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SUGGESTED DISTRIBUTION Senior executive teams, governing bodies, registrars, academic registrars

TERRITORIAL RELEVANCE England with some cross-border implications

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THE OFFICE FOR STUDENTS REGULATORY FRAMEWORK

EXECUTIVE SUMMARY

This paper provides an overview of the Office for Students (OfS) regulatory framework consultation and an initial assessment of priority areas. More clarity is needed on how the OfS will ensure that it will be a transparent, accountable, independent and proportionate regulator that protects the autonomy of institutions and the interests of students.

This paper is the first stage in the development of the Universities UK response. It is our intention to work constructively with all parties to improve the proposals, and ensure an orderly transition to the new regulatory system that minimises risks for students and institutions. UUK members are invited to share their initial views on the consultation and priorities for the UUK response by the **22nd November 2017**.

INTRODUCTION

1. The proposed consultation on the Office for Students regulatory framework was published on 19 October.¹ The consultation sets out how the OfS will enact the provisions of the Higher Education and Research Act 2017 (HERA) and government policy set out in the 2016 White Paper. The consultation closes on 22 December 2017.
2. This paper provides an initial high-level assessment of the consultation, including potential priority areas for the Universities UK (UUK) response and points for consideration. It should be pointed out from the outset that our general stance is to work constructively with all parties to improve the proposals, and ensure an orderly transition to the new regulatory system that reduces unnecessary turbulence and risk for students and institutions.
3. This paper is the first stage of developing the UUK response. Priorities will be considered by the UUK Board on 3 November. The Student Policy Network will then undertake a more detailed consideration of the consultation and the UUK response. UUK members will then have an opportunity to discuss the consultation at the Members Meeting on 1 December 2017. **Members are invited to share initial views with william.hammonds@universitiesuk.ac.uk by 22 November 2017.**

OVERVIEW

4. The core consultation document incorporates 27 questions. This is supported by guidance on registration conditions that provides important clarification on how registration conditions should be interpreted. An outline of the transition provides important information on the timeline, including the transfer from the Higher Education Funding Council for England (HEFCE) and the 1992 Act powers to the OfS and the 2017 HERA powers. Supporting consultations include new degree awarding powers and designation of quality and data bodies.
5. The OfS will be formally established on 1 January 2018. The subsequent deadline for applications to join the OfS register are in April 2018 with exact dates depending on UCAS application deadlines. The register will be published from mid-September 2018 with transitional arrangements in place for existing providers until September 2019.
6. The consultation sets out the OfS's proposed risk-based regulatory strategy for delivering its statutory duties. The approach is divided between two elements, the register that will establish basic expectations for providers depending on category and a set of indirect sector level mechanisms. These mechanisms will be used to deliver the OfS's primary objectives which, as anticipated, are exclusively focused on student outcomes. They are:
 - a. Objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education.

¹ The various consultation documents can be accessed at <https://consult.education.gov.uk/higher-education/higher-education-regulatory-framework/>

- b. Objective 2: 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.
 - c. Objective 3: that all students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure.
 - d. Objective 4: that all students, from all backgrounds, receive value for money.
7. The register is a voluntary compliance baseline. In order to achieve its statutory objectives, the OfS has set conditions of registration for providers. Further detail of these objectives and conditions are set out in Annex B. As set out in the 2016 White Paper the conditions are varied between three broad categories that are based on the level of access to public funding:
- e. ‘Registered basic’ – for providers not in receipt of student support or funding. This represents an entirely new regulatory category and will potentially bring a new set of providers into direct contact with sector regulation. This carries a nominal set of conditions, primarily relating to the qualifications delivered by the provider, subscription to the Office of the Independent Adjudicator (OIA) and some limited information.
 - f. ‘Approved’ – providers with designation for student support. This clarifies the arrangements for these providers who had previously been regulated by HEFCE on behalf of the Department for Education. The register will produce more consistency between Approved and Approved fee cap providers, including conditions relating to freedom of speech, student transfers, contracts and value for money. This category will be a minimum requirement for Home Office Tier 4 and for award of degree awarding powers.
 - g. ‘Approved fee cap’ – this category is for all providers who wish to receive direct teaching or research grant funding. This category covers almost all English UUK member institutions. This category has enhanced financial sustainability requirements and more restriction on fee levels, as determined by the Teaching Excellence Framework (TEF) and access and participation plans.
8. Provider risks, as defined against the OfS regulatory objectives, will be assessed and monitored through a series of lead indicators, many of which are comparable to the current HEFCE annual provider review (APR) indicators and financial sustainability, plus reportable events. Where necessary specific mitigating conditions will be applied to providers. The register is not intended to drive enhancement of practice. It is also expected to be low burden for providers categorised as low risk.
9. Alongside this the OfS will use indirect sector-level interventions to help ensure that students have a wide choice of good quality providers and provision. This includes encouraging competition through market entry for a wider range of providers and support for innovative provision. This will be supported by student information to enable choice and to shape the outcomes of the sector, primarily through the TEF.

CONSIDERATIONS

10. The consultation exercise is long and detailed. It reiterates the overall strategy set out in the 2016 White Paper, the OfS approach to its role and more detail about the key regulatory mechanisms and the transition arrangements. Although the OfS leadership has stressed that the consultation is a genuinely consultative exercise, the document itself and the timeline for implementation suggests little scope for substantive changes to proposals.
11. When developing the UUK response it will be important to focus on strategic questions of importance to the sector alongside specific practical issues that arise from the current proposals. Some initial considerations include:
 - a. The consultation is based on the approach set out in the 2016 White Paper and is primarily focused on bringing a wider range of providers into the scope of one regulator. Many of the proposals should be read with the objective of regulating a new set of providers in mind. In this respect, it follows UUK's recommendations in relation to reform of regulation in the sector.
 - b. The regulatory framework is intended as a baseline and not a mechanism for enhancement. Instead the OfS proposes to use indirect market mechanisms to incentivise improvement. However, there is often a disconnect between the rhetoric of risk-based regulatory baselines focused on student outcomes, and a focus on delivering current political priorities through more prescriptive measures that are often referred to as 'indicative behaviours'.
 - c. The consultation focuses almost exclusively on the relationship between providers and the OfS. There is almost no discussion of the relationship between institutions and students. The one area where this is covered – the student contract – is a reiteration of existing Competition and Markets Authority (CMA) expectations and a general commitment to develop this further.
 - d. The document stresses that the OfS is a new regulator in line with the approach set out in the 2016 White Paper. Annex A sets out more detail of how the new arrangements are different from the HEFCE approach. This includes emphasising that the approach to conditions of registration will entail new judgements for all providers based on the OfS's priorities that are distinct from HEFCE. However, this does risk minimising actual and potential areas of consistency with current arrangements.

KEY ISSUES

12. The consultation is long and there are many substantial questions and significant details that will require a response from UUK. Some top issues to note at this stage include:

- a. *More transparency is needed on how the OfS will formulate and be accountable for its judgements to students and the sector:* the judgements of the OfS will have a significant bearing on the regulatory burden of the proposed system and the extent to which the OfS meets its duty in relation to the autonomy and diversity of the sector. The document describes the information that the OfS will consider when formulating its judgements on institutions. However, at present, it appears that all judgements will be taken by senior OfS officials. This includes:
 - i. how the OfS sets its risk appetite and evaluates data and indicative behaviours to make its judgements
 - ii. how it defines and escalates a proportionate use of a range of potential measures and mitigating actions while protecting institutional autonomy

There is no reference to the Quality Assessment Committee that the OfS is required to establish by the HERA. In practice, this is a continuation of the existing HEFCE quality advisory committee that was involved in the APR. There should be some comment on its role, alongside the designated quality and data bodies and the student voice panel, to ensure that the OfS is accountable and that the sector can have confidence in its decisions.

- b. *More information is needed on how the OfS is mitigating the risks of the transition to existing institutions:* there is little assessment of the risks and mitigating actions being taken by the OfS to ensure a smooth transition to the new register. Delivering an orderly transition will be essential for protecting the student interest and avoiding unnecessary turbulence for institutions. Getting this wrong also risks potential reputational damage for individual institutions and the sector.
- c. *The registration fee is linked to university size:* while size does have some bearing on the cost of regulation, it is inconsistent with a risk-based approach to regulation. There is some scope for flexibility around banding, however, the current structure is partly designed to facilitate the entry of new providers into the system. UUK proposed a blended risk based approach to registration fees in response to the initial consultation in March 2017. The current DfE proposals suggest moving to a risk-based approach in the future. There is potentially a case to be made that the government should underwrite the costs of regulation until it is able to propose an appropriate risk-based approach to registration fees.
- d. *The newly proposed conditions of registration are linked to current political priorities:* as with HEFCE the OfS does have a role in helping to deliver government policy priorities. However, the prominence of new conditions of registration from the outset risk undermining the principle that the OfS is an

independent regulator and that the regulatory framework is a risk baseline focused on student interests. The new conditions are:

- i. *Value for money condition relating to senior executive pay*: this is based on transparency that is comparable to Freedom of Information requirements with the addition of accountability for decisions, and potential for efficiency studies of institutions. This highlights a potential tension between the OfS statutory duties to protect the autonomy of institutions, and secure value for money through a risk-based regulatory framework.

There is also a proposal that providers will be required to publish a statement on the steps taken to ensure value for money for students and taxpayers which provides transparency about their use of resources and income. This is intended as a document that is accessible by students, following examples from other sector such as local authorities.

- ii. *Freedom of speech*: this is rolled in to the broader public interest governance condition. More clarity is required about the detail of the expectations. The HERA extends the provisions of the 1986 Education Act to all registered providers. However, the proposals give the OfS a role in assessing compliance which is not covered by either Act. This seems to be underpinned by two expectations:
 - a provider should have and should abide by a code of practice relating to freedom of speech
 - the provider should incorporate obligations relating to freedom of speech in its governing documents and abide by them
 - iii. *Teaching Excellence Framework*: the document states that this will be a condition of registration. This is a clear departure from what was envisaged in the HERA. At the very least this emphasises the need for a robust and independent review of the TEF in 2018–19 as required by the HERA, and sufficient time to incorporate its recommendations in the design of future iterations. It also highlights the need to resolve the National Union of Students' (NUS) opposition to the TEF.
- e. *More detail is needed on how the OfS will carry out financial assessments on behalf of UK Research and Innovation (UKRI)*. More detail is required around the relationship between UKRI and the OfS. The OfS is being set up to cover all students, so institutions teaching post-graduate and accessing teaching grant will need to register as approved fee cap. However, how the OfS will discharge its finance, sustainability, management and governance (FSMG) functions for UKRI and the extent to which all conditions should apply for specialist postgraduate only institutions needs clarification.

OTHER POINTS TO NOTE

13. *Student focus*: the document is stronger on the rhetoric of student interest than the practice. For example, there is no requirement for registered basic providers to have student protection plans. Similarly, the Student Voice Panel proposal has very little detail about the independence and resource and role in shaping OfS decisions or priorities. There is no consideration of indicative behaviours relating to institutional engagement with the student body or representatives. The proposals for student contracts and student value for money statements have little detail and there is an opportunity for UUK to take lead on reviewing existing practice drawing on prior work in these areas.
14. *Market regulation*: the indirect mechanisms that the OfS will use to shape outcomes across the sector are significantly less developed than the register. There is very little discussion of how the OfS will shape its priorities or the evidence that it will use to inform this, other than highlighting the importance of the TEF and powers of market entry. This has also led to a focus on the register to achieve political and regulatory priorities. Much more information is needed to understand how the OfS will approach this part of its work, including improving the distinction with register and risk-based regulatory baseline.
15. *Access and participation*: the OfS will not impose targets on institutions for access and participation. However, the document does refer to intervening at provider level in relation to modes of provision that improve flexibility and access for under-represented groups. More clarity on this is required and it will be important that work with providers is led by evidence of what works.
16. *Efficiency reviews*: the consultation states that efficiency studies will be a powerful tool through which the OfS will monitor how effectively providers are delivering value for money. This moves beyond a risk-based assessment of institutional sustainability and is closely linked in the document to senior executive pay and institutional value for money statements. More information is needed on the framework for triggering and undertaking reviews, how they will be delivered and what purpose they will be used for.
17. *Quality and standards*: this strand largely follows existing APR indicators but drops the annual review dialogue with providers. It introduces a random sampling process for institutional review and more detail is needed on what these reviews would entail. The lead indicators will use absolute measures rather than contextual benchmarking, but judgements will consider institutional context. The most notable addition is the condition relating to protecting the value of a qualification over time. The OfS should also be challenged on its commitment to working with the UK Standing Committee on Quality Assessment and the outcomes of the review of the Quality Code.
18. *Data*: more clarity will be needed on the practical implications of the intention to seek information flows in as near real time as possible. It will be important that this aligns with a provider's own academic and professional need for high quality data and avoids adding significant additional burden due to the specific requirements of the returns. The OfS should seek data that that is necessary for its regulatory objectives which would rarely, if ever, require the highly demanding threshold of real time.

19. *Funding*: the document commits to using the teaching grant strategically, in line with government priorities, such as supporting science, technology, engineering and medicine (STEM) as well as access and successful participation for the most under-represented and disadvantaged students. It will be important to ensure that teaching grant is used in this way. There is also reference to a composite measure of sustainability that may be a development of the margin for sustainability and investment indicator that has been in development by HEFCE.
20. *Public interest governance condition*: the public interest governance condition is broadly a commitment to work with the OfS through provision of relevant information and iterates basic standards of transparent and autonomous institutional governance. Some of examples noncompliance given in the guidance document are:
- a. a provider does not follow its own governance procedures, does not engage with the OfS or obstructs regulatory activity or does not update the OfS if it makes changes to governing documents that affect the public interest principle
 - b. the provider misuses student support funding, for example through fraud, abuse of funds, financial mismanagement or irregularity or does not comply with the conditions imposed on it under s22 of the Teaching and Higher Education Act 1998
 - c. the provider seeks to abdicate responsibility for decision-making, seeks to rely on steers from the OfS
 - d. the provider does not provide sufficient information on a regular basis to demonstrate it operates in an open and accountable way, and does not provide information on how it ensures value for money

The main additions are the statement of value for money for students and the freedom of speech clause. Only the freedom of speech clause is described in the guidance notes and this focuses on institutions having protections for freedom of speech in governing documents, following procedures and taking appropriate remedial action in response to an adverse finding on freedom of speech. Further clarity is need on the role the OfS expects to play in assessing compliance. Notably, the consultation sets out scope for provisional arrangements for institutions with royal charter should they need to make changes to documents.

21. *Cross-border issues*: there is very little reference to cross-border issues in the framework or working with the other national funders other than where a provider wishes to operate in more than one country. The most immediate cross-border issues relate to the review of the Quality Code and highlight the need for the OfS to commit to the outcomes of the consultation. The Scottish sector is likely to want an enhancement element in the core part of the code. Other areas include:
- the inclusion of the TEF as a condition of registration
 - the cross-border operation of the Quality Assurance Agency (QAA)
 - diverging arrangements for market entry

22. *Designated bodies*: the relationship between the OfS designated bodies will be important. This includes the role of the designated bodies in shaping the OfS's delivery of its duties, design and delivery of assessment and formation of judgements rather than as simple contractors. More information is required on the delineation of the respective roles of the OfS and designated bodies in delivering different aspects of the regulatory framework in a way that is transparent and accountable to the sector. There is also a wider question in relation to the potential gap in developmental support to the sector from the OfS and the role of the new merged sector agency.
23. *Market entry*: there is more detail on proposed arrangements for N-DAPs – temporary degree awarding powers for providers with no or limited track record – and OfS validation arrangements. UUK has consistently raised concerns that these proposals will increase the risk of poor quality or transitory provision with negative consequences for enrolled students and the wider reputation of the sector. These powers should be used sparingly and the OfS should publicly justify its reasons when it does so, particularly in relation to its validation powers. The OfS should work with the designated quality body to ensure there are clear and robust arrangements for managing the significant risks to students associated with temporary degree awarding powers. There will also be a new level 6 'B-DAP' for institutions who wish to secure bachelor level degree awarding powers without postgraduate taught.

TRANSITION YEAR

24. The main consultation seeks to position the OfS as an entirely new regulator. It emphasises that all institutions will be subject to a review and risk assessment as part of the initial registration process. Existing HEFCE funded institutions will be registered with the OfS from September 2018 but they will continue to be regulated under the 1992 Act until September 2019.
25. By the end of April 2018, it appears that all providers will be required to submit:
- a. a short statement of corporate governance, plus notification of any change
 - b. self-assessment of compliance with consumer rights laws
 - c. student protection plan
 - d. any specific conditions relating to the provider
 - e. approved access and participation plan to charge higher fees for 2019–20
26. The OfS will use existing HEFCE data from FSMG and APR to assess sustainability and quality and standards conditions prior to April 2018. HEFCE will also undertake an assessment of risk and monitoring of any previously agreed action plans.
27. Further detail on the transition is set out in the provider roadmaps document that was published alongside the main consultation and guidance documents.

NEXT STEPS

28. Although this paper has highlighted many issues and concerns with the proposals, it is not an exhaustive review of the consultation or of the UUK response. Given the scale of the transition our priority is to work constructively to improve the proposals. This includes pushing for as much detail as possible to support institutional compliance and ensuring an orderly transition. Areas for consideration as the response develops include:

- a. setting out longer-term views of the OfS strategy, including the distinction between regulatory baseline and the market regulation and incentives, the balance between student outcomes and ‘indicative behaviours’
- b. reiterating the role of principles of co-regulation to ensure that both students and institutions can have confidence that OfS judgements are fair, transparent and accountable and that the OfS is independent of government
- c. challenging the OfS to set out its priorities for the first two years of its operation, with an emphasis on managing the risks of transition and clarifying where there is consistency with current practice to minimise disruption to institutions
- d. identifying areas where UUK in cooperation with sector partners should take a lead in shaping OfS practice, such as student contracts and value for money statements, student transfer information and student voice panel
- e. identifying areas where there are practical concerns about unintended impacts on institutions, such as the incorporation of freedom of speech elements in the public interest governance condition
- f. clearly identifying sensitive areas where there is a risk of overreaching the law, either now or in the future, such as:
 - i. new registration conditions in relation to executive pay and the TEF
 - ii. the use of efficiency reviews in support of broad value for money objectives
 - iii. clarifying provider level interventions in relation to flexibility of provision for widening participation objectives
 - iv. reiterating that teaching grant should be used to support strategic objectives rather than short-term priorities or regulatory objectives

29. **Members are invited to share initial views and priorities for the UUK response by 22 November.** The Student Policy Network will be undertaking a detailed consideration of the consultation and will lead the development of the UUK response. UUK will also be liaising with the mission groups, Association of Heads of University Administration and the Committee of University Chairs as part of the development of the response. There will be an opportunity for members to discuss the consultation at the UUK Members Meeting on 1 December. The proposed response will then be agreed by the Universities UK Board for submission by 22 December.

ANNEXE A: DIFFERENCE BETWEEN CURRENT AND FUTURE REGULATORY REGIME

Table 2 - differences between the current and future regulatory regimes

	Current system	Proposed system under the OfS
Focus	Provider focused	Student focused, regulating to protect students not providers
Remit	Core split between HEFCE funded providers and alternative providers regulated by DfE Access and participation considered separately	All registered English HE providers regulated by a single body providing regulatory clarity and a level playing field Access and participation embedded across regulatory approach
Entry and ongoing requirements	Multiple approaches, driven by provider form: <ul style="list-style-type: none"> • Four different gateways for market entry with different criteria, evidence requirements, and decision-makers • Requirements include focus on processes (what providers ought to <u>do</u>) and track record 	A single consistent approach, driven by student risk: <ul style="list-style-type: none"> • Single entry to the regulated sector driven by a core set of requirements linked to objectives for the student • Requirements focused on student outcomes (what providers need to <u>achieve</u>), articulated as baselines which all students can expect from their provider
Monitoring	Blanket use of cyclical assessments of providers, regardless of regulatory risk	Regulation proportionate to risk – providers that present lower risks for student will be left to flourish, whilst less secure provision will face greater scrutiny
Engagement	Universal, routine, regulator-led engagement and support for all providers across full range of institutional issues and interests, combined with increased frequency/intensity where needed	Engagement in response to indications of increased risk to students Focus on maintaining an open and trust-based dialogue with responsible provider
Regulatory levers	Access or restriction of access to funding in respect of 'Higher Education Institutions' and removal of designation of student support for both 'Higher Education Institutions' and 'Alternative Providers'	Creation of a spectrum of sanctions to reflect the diversity of providers and enable a spectrum of responses based on risk, regardless of provider type
Continuous improvement	Operating model for regulation seeks evidence of continuous improvement	Operating model does not seek to directly regulate providers to drive continuous improvement, which is instead driven by student choice and competition (with the exception of areas of market failure, such as access and participation)

ANNEXE B: ONGOING REGISTRATION CONDITIONS

Table 5 – Overview of ongoing registration conditions and which categories they apply to

Ongoing registration conditions (Note: these are in addition to the initial conditions set out under Table 4, which are also ongoing)	Appr Fee cap	Appr	Reg basic
BASELINE ONGOING CONDITIONS			
Objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education			
<ul style="list-style-type: none"> Condition A3: “The provider must comply with the Transparency Condition as set out in Section 9 of HERA”. 	√	√	
Objective 3: that all students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure			
<ul style="list-style-type: none"> Condition E3: “The provider must provide to the OfS and publish in their annual financial statements information on the number of its staff members earning a basic salary of over £100,000 per annum. For staff earning a basic salary of over £150,000, this information must include details of total remuneration, and an explanation of how these remuneration packages were decided and justified.” 	√	√	
<ul style="list-style-type: none"> Condition G: “The provider must cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education including the subscription requirements and make students aware of their ability to use the scheme.” 	√	√	√
<ul style="list-style-type: none"> Condition H: “The provider must publish information about its arrangements for a student to transfer. If the provider lacks such arrangements, it must explain how it facilitates the transfer of a student.” 	√	√	
OTHER ONGOING REGISTRATION CONDITIONS			
Notification of changes to register to maintain accuracy			
<ul style="list-style-type: none"> 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			
<ul style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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; 	√	√	√ (limited)

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<p>(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;</p> <p>(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 the OfS or a person nominated by it.</p> <p>The requirements in paragraphs (b) and (c) do not affect the generality of the requirement in paragraph (a).</p> <ul style="list-style-type: none"> Condition J2: "For the purposes of the designated data body's duties under sections 64(1) and 65(1) of HERA, the provider must provide the designated data body with such information as the designated data body specifies at the time and in the manner and form specified by the designated data body". 	√	√	
Mandatory fee limit	√		
<ul style="list-style-type: none"> Condition K: "A provider in the Approved (fee cap) category must charge fees within the prescribed limits determined by their quality rating or access and participation plan." 			
Facilitate electoral registration	√	√	
<ul style="list-style-type: none"> Condition L: "The provider must comply with OfS guidance on facilitating electoral registration in cooperation with electoral registration officers." 			
Pay OfS and designated bodies' fees			
<ul style="list-style-type: none"> Condition M: "The provider must pay its annual registration fee and other OfS fees in accordance with regulations made by the Secretary of State and, where applicable, fees charged by the designated bodies." 	√	√	√ (OfS fees only)
Terms and conditions of funding			
<ul style="list-style-type: none"> Condition N: "The provider must comply with any terms and conditions attached to financial support received from the OfS and UKRI under sections 41(1) and/or 94(2) of HERA. A breach of such terms and conditions of funding will be a breach of this registration condition." 	√	√ ²¹	√ ²¹
Accountability			
<ul style="list-style-type: none"> 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." 	√	√	√
Teaching Excellence and Student Outcomes Framework participation			
<ul style="list-style-type: none"> Condition P: "The provider must participate in the Teaching Excellence and Student Outcomes Framework (TEF)." 	√	√	

Application of conditions during transition (between registration and start of 19/20 academic year): To note that the OfS would require conditions F, I, J1 and O to take effect as ongoing conditions immediately after registration. All other conditions, including those that are initial conditions, would not become ongoing conditions of regulation until the start of 19/20, although the OfS will consider as part of its risk assessment immediately following registration whether a provider will be able to meet their ongoing conditions once these are applied from 19/20

ANNEXE C: CONSULTATION QUESTIONS

Part 1

1. Do you agree or disagree that these are the right risks for the OfS to prioritise?
2. Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?
3. Do you agree or disagree that a new Quality Review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?
4. Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?
5. Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?
6. What more could the OfS do to ensure students receive value for money?
7. Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think should the OfS should focus when highlighting good practice?
8. What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.

Part 2

9. Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?
10. Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements? How might the OfS best facilitate, encourage or promote the provision of student transfer arrangements?
11. Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?

Part 3

12. If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?

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13. The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?
14. Do you agree or disagree with the proposed lists of public interest principles in the guidance, and who they apply to?
15. Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 licence?
16. Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?
17. Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?
18. Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider (see the guidance for further detail)?
19. Do you agree or disagree with the proposed approach to risk assessment and monitoring?
20. Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?
21. Do you agree or disagree with the proposed approach the OfS will take to regulating providers not solely based in England?

Part 4

22. Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS register?
23. Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?
24. Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?
25. Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?

Annexe C

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26. Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?
27. Provided that the secretary of state considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator?