

Governors' briefing notes

26. The new regulatory approach to higher education in England

Introduction and aim

This Note discusses the main features of the new regulatory approach to higher education in England, and role of the Office for Students (OfS).

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01. The OfS

The passage into law of the Higher Education and Research Act (HERA, 2017) brings major changes to how higher education providers in England are overseen and regulated. Central to these changes is the establishment of the [OfS](#), a non-departmental governing body, sponsored by the Department for Education (DfE). The OfS began its work on the 1 January 2018 and replaces the Higher Education Council for England (Hefce) from 1 April 2018, as the body responsible for overseeing the higher education sector in England. The OfS will also subsume the Office for Fair Access (OFA). Full implementation of the provisions of HERA 2017 will not be immediate, and 2018/19 will be year of transition from the 'old' to the 'new' system.

02. The focus of the OfS

The aim of the OfS "is delivering positive outcomes for students – past, present and future." The OfS is also charged with ensuring that the higher education system delivers value for money for taxpayers.

03. Does the OfS differ from Hefce?

OfS will incorporate many of the functions of Hefce, including the distribution of grant funding for teaching. However, while the focus of Hefce was the higher education provider, the focus of OfS is the student. In addition, Hefce was charged with helping to develop and improve the system of higher education. Hefce's remit also extended to research and knowledge transfer. Under the new arrangements, responsibility for research and knowledge exchange will pass to a separate body: [United Kingdom Research and Innovation \(UKRI\)](#). OfS and UKRI are expected to cooperate closely and share information. More fundamentally, the relationship between a provider and the system's new regulator is expected to change. As an intermediary body, Hefce acted as broker between central government and higher education providers. OfS is a regulator.

04. OfS' approach to regulation

Acknowledging the diversity and complexity of providers within the higher education system, OfS describes its regulatory approach as principles-, rather than rules-based. The approach will not use numerical performance targets. Rather, the OfS will base its judgements about individual providers on a variety of data and contextual evidence. OfS will make its decisions on what it judges to be the risks associated with the provider. OfS will not provide support for improvement activities. This is in contrast with Hefce's policy of offering support to institutions who found themselves in difficulty.

05. The register of providers

One of the reasons for creating the OfS was for all providers to be listed on a single register, which detailed their regulatory status. To be included on the register a provider has to apply to OfS and demonstrate that they satisfy the initial conditions for registration. If successful, to remain on the register, providers will subsequently need to satisfy the ongoing conditions of registration.

All providers who become registered will be monitored by OfS. If OfS finds that a provider is in breach of the conditions of registration it is able to apply a range of sanctions, including monetary penalties, suspension or deregistration.

06. Who is eligible to register?

To be eligible to be registered, a provider must meet three conditions:

- a. Delivery of a higher education course as listed in [Schedule 6 of the Education Reform Act 1988](#)
- b. Activities are carried on, or principally carried on, in England
- c. They are an institution providing higher education

07. Why register?

Higher education institutions will need to register with the OfS if they want to:

- a. Be officially recognised as a provider of higher education in England
- b. Access public grant funding from the OfS or for research
- c. Access the student support system
- d. Recruit international students with a [Tier 4 sponsorship licence](#)
- e. Apply for degree-awarding powers (DAPs) and/or university title

08. When does registration take effect?

Registration applies to the recruitment of students for the 2019-20 academic year, ie. students who begin their studies between 1 August 2019 and 31 July 2020.

09. When to register

Providers whose courses have the early [Universities and Colleges Admission Service \(UCAS\)](#) deadline in October 2018, need to apply by **Monday 30 April 2018**. Institutions with the standard UCAS deadline of January 2019, need to apply by **Wednesday 23 May 2018**.

It is possible to apply after these dates, but this will delay OfS' decision, and beyond August 2018 affect access to public grant funding.

10. Categories of registration

There are two categories of registration: "Approved" and "Approved (fee cap)".

11. How do the categories differ?

A major difference between the two categories is the tuition fee rate the registered provider can charge. "Approved" providers can charge full-time Home and EU undergraduate students a maximum tuition fee of £6,165 (the "basic" fee). "Approved (fee cap)" providers can charge up to the permitted maximum of £9,250.

12. Requirements for initial registration

OfS must register a provider where it:

- Has applied to be registered in one of the categories
- Is, or intends to become, an English higher education provider
- Satisfies the initial conditions of registration for the relevant category
- Has made a correct application, containing all the required information

13. Conditions of registration

[Different conditions of registration](#) apply to current providers and those entities seeking to become a new provider for 2019-20.

14. Registration for current higher education providers

The conditions for [initial and ongoing registration](#) are grouped under six headings:

- a. Access and participation (conditions A1 and A2)
- b. Quality and standards (conditions B1 to B6)
- c. Guidance on consumer protection law (condition C1)
- d. Student complaints scheme (condition C2)
- e. Student protection plan (condition C3)
- f. Financial viability and sustainability (condition D)
- g. Management and governance (conditions E1 to E4)

For each of the conditions, OfS provides examples of the behaviours it seeks as evidence of whether the condition has been met.

15. Access and participation

To register in the Approved (fee cap) category, and charge the higher fees, the provider must have an Access and Participation plan (condition A1). The plan must be approved by the Director of Fair Access and Participation, who operates under the delegated authority of the OfS board. A condition of ongoing registration is that the provider has taken all "reasonable steps" to deliver the plan. If OfS judges this is not the case, it may decide to sanction the provider. OfS has published [guidance on access and participation plans for 2019-20](#). An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount must annually publish an Access and Participation statement (condition A2).

16. Quality and standards

These conditions relate to the quality and standards of higher education provided and apply to all registered providers. Providers with more than 500 students must participate in the Teaching Excellence and Student Outcomes Framework (TEF).

17. Consumer law protection

Registered providers are expected through their policies and practices that they have taken account of the [relevant guidance to high education providers](#) on consumer protection law issued by the Competition and Markets Authority (CMA). OfS has issued a template for producing a [self-assessment on guidance on consumer protection law](#).

18. Student complaints scheme

Registered providers are expected to be members of the [students' complaints scheme](#) run by the Office of the Independent Adjudicator for Higher Education.

19. Student protection plan

Registered providers are expected to have in place a student protection plan approved by OfS. The plan should reflect the specific circumstances of the provider, including the likely level of risk that the plan will need to be implemented. OfS has produced a [template on student protection plans](#).

20. Financial viability and sustainability

Registered providers are expected to be financially viable [condition D(i)] and sustainable [condition D(ii)]; have the necessary resources to deliver the higher education courses they offer [condition D(iii)]; and continue to comply with all the conditions of registration [condition D(iv)].

In making a judgement, OfS will consider a variety of evidence, including the provider's audited financial statements and financial forecasts.

21. Management and governance

Registered providers will be expected to uphold the public interest governance principles (condition E1), covering:

- Academic freedom
- Accountability
- Student engagement
- Academic governance
- Risk management
- Fit and proper
- Value for money
- Freedom of speech
- Governing body

Providers must also have in place adequate and effective arrangements for management and governance (condition E2) and evidence accountability (condition E3).

22. Ongoing conditions for registration

In addition to the conditions cited, registered providers are required to meet further ongoing conditions, including, for example, transparency information (condition F1), student transfer arrangements (condition F2) and provision of information to OfS and data designated body (conditions F3 & F4).

23. Degree awarding powers (DAP)

A provider with the power to grant taught awards and/or research awards does not need to apply to OfS to retain its DAP. Applications for new DAPs may be made to OfS, who has the power to authorise such powers. OfS can grant such powers either on a probationary (if the provider does not have a sufficient track record of delivering higher education), or full basis (ie. not time-limited). To apply for new DAPs authorisation the provider is expected to register with OfS, meet all the ongoing conditions of registration and have a sufficient proportion of its students undertaking higher education programmes. OfS also has the power to vary or revoke DAPs, regardless of how these powers were originally secured.

24. University title

A higher education provider can apply to the OfS to be eligible to use the title “university college” or “university”. In either case providers will need to be registered with the OfS, satisfy all ongoing conditions of registration and have secured full DAPs (other than those relating only to foundation degrees). In addition, the provider cannot be part of the further education sector. OfS has the power to revoke a university college or university title.

25. Concluding remarks

The establishment of the OfS accompanies the introduction of a new approach to regulating the higher education system in England. How the new approach will develop and evolve over time has been the subject of much speculation, and only time will tell as to how the emerging model of regulation will work in practice.

Questions to review

- Has the governing body received a detailed briefing on the in-coming system of regulation applying to the higher education sector in England?
- Do governors understand the initial and continuing conditions of registration?
- Are there any concerns about the provider meeting the initial and ongoing conditions of registration? If so, what action needs to be taken?