: criteria and conditions"⁷. The deadlines for the designation process for the academic year 2018/19 are below:

- a. September 2017- Deadline for submission of annual return for specific course designation for 2018/19 (for providers without Degree Awarding Powers).
- b. October 2017 to Dec 2017 - Assessment of annual returns.
- c. January 2018 - Last applications received from new providers for 2018/19 specific course designation.
- d. January 2018 - Expect most 2018/19 re-designation decisions to have been made and communicated to providers (for providers without Degree Awarding Powers).
- e. March 2018 - Expect the final QAA HER(AP) reviews completed for any new providers seeking specific course designation for 2018/19.
- f. March 2018 - UK Performance Indicators published and decisions made about appropriate sanctions where there are concerns.
- g. April 2018 - 2018/19 Student Number Controls communicated to relevant providers.
- h. May 2018 - Expect most 2018/19 new provider designation decisions to have been made and communicated to providers.

Evidence required for Alternative Providers for registration in 2018/19

28. Each currently designated Alternative Provider is required to register with the OfS if it wishes to access the student support system from 1 August 2019. The table below sets out the initial conditions of registration that a provider will need to meet in order to be registered, the evidence that the OfS will use to

⁷ Specific course designation guidance policy and guidance for Alternative Providers of higher education: criteria and conditions: www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers

assess the provider, and the extent to which these evidence requirements will be met from existing sources. This example assumes that a provider will wish to apply to be registered as an Approved provider. If a provider instead wishes to apply to be registered as an Approved (fee cap) provider and wishes to charge tuition fees above the basic amount, it will need to supply different evidence for condition A, as A1 would apply. In these circumstances, a provider would need to produce a new access and participation plan to be approved by the OfS.

Initial conditions of registration	Would existing evidence be suitable?	What evidence will be used/ required?
BASELINE INITIAL CONDITIONS		
Objective: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education		
Condition A1: “An Approved (fee cap) provider intending to charge fees above the basic amount for qualifying courses must have an access and participation plan approved by the OfS in accordance with HERA, and for any period in which the provider charges fees above the basic amount, the plan must be in force and the provider must take all reasonable steps to comply with the provisions of the plan.”	N/A	N/A
Condition A2: “An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount must publish an access and participation statement and must update and re-publish this on an annual basis.”	No	Providers will need to produce an access and participation statement in order to be registered.
Objective: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards		
Condition B1: “The provider must deliver well-designed courses that provide a high quality academic experience and enable a student’s achievement to be reliably assessed.”	Yes	The OfS will use the outcomes of the most recent HER (AP), the outcomes of QAA annual monitoring (including progress on any action plan), and any outcomes of any QAA Concerns investigation, to assess compliance with conditions B1, B2, C1 and C2.
Condition B2: “The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience.”		

<p>Condition B3: “The provider must deliver successful outcomes for its students and these are recognised and valued by employers, and/or enable further study.”</p>		<p>For condition B3 providers will be assessed (where data is available) against the following indicators:</p>
<p>Condition C1 “The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards”</p>		<ul style="list-style-type: none"> •Non-continuation and non-completion rates.
<p>Condition C2: “The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher.”</p>		<ul style="list-style-type: none"> •Degree and other higher education outcomes, including differential outcomes for students with different characteristics. •Graduate employment and, in particular, progression to professional jobs and postgraduate study. <p>The OfS will consider the data in absolute terms, taking account of provider context, rather than in the form of benchmarked metrics.</p>
<p>Objective: that all students, from all backgrounds, have their interests as consumers protected while they study, or in the event of provider, campus, or course closure.</p>		
<p>Condition D: “The provider must be financially viable and financially sustainable and must have appropriate resources to provide and fully deliver the higher education courses as advertised (thus enabling students to complete their courses), and enable the provider to continue to comply with all conditions of its registration”</p>	<p>Yes, returns made under the specific course designation regime</p>	<p>With the consent of the provider, the OfS will use the information submitted by the provider to HEFCE as part of the annual designation checks. Otherwise, the provider will need to supply equivalent information.</p> <p>Where relevant, the OfS will also seek information regarding:</p> <ul style="list-style-type: none"> • The provider’s business plan (in particular, where there are concerns about the provider’s financial viability or sustainability). • Legally binding parental guarantee or other legally binding deed of undertaking, including evidence that the guarantor can fulfil the guarantee (if a provider is relying on such a guarantee to meet the condition) – this may include audited financial statements where the guarantor is a company or similar entity (see the Guidance document for what guarantees are acceptable). • Any other relevant supporting evidence, such as endorsement by a validating body for any student numbers forecasts.

		<p>Once registered: Where a provider is not required to submit financial statements during the academic year 2018/19 under the current regulatory regime, the OfS may request this information to ensure that it has the latest financial information available during the 2018/19 academic year.</p>
<p>Condition E1: “The provider must have in place adequate and effective management and governance arrangements to provide and fully deliver the higher education courses advertised, and to continue to comply with all conditions of its registration.”</p>	<p>Partially, returns made under the specific course designation regime will include some evidence such as details of ownership and corporate form.</p>	<p>Providers will need to submit a short self-assessment, describing the relevant provisions in their governing documents, the arrangements for implementing the requirements and an explanation of their appropriateness.</p> <p>Each provider must also submit or make available a copy of its governing documents. Supporting evidence may include:</p> <ul style="list-style-type: none"> • Details of ownership and control that demonstrate that the provider is owned and controlled by fit and proper persons. • Details of corporate form and any group structures that demonstrate transparency of inter-relationships between companies / organisations. • Membership and terms of reference of the governing body and any subcommittees, e.g. audit committee (where appropriate).
<p>Condition E2: “The provider must adhere to its governing documents, which must be consistent with the public interest principles that are applicable to the provider.”</p>	<p>Only evidence not already submitted to HEFCE or DfE will need to be provided.</p>	<p>Where appropriate, evidence might also include:</p> <ul style="list-style-type: none"> • Evidence regarding risk management tools and processes (e.g. a risk register) (where appropriate). • Audit Committee annual report (where appropriate). • Internal audit plan and annual report (where appropriate). • Recent effectiveness review report of the governing body and any subcommittees (where appropriate).

		<ul style="list-style-type: none"> Information about governor (or equivalent) recruitment and induction (where appropriate).
Condition E4: “Providers should demonstrate in developing their policies and procedures governing their contractual and other relationships with students that they have given due regard to relevant guidance as to how to comply with consumer law.”	No	<p>Providers will need to submit a short self-assessment, describing how they are developing their policies and procedures to ensure compliance with consumer law.</p> <p>The provider may find it helpful to take account of the compliance checklists at Annex A of the CMA’s advice (p. 55 – 59)⁸</p>
Condition F: “The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students’ continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan.”	No	<p>Providers will be required to submit a student protection plan. The OfS will assess the appropriateness of the plan in the context of its risk assessment of the extent to which a provider may in future breach its conditions of registration and may need to implement the provisions of its plan e.g. for a provider assessed as at an increased risk of a future breach of conditions of registration, more extensive provisions for student protection will be required.</p>

General ongoing registration conditions for Alternative Providers in 2018/19

29. Alternative Providers will be subject to the following general ongoing registration conditions from the point they are registered in 2018:

Student Protection Plan

30. Condition F: The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students’ continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan.

Notification of changes to register to maintain accuracy

⁸ CMA’s consumer protection law advice for higher education providers:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf

31. Condition I: The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the register.

Provision of information the OfS and designated bodies require to perform their functions

32. Condition J1: For the purposes of assisting the OfS in performing any function conferred on the OfS under any legislation, the governing body of a provider must:

- a. provide the OfS or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified by the OfS;
- b. permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified by the OfS and notify the OfS of the outcome of any independent verification at the time and in the manner and form specified by the OfS;
- c. take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular (but not limited to) providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet to the OfS or a person nominated by it.

33. The requirements in paragraphs b and c do not affect the generality of the requirement in paragraph a.

Accountability

34. Condition O: The governing body of the provider accepts responsibility for its interactions between the provider and the OfS, and the provider's compliance with all of its registration conditions. To assist and enable it to discharge this responsibility, the governing body must designate a senior officer as the 'accountable officer' who shall act as the principal contact for the OfS, and must notify the OfS accordingly.

Alternative Providers must comply with conditions of designation imposed by the Secretary of State.

35. This will be a transitional general ongoing condition only and will not be applied from 1 August 2019. This is to ensure that during 2018/19, if a provider is not meeting the conditions imposed on it under the existing

regulatory approach, the OfS can take action, in the interests of students and the taxpayer to either suspend or deregister a provider from the new register. This is important given providers will be recruiting students for 2019/20 on the basis of its new registration status.

Monitoring of and sanctions for Alternative Providers during 2018/19

36. DfE will routinely monitor providers during this period through:

- a. ongoing Alternative Provider Intelligence Unit (APIU)⁹ activity, both routine and where there are specific concerns/ issues including those raised by whistle-blowers
- b. monitoring of data that becomes available during 2018/19
- c. provider change of circumstance processes¹⁰
- d. QAA annual monitoring and Concerns procedure¹¹
- e. sanctions where conditions of designation are breached

37. A monitoring exercise in late 2018 will also be necessary to ensure providers continue to meet the conditions of designation.

38. During 2018/19, providers will therefore be principally regulated by DfE according to the requirements set out in the July 2017 specific course designation policy and guidance¹². Where a provider has also successfully registered on the new OfS register, not all of the applicable general ongoing registration conditions and monitoring and sanctions arrangements under the new regulatory framework (as set out in Chapter 5 of the main consultation document), will be in force in 2018/19. In this period, the OfS will:

⁹ The Alternative Provider Intelligence Unit is a joint DfE/ HEFCE Unit set up to manage relationships and information relating to Alternative Providers with specific course designation and those exiting the system.

¹⁰ The reporting any changes that may affect your ability to continue to meet the criteria or conditions of designation.

¹¹ The process through which QAA investigates concerns raised by students, staff and other parties about how higher education providers manage their academic standards, the quality of learning opportunities, and the information that they make available about their provision.

¹² Specific course designation guidance policy and guidance for Alternative Providers of higher education: criteria and conditions: www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers

39. Follow up with providers in relation to any specific ongoing registration conditions that may have been applied to them at the point of registration.
40. Take action where there is evidence that any of the ongoing registration conditions imposed and in force for 2018/19 and as set out above are breached, which may include suspension from the register and deregistration. This will involve close working with DfE.
41. As stated above not all of the ongoing general registration conditions will be in force during 2018/19. This would lead to double regulation of providers under the new powers within HERA and FHEA, this approach balances minimising the duplication whilst ensuring students and the taxpayer remain protected.

Other forms of regulation

Tier 4 licence

42. All providers with an existing Tier 4 licence will need to continue to have educational oversight checks conducted during 2018/19 to maintain their licence and, as necessary, will need to reapply for their Tier 4 licence if it expires in 2018/19. The OfS will seek to de-conflict these educational oversight checks with those being carried out by the OfS for entry to the register to reduce the administrative burden upon providers. The terms and duration of a licence will remain extant during transition unless the provider fails to meet either the existing educational oversight checks, the conditions for joining the OfS register, or does not comply with other Tier 4 requirements.

Prevent

43. Providers will continue to be required to comply with the Prevent statutory duty during and after the transition period.

Transition roadmap – Providers that are registering for the first time (i.e. are not existing HEFCE funded providers/Alternative Providers as described above)

Evidence required for new providers for registration during 2018/19

44. The table below assumes that this provider applies as an Approved provider. If a provider applies for Approved (fee cap) and wants to charge tuition fees above the basic amount it will need to supply different evidence for condition A, as A1 would apply. In these circumstances, a provider would need to produce a new Access and Participation Plan for approval by the OfS.

Initial conditions of registration	Would existing evidence be suitable?	What evidence will be used/ required?
BASELINE INITIAL CONDITIONS		
Objective: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education		
Condition A1: “An Approved (fee cap) provider intending to charge fees above the basic amount for qualifying courses must have an access and participation plan approved by the OfS in accordance with HERA, and for any period in which the provider charges fees above the basic amount, the plan must be in force and the provider must take all reasonable steps to comply with the provisions of the plan”	No	Providers will need to produce an access and participation statement or access and participation plan depending on the category applied for.
Condition A2: “An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount must publish an access and participation statement and must update and re-publish this on an annual basis.”	N/A	
Objective: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards		
Condition B1: “The provider must deliver well-designed courses that provide a high quality academic experience and enable a student’s achievement to be reliably assessed.”	Yes, but we appreciate not all	The OfS will commission the Designated Quality Body to conduct a quality review to

Condition B2: “The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience.”	new providers will have had a quality review.	allow the OfS to assess compliance with conditions B1, B2 B3 and C1 and C2.
Condition B3: “The provider must deliver successful outcomes for its students and these are recognised and valued by employers, and/or enable further study.”		As the Designated Quality Body will not be in a position to conduct such a review until Autumn 2018 providers may apply to the QAA for a current- review (either HER (AP) for Alternative Providers or QRV for publicly funded providers) and the outcome from this will be used to assess conditions B1, B2, B3, C1 and C2.
Condition C1 “The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards”		Applications for current QAA reviews will be accepted until the new review is available.
Condition C2: “The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher.”		Where data is available (because the provider has operated through a franchising or other indirect funding arrangement) the OfS will use this to assess condition B3.
Objective: that all students, from all backgrounds, have their interests as consumers protected while they study, or in the event of provider, campus, or course closure.		
Condition D: “The provider must be financially viable and financially sustainable and must have appropriate resources to provide and fully deliver the higher education courses as advertised (thus enabling students to complete their courses), and enable the provider to continue to comply with all conditions of its registration”	No	<p>The OfS will seek information regarding:</p> <ul style="list-style-type: none"> • Audited financial statements and forecasts (if available). • The provider’s business plan (in particular, where there are concerns about the provider’s financial viability or sustainability). • Legally binding parental guarantee or other legally binding deed of undertaking, including evidence that the guarantor can fulfil the guarantee (if a provider is relying on such a guarantee to meet the condition) – this may include audited financial statements where the guarantor is a company or similar entity. • Any other relevant supporting evidence, such as endorsement by a validating body for any student numbers forecasts. <p>Once registered: Where a provider is not required to submit financial statements during the academic year 2018/19 under the current regulatory regime, the OfS may request this information to ensure that it has the latest</p>

		<p>financial information available during the 2018/19 academic year.</p> <p>For Sixth Form Academies the OfS will consider assurances provided by ESFA to assess this condition.</p>
<p>Condition E1: “The provider must have in place adequate and effective management and governance arrangements to provide and fully deliver the higher education courses advertised, and to continue to comply with all conditions of its registration.”</p>	No	<p>Providers will need to submit a short self-assessment, describing the relevant provisions in their governing documents, the arrangements for implementing the requirements and an explanation of their appropriateness.</p> <p>Each provider must also submit or make available a copy of its governing documents. Supporting evidence may include:</p> <ul style="list-style-type: none"> • Details of ownership and control that demonstrate that the provider is owned and controlled by fit and proper persons. • Details of corporate form and any group structures that demonstrate transparency of inter-relationships between companies / organisations. • Membership and terms of reference of the governing body and any subcommittees, e.g., audit committee (where appropriate). • Evidence regarding risk management tools and processes (e.g. a risk register) (where appropriate). • Audit Committee annual report (where appropriate). • Internal audit plan and annual report (where appropriate). • Recent effectiveness review report of the governing body and any subcommittees (where appropriate). • Information about governor (or equivalent) recruitment and induction (where appropriate). <p>For Sixth Form Academies the OfS will consider assurances provided by ESFA to assess this condition.</p>
<p>Condition E2: “The provider must adhere to its governing documents, which must be consistent with the public interest principles that are applicable to the provider.”</p>		

<p>Condition E4: “Providers should demonstrate in developing their policies and procedures governing their contractual and other relationships with students that they have given due regard to relevant guidance as to how to comply with consumer law.”</p>	<p>No</p>	<p>Providers will need to submit a short self-assessment, describing how they are developing their policies and procedures to ensure compliance with consumer law.</p> <p>The provider may find it helpful to take account of the compliance checklists at Annex A of the CMA’s advice (p. 55 – 59)¹³</p>
<p>Condition F: “The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students’ continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan.”</p>	<p>No</p>	<p>Providers will be required to submit a student protection plan. The OfS will assess the appropriateness of the plan in the context of its risk assessment of the extent to which a provider may in future breach its conditions of registration and may need to implement the provisions of its plan. For example, for a provider assessed as at an increased risk of a future breach of conditions of registration, more extensive provisions for student protection will be required.</p> <p>For Sixth Form Academies the OfS will take assurance from the ESFA regarding its arrangements to protect students in the event of provider closure. They will be required to produce a student protection plan covering other aspects of student protection (course closure, campus closure, etc.).</p>

General ongoing registration conditions for new providers in 2018/19

45. New providers registering in the Approved categories will be subject to the following ongoing registration conditions from the point they are registered in 2018/19:

Quality and Standards

46. Condition B1: The provider must deliver well-designed courses that provide a high quality academic experience and enable a student’s achievement to be reliably assessed.

¹³ CMA’s consumer protection law advice for higher education providers: www.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf

47. Condition B2: The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience.
48. Condition B3: The provider must deliver successful outcomes for its students and these are recognised and valued by employers, and/or enable further study.
49. Condition C1: The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards.
50. Condition C2: The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher.

Financial Sustainability

51. Condition D: The provider must be financially viable and financially sustainable and must have appropriate resources to provide and fully deliver the higher education courses as advertised (thus enabling students to complete their courses), and enable the provider to continue to comply with all conditions of its registration.

Management and Governance

52. Condition E1: The provider must have in place adequate and effective management and governance arrangements to provide and fully deliver the higher education courses advertised, and to continue to comply with all conditions of its registration.
53. Condition E2: The provider must adhere to its governing documents, which must be consistent with the public interest principles that are applicable to the provider.

Student Protection Plan

54. Condition F: The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students' continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan.

Notification of changes to register to maintain accuracy

55. Condition I: The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the register.

Provision of information the OfS and designated bodies require to perform their functions

56. Condition J1: For the purposes of assisting the OfS in performing any function conferred on the OfS under any legislation, the governing body of a provider must:

- a. provide the OfS or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified by the OfS
- b. permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified by the OfS and notify the OfS of the outcome of any independent verification at the time and in the manner and form specified by the OfS
- c. take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular (but not limited to) providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet to the OfS or a person nominated by it

57. The requirements in paragraphs b and c do not affect the generality of the requirement in paragraph a.

Accountability

58. Condition O: The governing body of the provider accepts responsibility for its interactions between the provider and the OfS, and the provider's compliance with all of its registration conditions. To assist and enable it to discharge this responsibility, the governing body must designate a senior officer as the 'accountable officer' who shall act as the principal contact for the OfS, and must notify the OfS accordingly.

Monitoring of and sanctions for new providers during 2018/19

59. During 2018/19, the OfS will want to ensure that a provider continues to be meeting a minimum set of conditions to remain on the OfS register and be recruiting students for 2019/20.

60. Whilst not all of the applicable general ongoing registration conditions and monitoring and sanctions arrangements under the new regulatory framework (as set out in Chapter 5 of the main consultation document), will be fully in force in 2018/19, the OfS will:

- a. follow up with providers in relation to any specific ongoing conditions that may have been applied to them at the point of registration.
- b. take action where there is evidence that any of the general ongoing registration conditions imposed and in force for 2018/19 and as set out above are breached, which may include suspension from the register and deregistration. This will involve close working with DfE.

61. This approach ensures students and the taxpayer remain protected in advance of the Regulatory Framework being fully implemented from 1 August 2019.

Other transitional matters

Degree Awarding Powers (DAPs) and University Title

62. Applications under existing criteria and guidance can be made until 31 March 2018 for DAPs, and 31 March 2019 for University Title.
63. Any applications submitted on or before these dates will be assessed, using existing processes, with the Privy Council continuing to make decisions on the same basis that it does at present.
64. Under the new guidance, applications for DAPs can be made from 1 April 2018 onwards, and applications for University Title can be made from 1 April 2019 onwards. Any application received after these dates will be treated as an application under the new guidance, to be published in early 2018 following the “Simplifying Access to the Market: Degree Awarding Powers & University Title” consultation.
65. Providers will not be able to operate with DAPs obtained under the new guidance until the regulatory framework is fully in place from 1 August 2019. Therefore, any DAPs orders made prior to August 2019 would have a commencement date of on or after 1 August 2019.
66. The sections of the current guidance listed below will continue to apply up to 31 July 2019, for issues arising post-award for providers with University Title, and for all providers with DAPs (whether with or without University Title):
 - a. ‘Post-award issues’/‘Issues arising after award’ and ‘Rights and obligations applicable to DAPs holders’ (Sections 5 and 6 of the current guidance for taught and research degree awarding powers¹⁴);
 - b. ‘Scope, duration and renewal’ and ‘Rights and obligations’ (sections 4 and 5 of the current guidance for foundation degree awarding powers)¹⁵, and,

¹⁴ Taught Degree Awarding Powers and Research Degree Awarding Powers. Guidance for Higher Education Providers: criteria and process for applying for taught degree awarding powers and research degree awarding powers” (September 2015)

¹⁵ Foundation Degree Awarding Powers. Guidance for Higher Education Providers: criteria and process for applying for foundation degree awarding powers” (October 2015)

- c. 'Criteria', 'Selecting a preferred name', 'Notification of decision and next steps' and 'Issues arising after award' (sections 2, 4, 7, and 8), and Annexes A, B and C of the current guidance for University Title¹⁶

67. Providers that currently have renewable DAPs, may apply to the OfS for indefinite DAPs from 1 August 2019 onwards, once they have operated with DAPs for three years. Please refer to the "Simplifying Access to the Market: Degree Awarding Powers and University Title" consultation for further details on applying for indefinite DAPs.

68. Only providers registered in the Approved and Approved (fee cap) categories will be eligible to apply for and hold DAPs or University Title.

Privy Council Oversight of Governing Documents

69. As part of the ongoing registration conditions in relation to management and governance, the OfS will have oversight of the governing documents of providers registered in the Approved or Approved (fee cap) categories. This registration condition and the underpinning list of public interest principles therefore replace the current processes through which publicly funded providers must submit any changes to their governing documents to the Privy Council for approval.

70. The removal of the requirement for such Privy Council approval will apply to English designated institutions and Higher Education Corporations (HECs). Privy Council oversight for such providers will cease on 31 July 2019.

71. The exception to these arrangements are providers with Royal Charters or Private Acts, as provisions within individual Charters and Acts may still require Privy Council approval before changes can be made. In future, we envisage that this Privy Council approval process could continue in parallel to the oversight exercised by the OfS under its registration conditions, and there may also be de-regulatory options for providers to explore which would limit the need for continued Privy Council scrutiny. Further information on this will be made available following the consultation.

72. Where providers that will no longer be subject to Privy Council oversight from 1 August 2019 need to make minor changes to their governing documents prior to OfS registration (for example, to bring them fully in line with the new OfS Public Interest Principles), the OfS will be able to agree such amendments in draft form. This means that providers would not need to go

¹⁶ Guidance for higher education providers: criteria and process for applying for University Title and university college title (September 2015).

through the Privy Council approval processes prior to registration with the OfS. Instead, the OfS would agree changes in draft with the provider, on the condition that the changes are reflected in the provider's governing documents once Privy Council oversight has ceased.

Designation for HEFCE funding

73. For a provider that is not currently designated to receive HEFCE funding, September 2017 was the last point at which HEFCE could assess an application for funding to commence at the start of the 2018/19 academic year. This reflects the fact that the process normally takes six months from the point of application to a decision. For a provider that already receives HEFCE funding indirectly, for example through a sub-contractual arrangement, HEFCE will be able to receive applications for funding to commence at the start of the 2018/19 academic year up until the end of November 2017.

Transfer from the further education sector and re-incorporation as a Higher Education Corporation

74. Under the reforms, there will remain a route for Further Education Corporations to re-incorporate as Higher Education Corporations (HECs). However, in future, English HEC status will no longer give automatic eligibility to receive grant funding. Instead, English HECs will be required to register in the Approved (fee cap) category, in the same way as other providers to gain access to grant funding.

75. Where an FE institution currently receives direct HEFCE funding, the last point for applications to become a HEC under the current system would be the end of November 2017, in order for the OfS to arrange for funding for the start of the 2018/19 academic year.

76. Later applications could still be considered, however on the understanding that the provider in question would not be eligible to receive funds for 2018/19, and would need to register with the OfS from April 2018. Any provider considering making such an application should discuss with DfE/HEFCE/OfS in the first instance.

77. New guidance on re-incorporation as a HEC will be published ahead of the academic year 2019/20. However, because no automatic funding eligibility will attach to English HEC status, the criteria for conversion to HEC will be reduced in scope. Some requirements, such as the requirements for 55% of FTE students to be studying at higher education level and an outcome from a

structure and prospects appraisal, which recommends conversion, will remain.

78. As set out above, English HECs will no longer require Privy Council approval for changes to their governing documents. This is effected by Schedule 8 of HERA, which amends the Education Reform Act 1988. These changes also remove many of the detailed requirements governing the content of an HEC's instruments and articles of government.



Department
for Education

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