

**Office for  
Students**



# **Terms and conditions of funding for higher education institutions**

**For the period to 31 July 2019**

Reference **OfS 2018.15**

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# Introduction

1. The Office for Students' (OfS's) regulatory framework published in February 2018 (OfS 2018.01) will not come fully into force until 1 August 2019. The secondary legislation that enacts the Higher Education and Research Act 2017 (HERA) makes provision for the powers and duties of the Higher Education Funding Council for England (HEFCE) (under the Further and Higher Education Act 1992) and the Director of Fair Access to Higher Education (under the Higher Education Act 2004) to be exercised by the OfS until all of its new powers are commenced.
2. This means that providers will be funded and regulated by the OfS from 1 April 2018 to 31 July 2019 through a combination of the powers and duties 'carried forward' from the previous legislation and the new HERA powers and duties. This is called the 'transition period'. The terms and conditions of funding in this document set out the requirements placed on higher education institutions (HEIs) under the 'carried forward' powers. For more information about our approach to regulation during the transition period see 'Regulatory notice 2: Regulation up to 31 July 2019 of providers that were previously funded by HEFCE' (OfS 2018.12).
3. The terms and conditions of funding set out in this document take effect from 1 April 2018 and apply during the transition period to 31 July 2019. They are made under section 65 of the Further and Higher Education Act 1992, as amended by a statutory instrument setting out the transitional arrangements, the Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018. They apply to HEIs that we<sup>1</sup> fund, and to their governing bodies and accountable officers. They reflect our responsibility to provide annual assurances to Parliament that:
  - funds provided to us are being used for the purposes for which they were given
  - risk management, control and governance in the higher education sector are effective and
  - value for money is being achieved.
4. 'HEI' means the HEI including its related undertakings, as defined in Annex E, unless such undertakings:
  - are subject to a separate funding agreement directly with the OfS
  - are subject to separate terms and conditions of UK Research and Innovation (UKRI) funding in relation to funds administered by Research England
  - have been designated by the Secretary of State as institutions in the further education sector which have their own contract with the Education and Skills Funding Agency or
  - are schools as defined by section 4 of the Education Act 1996 or multi-academy trusts.
5. HEIs are bound by the requirements of their governing documents and by the law relating to their charitable status. This document does not supersede those requirements but is intended to complement and reinforce them.
6. These terms and conditions should be read in conjunction with the terms and conditions of Research England grant. Together, these documents supersede the 'Memorandum of assurance and accountability between HEFCE and institutions' (HEFCE 2017/08). References to Research England in these terms and conditions relate to the functions of UKRI that will be

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<sup>1</sup> In this document, the terms 'we' and 'our' refer to the Office for Students and not to Research England or to both organisations.

exercised by its Research England committee under section 97 of HERA, but should be read as including UKRI, which retains responsibility for those functions.

7. We will make material revisions to this document only after consulting the higher education sector or its representative bodies. Because these terms and conditions are being issued before funding allocations for the 2018-19 academic year have been determined or announced, the OfS reserves the right to revise or add to terms and conditions applying to specific grants for the 2018-19 academic year, in relation to monitoring arrangements or the use of funds. Any such revisions or additions will be notified to institutions in advance of the first payments of those grants.

## **Terms and conditions previously imposed by HEFCE**

8. The OfS and UKRI will each assume responsibilities from the previous regulatory system during the transition period. In relation to financial years (April to March) and academic years (August to July) up to 2017-18 inclusive, terms and conditions of grant previously specified by HEFCE and agreements made by the Director of Fair Access to Higher Education continue to apply. The OfS and Research England will, individually or together as they consider appropriate, continue to monitor compliance with HEFCE terms and conditions of grant and take action against institutions that are found to be in breach of them.
9. Actions that the OfS and Research England may take against institutions that are found to be in breach of previous HEFCE terms and conditions of grant for financial and academic years up to 2017-18 include (but are not limited to):
  - a. Recalculating and adjusting grants previously announced where these are found to have been informed by incorrect data from institutions.
  - b. Continuing to implement adjustments to student numbers or funding relating to over-recruitment in the academic years up to 2017-18 against intake targets for medicine and dentistry, in line with the approach previously notified by HEFCE.
  - c. Monitoring continued compliance with regulated fee limits and any access agreement(s) with the Director of Fair Access to Higher Education (or subsequently the OfS) in relation to students recruited in any year up to 2018-19 and taking action (including imposing financial requirements on an institution) if non-compliance is found.
10. The OfS and Research England will agree which of them will take action for such breaches according to the following general principles:
  - a. The OfS will take action in relation to recurrent and capital grants that relate primarily to teaching activities and taught students.
  - b. Research England will take action in relation to recurrent and capital grants that relate primarily to research and knowledge exchange activities and research students.
  - c. The OfS will take action where an institution does not comply with the provisions of an access agreement with the Director of Fair Access to Higher Education (or subsequently the OfS) or regulated tuition fee limits.

## Our responsibilities

11. The OfS provides funding for the provision of education and related activities by those universities, institutions conducted by higher education corporations, and institutions of higher education designated as eligible to receive OfS funding (collectively referred to as 'higher education institutions' or 'HEIs'). The OfS has lead responsibility for public accountability for HEIs.
12. As such we will endeavour to work with HEIs and others in the higher education sector to the highest standards of openness, integrity and consistency expected of public sector bodies. We recognise that HEIs are autonomous bodies and acknowledge that they accept that they are accountable for the funding they receive. We will not ask for information that we already have, and as far as possible we will rely on data and information that HEIs have produced to meet their own needs. We will make regulation efficient and effective and seek to ensure that its benefits outweigh the costs to HEIs, ourselves and other parties.
13. We will respect commercial confidentiality within the constraints of the Freedom of Information Act 2000 and our own obligations to Parliament and under the framework document with our sponsor department.
14. Our funding to HEIs is to fund certain activities defined by the Further and Higher Education Act 1992. For HEIs these are:
  - providing education and
  - providing facilities and undertaking activities that the HEI's governing body thinks are necessary or desirable for providing education.
15. We will review an HEI's annual accountability return to us, and notify the accountable officer and governing body of any issues that we consider to represent increased risk in relation to the funding the institution receives from the OfS or from UKRI. We will not normally make our risk assessments public until three years have elapsed. This period, based on advice from the Information Commissioner, gives an HEI that is designated 'at higher risk' (see paragraph 62) time to reduce its risk classification.
16. We will make our risk assessments available within this three-year period to Research England and, on an exceptional and confidential basis, to:
  - other public funders and other regulators to enable those bodies to make their own assessments of risk and
  - the National Audit Office, which may exceptionally need to discuss those assessments at the Public Accounts Committee or disclose them in a published report.
17. We must do this to minimise the risk to public funds distributed by those bodies or other regulatory remits they hold.
18. We will exceptionally make public a risk assessment at any time if we have strong grounds for believing that it is in the collective student interest or the public interest to do so. We will only share or publish our risk assessments after having notified the accountable officer and governing body of the HEI concerned. When we assess an HEI to be 'at higher risk' for these specific funding purposes, we will seek to ensure that we understand how the HEI is managing and mitigating risks to funding and that there continues to be appropriate accountability to Parliament in respect of these funds.

# Responsibilities of higher education institutions

## Regularity and propriety

19. HEIs must use OfS funding only for activities that are eligible for funding under the Further and Higher Education Act 1992, as this is the intended purpose for which the funds have been provided by Parliament. When using this funding HEIs must ensure they apply proper processes that ensure effective accountability.
20. This requirement also applies where the HEI passes on part of its OfS funding to another legally distinct entity for the provision of facilities or learning and teaching. In such cases, as set down in Section 65(3A) of the Further and Higher Education Act 1992, the HEI must obtain our consent before passing OfS funds to the connected institution. In these circumstances the HEI awarded the funding by the OfS will be held accountable for those funds; and the HEI should therefore ensure adequate and effective accountability arrangements are in place when it passes on such funding to another entity.
21. Governing bodies and accountable officers are accountable for their decisions and actions, and must submit themselves to whatever scrutiny is appropriate to their office. They should also be as open as possible about all the decisions and actions that they take that may affect funding provided by the OfS.

## Governing bodies

22. Members of governing bodies of HEIs have a set of legal responsibilities and other duties. Taken together, the responsibilities of members of a governing body and of the governing body as a whole are considerable, and must be met. The governing body of an HEI is collectively responsible and has ultimate responsibility that cannot be delegated for overseeing the HEI's activities, to determine its future direction, and to foster an environment in which the HEI's mission is achieved. In accordance with the HEI's own statutes and constitution, there should be effective arrangements for providing assurance to the governing body that the HEI:
  - a. Has a robust and comprehensive system of risk management, control and corporate governance. This should include the prevention and detection of corruption, fraud, bribery and irregularities.
  - b. Has regular, reliable, timely and adequate information to monitor performance and track the use of public funds.
  - c. Plans and manages its activities to remain sustainable and financially viable.
  - d. Informs us of any material change in its circumstances, including any significant developments that could impact on the mutual interests of the HEI and the OfS.
  - e. Uses public funds for proper purposes and seeks to achieve value for money from public funds.
  - f. Complies with the mandatory requirements relating to audit and financial reporting, set out in our Audit Code of Practice and in our annual accounts direction.
  - g. Sends us:
    - i. The annual accountability return.
    - ii. Other information we may reasonably request.

- iii. Any data requested on our or Research England's behalf by the Higher Education Statistics Agency (HESA).
- h. Has adequate and effective arrangements for the management and quality assurance of data submitted to HESA, the Student Loans Company, the OfS and other funding or regulatory bodies. The OfS reserves the right to use and publish its own estimates of data, where we are not satisfied that the HEI's data are fit for purpose. The OfS also reserves the right not to publish data. Responsibility for the quality of data used for internal decision-making and external reporting, which must be fit for purpose, rests with the HEI itself. Data submitted for funding and student number control purposes must comply with directions published by HEFCE (previously) and the OfS; if in doubt an HEI should ask the OfS to provide an authoritative, written ruling.
- i. Has an effective framework – overseen by its senate, academic board or equivalent – to manage the quality of learning and teaching and to maintain academic standards.
- j. Considers and acts on our assessment of its risk specifically in relation to these funding purposes.

## **Accountable officer**

- 23. The head of an HEI is first and foremost responsible for leadership of the academic affairs and executive management of the HEI. The appointment (or dismissal) of the head of an HEI is governed by employment law, and this is clearly the responsibility of the governing body. The OfS has no role, rights or responsibilities in relation to the appointment (or dismissal) of the head of an HEI. We presume that in a case where a head of an HEI does not discharge their duties or acts improperly the governing body will take appropriate action.
- 24. Under these terms and conditions, the governing body is responsible for the use of public funds. To assist and enable it to discharge this responsibility and to provide clear accountability, the governing body will designate a senior officer, normally the head of the HEI, as the 'accountable officer': that is, the officer who reports to the OfS on behalf of the HEI.
- 25. The accountable officer is personally responsible to the governing body for ensuring compliance with the terms and conditions of funding and for providing the OfS with clear assurances to this effect.
- 26. The accountable officer is also required to report to the OfS on behalf of the HEI in relation to the requirements in relation to accountability for funding and the quality of data. In exceptional circumstances the OfS may take the view that the accountable officer is failing to meet these responsibilities.
- 27. If, in the judgement of the OfS's chief executive, there is evidence of serious failure in relation to the oversight and management of public funds, they will raise this as appropriate with the accountable officer concerned, the chair of the governing body or both; provide the relevant evidence; and seek and consider a response.
- 28. In extremis, and after all due process has been exhausted, the OfS's chief executive may conclude that the accountable officer is unable or unwilling to meet their responsibilities under these terms and conditions. The OfS may then ask the governing body to appoint someone else to report to the OfS and Research England on behalf of the HEI. In taking this action the OfS will not seek to influence the employment relationship between the governing body and the head of the HEI. The governing body is clearly entitled to maintain the head of the HEI in post. However, the governing body would then have to designate another senior officer as the accountable officer, and adjust the roles and responsibilities of the head of the HEI accordingly.



29. The HEI's accountable officer, the chair of the governing body or both may be required to appear before the Public Accounts Committee alongside the chief executive of the OfS in their role as accounting officer, on matters relating to grants to the HEI.
30. In the event of a prolonged absence from work or a sudden departure by the accountable officer, the governing body must ensure that the OfS is made aware immediately of the identity of the interim accountable officer.

## **Financial sustainability**

31. HEIs should have a financial strategy that reflects their overall strategic plan, sets appropriate benchmarks and performance indicators, shows how resources are to be used, and shows how activities and infrastructure will be financed. This should include how the HEI assesses and reviews its own sustainability, including the use of sustainability assessments.
32. To remain sustainable and financially viable HEIs should also assess, take and manage risks in a balanced way that does not overly constrain freedom of action in the future. We will assess the financial sustainability of HEIs on the basis of information submitted in the annual accountability return.
33. We normally expect that an HEI will make a surplus in line with its financial strategy for sustainability, and thus that its unrestricted reserves will grow over time, all other things being equal. A series of deficits, even if covered by unrestricted reserves, might cause us concern, as could low levels of liquidity or increased financial commitments. Where we identify significant risks to an HEI's financial sustainability, we will engage with the senior management of the HEI to understand how it is managing and mitigating the risks.
34. As part of ensuring its long-term sustainability, an HEI should know the full cost of its activities and use this information in making decisions. If it does not seek to recover the full cost, this should be the result of a clear policy set by the governing body and included in the financial strategy, and should not put the HEI in financial difficulty. We do not expect public funds to subsidise non-public activities.

## **Financial commitments**

35. HEIs must apply the following principles when entering into any financial commitments:
  - a. The risks and affordability of any new on- and off-balance sheet financial commitments must be properly considered.
  - b. Financial commitments must be consistent with the HEI's strategic plan, financial strategy and treasury management policy.
  - c. The source of any repayment of a financial commitment must be clearly identified and agreed by the governing body at the point of entering that commitment.
  - d. Planned financial commitments must represent value for money.
  - e. The risk of triggering immediate default through failure to meet a condition of a financial commitment should be monitored and actively managed.
36. The primary responsibility for assessing the affordability of, and risks around, financial commitments rests with HEIs' governing bodies. The OfS's role is to assess whether any financial commitments entered into by an HEI present challenges to the HEI's sustainability that could impact adversely on the past and continuing public investment in the HEI, become a call on public funds, or adversely affect the collective student interest. The terms and conditions of

OfS funding require HEIs in some circumstances to obtain written approval from the OfS before increasing their financial commitments. During the transition period HEIs will need to seek the OfS's approval if they meet any of the following criteria:

- the OfS has informed the HEI that it is considered to be 'at higher risk' or
  - the OfS has informed the HEI that it wishes to engage with it on the basis of 'focused dialogue'.
37. If an HEI does not meet the criteria set out above it will not need to seek the OfS's approval before it increases its financial commitments. It will, however, need to have included any planned future borrowing in the financial forecasts submitted to HEFCE or to the OfS. If an HEI has not previously included an increase in financial commitments in its submitted forecasts it must report material changes in its financial performance and position relative to its submitted forecasts. It is likely that significant increases to an HEI's financial commitments will trigger this reporting requirement and it will need to provide detailed information about its new financial commitments as part of that reporting. This will allow the OfS to:
- a. Consider the impact of this borrowing on the HEI's financial sustainability.
  - b. Decide whether the HEI's risk status, or the level of engagement that the OfS has with the HEI, should be changed.
  - c. Ask the HEI to develop an action plan to mitigate increased risk if the OfS decides to increase the HEI's risk status or level of engagement. This will provide the OfS with a similar level of assurance to that gained by HEFCE through the conditions it imposed through its financial commitment approval process.
38. An HEI should determine the level of its financial commitments that are both affordable and consistent with its financial strategy. In any case presented to us we ask the HEI to demonstrate this, to show that the proposal represents good value, and to confirm the approval of its governing body.

## **Material adverse events**

39. The HEI's accountable officer must report any material adverse change without delay – such as a significant and immediate threat to the HEI's financial position, significant fraud<sup>2</sup>, or impropriety or major accounting breakdown – to all of the following:
- the chair of the HEI's audit committee
  - the chair of the HEI's governing body
  - the HEI's head of internal audit
  - the external auditor
  - the OfS at [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk).
40. The HEI's accountable officer must also inform the OfS about any merger with another institution or organisation and about any material changes in its financial performance and position relative to its submitted forecasts.

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<sup>2</sup> Defined as fraud of £25,000 or higher.

41. The governing body must inform the OfS without delay of the removal or resignation of the external or internal auditors before the end of the term of their appointment, including the reason for the removal or resignation.

## Quality of provision

42. During the transition period the OfS is subject to the 1992 Further and Higher Education Act's duty to secure that provision is made for assessing the quality of education provided in institutions for whose activities it provides, or is considering providing, financial support<sup>3</sup>. Up to 31 July 2019, the OfS will discharge this duty using an approach that replicates the Annual Provider Review process adopted by HEFCE in previous years. It will also investigate complaints made about quality or standards in HEIs as necessary. If an HEI does not meet the quality assessment requirements it will be expected to make any necessary improvements through the implementation of an agreed action plan. Improvements will be expected and, in exceptional circumstances, sanctions may be applied. Our ultimate sanction under these terms and conditions is the withdrawal of some or all OfS funding.

## Provision of information to the OfS

43. Our information requirements as they relate to funding and data are set out in these terms and conditions, and in guidance on accountability and other returns. It is a condition of funding that HEIs provide the requested accountability or other information. We keep these information requirements under review to ensure we only ask for the information we need.
44. The OfS publishes an accounts direction: HEIs and their external auditors must comply with it. The accounts direction sets out the financial reporting requirements of both the OfS and Research England.
45. It is a condition of funding that institutions supply data requested by the OfS or its agents to allow for provision of information to prospective and current students. For example institutions must provide Unistats data annually according to the published specification and timetable<sup>4</sup>.

## Access and participation during 2017-18 and 2018-19

46. All HEIs that have an access agreement with the Director of Fair Access to Higher Education for 2017-18 and/or 2018-19 (or as subsequently agreed with the OfS) or are in receipt of 2017-18 or 2018-19 student premium and disabled students' premium funding from HEFCE or the OfS are required to submit a monitoring return to the OfS relating to each year. These returns are a condition of the student premium and disabled students' premium funding provided, and required so that the OfS can monitor the extent to which institutions have met the obligations set out in their access agreements and the progress they have made against their milestones and targets. The OfS will use this information in determining whether institutions may have failed to comply with any provision of their approved plan. Further information about monitoring requirements will be provided separately (OfS 2018.12).

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<sup>3</sup> Further and Higher Education Act 1992, part II, section 70  
[www.legislation.gov.uk/ukpga/1992/13/section/70#commentary-c1106607](http://www.legislation.gov.uk/ukpga/1992/13/section/70#commentary-c1106607).

<sup>4</sup> Further information about Unistats data requirements is available at: [www.officeforstudents.org.uk/advice-and-guidance/student-information-and-data/unistats/](http://www.officeforstudents.org.uk/advice-and-guidance/student-information-and-data/unistats/).

## Other requirements

### Subscriptions to sector bodies

47. It is a condition of funding that HEIs in receipt of OfS funding:
- a. Subscribe to the Quality Assurance Agency for Higher Education.
  - b. Subscribe to the Office of the Independent Adjudicator (under the Higher Education Act 2004).
  - c. Subscribe to and provide data or other information requested by HESA.
  - d. Subscribe to Jisc's core network package from 1 April 2018 to 31 July 2019 and ensure that their use of JANET and SuperJANET networks conforms to acceptable practice and current legislation.
48. Non-compliance with regulatory requirements or requirements of such other bodies may be taken into account in our assessment of risk, and there may be actions that flow from that assessment.

### TRAC

49. HEIs must submit the Transparent Approach to Costing (TRAC), including TRAC for teaching, returns to the OfS<sup>5</sup>. This must be approved by a lay committee of the governing body prior to submission. The OfS will share the TRAC returns with UKRI.

### Estates

50. HEIs should manage their estate in a sustainable way, in line with an estates strategy. HEIs are required to have carbon management plans in accordance with guidance published previously in 'Carbon management strategies and plans (HEFCE 2010/02)<sup>6</sup>, and performance against these plans is a factor in determining future capital allocations.

### State aid

51. HEIs must ensure compliance with EU state aid law in their own uses of OfS funding. In the case of any breach of state aid law we may be required to recover all or some funding, together with interest. The OfS may also be required to withhold funding or aspects of funding to any institution which is subject to a state aid enquiry or which has an outstanding recovery notice against it.

### Exchequer interest

52. There is an Exchequer interest that has built up over time in HEIs in receipt of HEFCE and OfS capital funding. These HEIs entered into an agreement with HEFCE effective from 1 August 2006 and which continues under the OfS. These institutions and any others that have received capital funding since then are required to comply with the following conditions.
53. If either of the following remote events occurs, they will trigger immediate liability for the institution to repay to the OfS the full amount of the Exchequer interest balance. The institution will recognise the OfS as an unsecured creditor until such repayment is made. If a liability to make repayment arises, the OfS may agree to accept repayment of some other sum, or to

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<sup>5</sup> See [www.hefce.ac.uk/funding/finsustain/trac/#TRAC\\_Guidance](http://www.hefce.ac.uk/funding/finsustain/trac/#TRAC_Guidance).

<sup>6</sup> See [www.hefce.ac.uk/pubs/year/2010/201002/](http://www.hefce.ac.uk/pubs/year/2010/201002/).

delay repayment, at its absolute discretion, and such agreement may be on terms and conditions as the OfS thinks fit.

a. The first trigger event will be if the institution becomes insolvent, including going into liquidation or administration, or if it dissolves or transfers its undertaking to some other body (for example, by the exercise of the Secretary of State's powers under the Education Reform Act 1988), or if it experiences any analogous event.

b. The second trigger event is if the institution ceases to be designated as eligible for OfS funding, or chooses to withdraw from its funding relationship with the OfS.

54. If either of the triggers is activated, the OfS will calculate, and share with the institution, the Exchequer interest balance, and has the right, but not the obligation, to request repayment of the Exchequer interest balance. It has discretion to waive the requirement for repayment. In making this decision, the OfS will consider the extent of any continuing public benefit arising from the use of previous OfS or HEFCE capital grants.

### **Payment of grant**

55. Each year we determine how much money to allocate to each HEI. HEIs should use this money only for the purposes we are empowered to fund, as defined in the Further and Higher Education Act 1992 or other relevant legislation.

56. We may withhold or require an HEI to repay part or all of a grant if it does not comply with the conditions we attach to the funding or if it has been incorrectly over-funded. In cases where we require repayment we may charge interest, at 2 per cent above the Bank of England base rate, for the period before the HEI repays the funding to us.

## **Institutional engagement**

57. As a public sector funding body the OfS must be confident that the bodies it funds have adequate and effective risk management, control and governance arrangements to protect the investment of public funding; and arrangements for delivering value for money (VFM) from public funds.

58. The OfS will ensure accountability for its funding up to 31 July 2019 using three main strands designed to provide confidence about the regularity, propriety and VFM of public funding, while minimising burden on the sector. The strands are:

- annual accountability return
- assurance review
- data assurance.

59. The OfS will share with Research England its conclusions about institutions in receipt of funding administered through Research England arising from activities carried out and information received under its accountability framework. This approach will minimise the demands on HEIs placed by both organisations.

60. The documents that the OfS will need to assess to gain assurance over the accountability, regularity, propriety and VFM of the funding that it disburses are set out in Regulatory Notice 2 (OfS 2018.12). This continues the approach to minimise the regulatory burden on HEIs by relying on data and information that they have produced to meet their own needs.

61. We will assess risk for all institutions for these specific funding purposes during the transition period. We will continue to use during this period the categories previously used by HEFCE: there are currently two risk categories. The first is 'not at higher risk' (HEFCE's experience was that this is the vast majority of HEIs at any time). We will have minimal engagement with HEIs that we assess under these funding requirements as being 'not at higher risk'.
62. The second category is 'at higher risk' (for a small number of institutions). We define an HEI as 'at higher risk' for these specific funding purposes when in our judgement, on the basis of all available evidence, it:
- faces threats to the sustainability of its operations, either now or in the medium term
  - has serious problems relating to value for money, propriety or regularity (that is, whether funds are used for the purpose intended) or
  - has materially ineffective aspects of risk management, control or corporate governance.
63. When we assess an HEI as being 'at higher risk' we must respond appropriately, to protect the public and collective student interest. We will write to the accountable officer (copying the letter to the chair of the governing body) to set out our concerns. We will also engage with the HEI's senior management to understand how they are managing and mitigating the risks and ensuring that students are protected. When we consider the HEI to be no longer at higher risk, we will write to its accountable officer and its governing body to confirm this.
64. If an HEI fails to take any agreed action the OfS will seek explanations and, if appropriate and justified, issue warnings to improve.
65. If the HEI still fails to address the risks and issues then the HEI will be informed that one or more actions will be applied. This is very much a last resort and an action that we would not expect to take often. Actions may be taken by the OfS and Research England, individually or together.
66. The two actions at the disposal of the OfS and Research England, which could be deployed if other routes to secure compliance are not successful, are:
- a. **Financial** – through the recovery of grant funding or the denial of access to future grant funding, including access to specific grants or to discretionary funding. This applies both to OfS grants and those administered through Research England on behalf of UKRI. Ultimately the OfS and Research England can withdraw funding entirely, should circumstances warrant such action.
  - b. **Informational** – through making public our concerns about an HEI where there are strong grounds to do so and where this is in the public or collective student interest (including that of both current and prospective students, and past students where relevant).
67. There are occasions when we identify significant risks at an HEI through our risk assessment. For example, we may identify that an HEI's risks are increasing because of, for instance, changes in student demand or increased competition, its performance or its internal control arrangements. At such times the OfS will seek a period of 'focused dialogue' with the institution to try to ensure that the risks are appropriately addressed.
68. The Agreement on Institutional Designation (OfS 2018.17) has been developed with Universities UK, GuildHE and the Association of Colleges to ensure that accountability for public funds continues to be effective following the government's reforms of the funding of higher education. The Agreement is effective until the new regulatory framework is fully implemented on 1 August 2019. Any actions that the OfS might take under that Agreement may also lead to actions under these terms and conditions.

## Annual accountability return

69. During the transition period, the OfS will take assurance from a suite of accountability returns, including audited financial statements, financial forecasts and independent audit reports, which must be submitted to the OfS by a specified date or dates. They provide the OfS with a view of each HEI's risk management, control and governance, financial sustainability, arrangements for promoting VFM and managing and quality assuring data. By using information and assurances, much of which is needed for internal management and assurance purposes by the HEI, the OfS will be able to minimise its audit requirements and reduce burden. The annual accountability returns are assessed by the OfS to inform its view of risk specifically in relation to these funding purposes.
70. In preparing their audited financial statements for submission in the annual accountability return, HEIs must follow the OfS's accounts direction and the 'Statement of recommended practice: Accounting for further and higher education' (SORP), or any successor to the SORP in preparing their audited financial statements for the years ended 31 July 2018 and 31 July 2019. If an HEI is also a company limited by guarantee, this direction is subject to the requirements of the Companies Act.
71. The latest date for submission of HEIs' audited financial statements for 2017-18 is Monday 3 December 2018. Earlier submission is welcome.

## Assurance review

72. The assurance review is a short site visit to HEIs to ensure that there are suitable accountability processes within each HEI to assure the validity of its annual accountability returns. This helps the OfS to validate the systems of self-regulation on which it relies. These reviews will continue through July 2018. The OfS will then adopt a more risk-based approach to further reviews during the transition period – this is expected to mean that a smaller number of reviews will be carried out.

## Data assurance

73. During the transition period, HEIs are required to supply the OfS with data to inform allocations of funding and for other purposes. The responsibility for the quality and accuracy of that data rests with the HEI. The OfS relies on the HEI's own data assurance processes where possible.
74. The OfS monitors the reasonableness of data and undertakes verification, validation and reconciliation work between HESA data and other datasets. The OfS may undertake audits at an HEI if it deems this necessary. Data audits will assess the strength of institutional systems and controls as well as assessing the accuracy of the data submissions.

# Annex A: Funding agreement between the OfS and an HEI: 1 April 2018 to 31 July 2019

## Introduction

1. This annex records the agreement between the Office for Students (OfS) and a higher education institution (HEI) relating to the amount of recurrent funding which the OfS will provide to the institution for the period 1 April 2018 to 31 July 2018 and 1 August 2018 to 31 July 2019. The amount of funding will be notified in writing to each HEI separately. This annex sets out certain conditions the HEI is expected to meet in return for that funding.
2. This annex must be read in conjunction with the rest of this document. References to Research England in this schedule relate to the functions of UK Research and Innovation (UKRI) that will be exercised by its Research England council under Section 97 of the Higher Education Act 2017, but should be read as including UKRI, which will retain responsibility for those functions.
3. An institution (defined below) must include all its registered students when counting the number of students to be included within any control on that institution's student numbers, such as medical or dental intake targets, and for the institution's reporting obligations relating to students under paragraph 8, and for the purposes of the Unistats data collection under the terms and conditions of OfS funding and this funding agreement.
4. This annex specifies the conditions of funding that apply for the periods:
  - 1 April 2018 to 31 July 2018
  - 1 August 2018 to 31 July 2019.

## Institution

5. 'Institution' means the institution including its related undertakings (as defined in Annex E), unless such undertakings:
  - are subject to a separate funding agreement directly with the OfS
  - are subject to separate terms and conditions of UKRI funding in relation to funds administered by Research England
  - have been designated by the Secretary of State as institutions in the further education sector which have their own contract with the Education and Skills Funding Agency (ESFA) or
  - are schools as defined by section 4 of the Education Act 1996 or multi-academy trusts.

## Conditions of funding

6. All funding provided by the OfS is subject to the conditions set out in this document and, in accepting funding, the institution is agreeing to comply with those conditions.
7. The institution is free to distribute internally at its own discretion all funding from the OfS which is not earmarked or provided for a specific purpose, subject to that funding being used for the activities eligible for funding under section 65(2)(a) and (b) of the Further and Higher Education Act 1992, as amended. Any funds that have been earmarked or provided for a specific purpose must be used solely for the purpose for which those funds were earmarked or provided.



8. Information and data requirements are set out in paragraphs 43-45 in the main body of this document. These are part of the terms and conditions attached to funding. The data required includes the data collected by the Higher Education Statistics Agency (HESA) during and/or for the 2017-18 and 2018-19 academic years, the 2018 Higher Education Students Early Statistics (HESES) survey and, for those institutions offering medical and dental courses that lead on successful completion to first registration as a doctor or dentist, the 2018 Medical and Dental Students (MDS) survey (or such other surveys as may replace these under the funding method for teaching). This data enables the OfS and Research England to monitor the delivery of teaching and research during 2017-18 and 2018-19, and informs the consideration of funding and student number allocations. Higher education institutions are also required to submit student contact details to enable the OfS, or its agents, to conduct the National Student Survey and to provide information to HESA for publication on the Unistats website (or its replacement website).
9. Compliance with the code of practice for higher education data collections<sup>7</sup> is a condition of funding for all institutions. Each HEI is required to confirm in its annual assurance return that it complies with the code of practice.
10. The HEI agrees that non-statutory bodies which perform a function for the higher education sector, specifically UCAS and the Student Loans Company, may provide to the OfS such information (including financial information) relating to students at, offers and acceptances by, and applications to the institution as the OfS may require for the purposes of the exercise of any of its functions under the Education Acts. These functions include the allocation and monitoring of funding and student numbers and the provision of advice to the Secretary of State. The OfS will notify the institution in advance of any data request it may make to these other bodies.
11. Institutions should note the guidance on senior staff remuneration, in the grant letter to the Higher Education Funding Council for England (HEFCE) of 23 February 2017<sup>8</sup> and the guidance letter to the OfS of 28 February 2018<sup>9</sup> and the disclosure requirements set out in the accounts direction published by the OfS ([www.officeforstudent.org.uk/#documents](http://www.officeforstudent.org.uk/#documents)).

## Conditions of funding on regulated fees

12. It is a condition of the funding provided for the 2017-18 and 2018-19 academic years by HEFCE and the OfS that the institution complies with tuition fee regulations and the terms of any access agreement in force as agreed with the Director of Fair Access to Higher Education or the OfS. The condition that applies for 2017-18 and 2018-19, and the action that may be taken for any breaches of that condition is provided at Annex B.

## Arrangements for payment

13. The OfS will normally pay recurrent funds to the institution in monthly instalments, in accordance with a funding profile for the whole academic year that will be notified separately. While the OfS reserves the right to amend the profile during the year, it will make adverse

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<sup>7</sup> Available at [www.hesa.ac.uk/content/view/3685](http://www.hesa.ac.uk/content/view/3685).

<sup>8</sup> 'Funding for higher education in England for 2017-18: HEFCE grant letter from the Department for Education', available at [www.hefce.ac.uk/funding/govletter](http://www.hefce.ac.uk/funding/govletter).

<sup>9</sup> See 'Strategic guidance to the Office for Students: Priorities for financial year 2018-19' <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/>.

changes to the profile only in exceptional circumstances and following consultation with the institution.

14. Payments for the period 1 April 2018 to 31 July 2018 will reflect the residual balance of teaching grants that are due for the 2017-18 academic year but have not already been paid by HEFCE or transferred to UKRI.

## **Recurrent funding allocations for 2017-18 and 2018-19**

15. The funding tables provided by HEFCE in July 2017, or as subsequently updated, show the allocations of recurrent funding for the institution for the period 1 August 2017 to 31 July 2018. HEFCE has paid a proportion of the total between August 2017 and March 2018 according to a monthly payment profile that it notified separately. The balance will be paid by the OfS and UK Shared Business Services Ltd, on behalf of Research England (for those grants that are transferring to it and subject to its separate funding decisions). These allocations may be amended subsequently in the light of any data assurance work we or Research England carry out with individual institutions or other data amendments that we agree to accept. We may also reduce the institution's grant for 2017-18:
  - a. If the institution exceeded its medical or dental intake target in both 2013-14 and 2014-15. Any such reduction will reflect the revised adjustments (reflecting confirmation of 2014-15 intakes in the 2015 MDS) notified in the letter of 9 March 2016 from Anna Child and Esther Nye, or as may be notified separately following data assurance.
  - b. If the institution exceeded its medical or dental intake target in both 2014-15 and 2015-16. Any such reduction will reflect the revised adjustments (reflecting confirmation of 2015-16 intakes in the 2016 MDS) notified in the letter of 28 February 2017 from Anna Child and Esther Nye, or as may be notified separately following data assurance.
  - c. If the institution exceeded its medical or dental intake target in both 2015-16 and 2016-17. Any such reduction will reflect the adjustments notified in the letter of 28 February 2017 from Anna Child and Esther Nye, or as may be notified separately, including in the light of confirmation of 2016-17 medical and dental intake numbers in the 2017 MDS.
16. The OfS expects to issue grant tables in May 2018, showing the allocations of recurrent teaching funding for the institution for the period 1 August 2018 to 31 July 2019.
17. These allocations may be amended subsequently in the light of any data assurance work we carry out with individual institutions or other data amendments that we agree to accept. We may also reduce the institution's recurrent teaching grant for 2018-19:
  - a. If the institution exceeded its medical or dental intake target in two successive years, reflecting any of the circumstances described in paragraph 15.
  - b. If the institution exceeded its medical or dental intake target in both 2016-17 and 2017-18. Any such reduction will reflect the adjustments notified in the letter of 14 February 2018 from Esther Nye, or as may be notified separately, including in the light of confirmation of 2017-18 medical and dental intake numbers in the 2018 MDS.
18. If an institution does not have any OfS-fundable students in 2017-18 or 2018-19, then all recurrent and capital funding for teaching allocated for that year will be held back. Unless subsequently revised, 'OfS-fundable students' has the same meaning as 'HEFCE-fundable students' as defined in Annex F of 'HESES17' (HEFCE 2017/17, available at

[www.hefce.ac.uk/pubs/year/2017/201717/](http://www.hefce.ac.uk/pubs/year/2017/201717/)), but from 1 August 2018 also includes those that come within the category of 'persons granted stateless leave and their family members'<sup>10</sup>.

19. If necessary, we will require a direct repayment of grant if future payments are insufficient to allow us to recover sums due back within the year.
20. We reserve the right to revise any allocation to take account of changes to the grant available to us from government, or where we believe the size of any allocation that we have announced has been affected by erroneous or incomplete data.

## **Changes to the grant available to us**

21. The strategic guidance letter to the OfS of 28 February 2018 from government confirmed the teaching funding available for the 2018-19 financial year (April to March). However it did not show any indicative funding for the 2019-20 financial year. The letter also identified the policies and priorities that should underpin our approach to funding.
22. In the light of the guidance letter, the OfS's Board has confirmed funding for the period April 2018 to July 2018 and agreed 2018-19 academic year budgets. In doing so, it has had to make an assumption about the funding that might be available for the 2019-20 financial year, because of its four-month overlap with the 2018-19 academic year. Any future changes to the grant made available to us by government for financial year 2018-19, or that we have assumed for financial year 2019-20, are likely to affect the funding we are able to distribute to institutions in the 2018-19 academic year, and this may include revising allocations after they have already been announced. Accordingly, institutions should plan their budgets prudently.

## **Data audit and reconciliation**

23. Data collected from institutions informs the allocations of student numbers, recurrent funds for teaching, and some non-recurrent allocations in response to specific initiatives. We and our agents also use data from institutions to provide public information about institutions and their courses, including through the Unistats website. We will audit data selectively, through audit visits and other processes. We will also use data which institutions provide to HESA, HEFCE, the ESFA and other organisations to verify the data institutions send directly to us. We will use the outcomes of these data audits and reconciliations to review funding and student number allocations both for the year in question and all subsequent years.
24. If we find, either through reconciliations with HESA, HEFCE, ESFA or other organisations' data, or through any data audit, that erroneous data has resulted in institutions receiving incorrect funding or student number allocations, then we will adjust these accordingly (subject to any appeals process that may apply and the availability of our funds). We will recover funding from an institution for any year informed by the audited or reconciled data (including any consequential effects on funding for subsequent years) unless there is evidence that an institution has deliberately not complied with the funding rules or has ignored previous HEFCE or OfS advice or recommendations. In these exceptional circumstances we may recover funding that relates to a longer period, up to a maximum of seven years (including in relation to years when funding was provided by HEFCE).

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<sup>10</sup> This category is defined in an amendment to the Education (Fees and Awards) (England) Regulations 2007 that has been made through Regulation 17 of statutory instrument 2018/137 ([www.legislation.gov.uk/ukxi/2018/137/contents/made](http://www.legislation.gov.uk/ukxi/2018/137/contents/made)).

25. We will seek assurances from accountable officers and audit committees about the management and quality assurance arrangements for data submitted to HESA, the Student Loans Company, the OfS, Research England, HEFCE and other bodies. This is imperative in order to improve the reliability of data, which is crucial for the efficiency of our funding, for the accuracy of public information that we provide and to reduce the number of significant funding or student number allocation adjustments arising from data corrections. Further guidance for audit committees on data assurance can be found at [www.hefce.ac.uk/reg/guidance/audit/](http://www.hefce.ac.uk/reg/guidance/audit/).

## **Funding agreement requirements**

26. Table A of the recurrent grant tables for each academic year shows two requirements relating to student numbers that may apply to the institution, and that we expect it to meet. The table specifies whether and how they apply to the institution. They are as follows:
- a. A 'medical intake target', specifying the limit on students beginning undergraduate quota-controlled medical courses in the relevant year.
  - b. A 'dental intake target', specifying the limit on students beginning undergraduate quota-controlled dental courses in the relevant year.
27. We expect the institution to meet all the requirements that apply to it. If the institution does not meet any of the individual requirements that apply, then we may adjust its funding and student number allocations for the relevant year and/or future years.

### **Medical and dental targets for 2017-18**

28. The medical and dental intake targets for 2017-18 were set out in the grant tables for that year issued by HEFCE in July 2017. The monitoring arrangements and the action to be taken in the event of over-recruitment remain as set out in the 2017-18 funding agreements also issued by HEFCE in July 2017, albeit that this will now be pursued by the OfS.

### **Medical and dental targets for 2018-19**

29. The medical and dental intake targets specified on the 2018-19 OfS recurrent grant Table A represent the maximum intakes for all students (whether Home, EU or overseas) starting full-time undergraduate (including graduate-entry) programmes that lead on successful completion to first registration as a doctor or dentist, respectively. The institution should ensure it does not exceed these targets (where they apply). We may take action against any institution that continues to do so.
30. Continuing the arrangements that have applied under HEFCE funding, we will not count any students recruited in excess of these targets towards our funding for high-cost subjects and this will apply to all years of study relating to the excess numbers recruited. In order to implement this, where an institution exceeds such a target, we will identify the extent of over-recruitment and use this to adjust the total number of students we would otherwise count towards our funding for high-cost subjects. This will be implemented as a reduction to student numbers, reflecting that such students will commonly continue their studies for five years. The adjustments will be calculated as follows:
- a. For over-recruitment in medicine: we will multiply the number of students recruited in excess of the 2018-19 intake target by a percentage (to take account of the fact that a proportion of the 2018-19 intake target number may be used for the recruitment of overseas students – the maximum intake of overseas students within the total for 2018-19 is also specified on Table A). The product of this calculation will be deducted from the total student numbers we would otherwise count in determining the allocation of funding

for high-cost subjects. This deduction will apply to the numbers in price group B in the allocations for each of 2018-19 and 2019-20 and to the numbers in price group A in the allocations for each of 2020-21 to 2022-23. This approach reflects how students are commonly counted for funding purposes for a typical five-year medical degree.

- b. For over-recruitment in dentistry: we will multiply the number of students recruited in excess of the intake target by a percentage (to take account of the fact that up to 5 per cent of the intake target may be used for the recruitment of overseas students – the maximum intake of overseas students within the total for 2018-19 is also specified on Table A). The product of this calculation will be deducted from the total student numbers we would otherwise count in determining the allocation of funding for high cost subjects. This deduction will apply to the numbers in price group B in the allocation for 2018-19 and to the numbers in price group A in the allocations for each of 2019-20 to 2022-23. This approach reflects how students are commonly counted for funding purposes for a typical five-year dentistry degree.
31. In addition to the adjustment described in paragraph 30, where institutions have exceeded their medical or dental intake target for 2017-18, any further over-recruitment against that target in 2018-19 will result in a grant reduction for each excess student recruited in 2018-19. We will multiply the numbers recruited in excess of the 2018-19 medical or dental intake target by the relevant percentage described in paragraph 30, to take account of the fact that a limited proportion of each intake target may be used for the recruitment of overseas students. We will calculate the grant reduction by multiplying the resulting excess number so identified by a rate calculated as £1,000 less than the institution's average tuition fee after fee waivers (according to an Access Agreement with the Office for Fair Access, or as subsequently agreed by the OfS). These grant reductions will apply for up to five years, beginning in 2018-19, reflecting the typical duration of undergraduate degrees in medicine and dentistry. The calculations will be carried out separately for each intake target.
  32. There will be no opportunity to offset any over-recruitment, by recruiting below the targets for future years, so as to avoid the reductions to student numbers counted for funding or the grant adjustments described in paragraphs 30 and 31 that we will implement from 2018-19.
  33. We will monitor recruitment against the medical and dental intake targets initially using the 2018 MDS survey. Institutions will be notified of provisional reductions to the student numbers counted for funding and any grant reductions in late 2018 and will have an opportunity to appeal against any such reduction. Reductions will be reviewed and adjusted as necessary following receipt of final numbers for 2018-19 in the 2019 MDS survey. We may also use the outcome of any data audit or reconciliation work and the HESA individualised student record for 2018-19 to review the institution's compliance with these student number requirements and any consequences for the institution's funding or student number allocations from us.
  34. Where institutions have combined to form joint medical or dental schools, the intake targets are attributed entirely to one 'lead' partner on its grant Table A, while the other partner will not have intake targets shown on its 2018-19 grant Table A. We will monitor recruitment against the intake target for the joint medical or dental school. In the event that the school exceeds its intake target, we will seek to apply any reductions in student numbers counted for funding to the partners, according to a split agreed with them. Where the partners are unable to agree, we will make the final decision on how to attribute the reduction between them and this decision will not be subject to appeal.

## Other funding agreement requirements

35. The targeted allocation for very high-cost science, technology, engineering and mathematics subjects within the teaching grant, shown on the 2017-18 recurrent grant Table B issued by HEFCE and the 2018-19 grant Table A issued by the OfS, is conditional on institutions continuing to maintain taught programmes in the very high-cost disciplines (physics; chemistry; chemical engineering; and minerals, metallurgy and materials engineering) that this funding aims to sustain. Institutions that discontinue or substantially reduce their provision in any of these subjects in a year for which this funding has been provided will lose their allocation of this funding and be required to repay all of it. Institutions in receipt of this funding may be asked to submit qualitative monitoring information on the use of the funds. This will complement our monitoring of activity in these subjects through the HESA record. The monitoring statement should include details of the programmes offered in the four subject areas during the year, and the new entrants and total numbers of Home and EU students for each.
36. The nursing and allied health supplement within the teaching grant, also shown on 2017-18 recurrent grant Table B issued by HEFCE and the nursing, midwifery and allied health supplement shown on the 2018-19 grant Table A issued by the OfS, is conditional on institutions maintaining their current provision of pre-registration courses for the professions that attract this funding. Those professions are, for both undergraduate and (from 2018-19) postgraduate courses: adult, mental health, child, learning disability and other (unclassified) nursing; therapeutic radiography; diagnostic radiography; podiatry and chiropody; orthoptics; prosthetics and orthotics; and speech and language therapy; and also from 2018-19 for postgraduate courses only: midwifery, dietetics, occupational therapy and physiotherapy. Institutions that discontinue their provision for any of these professions in a year for which this funding has been provided will lose their allocation of this funding and be required to repay all of it. Institutions in receipt of this funding may be asked to submit qualitative monitoring information on the use of the funds. This will complement our monitoring of activity in these subjects through HESA and HESES data.

## Grant reductions arising from non-compliance with Table A funding agreement requirements

37. Where any reduction to grant is due because the institution has not met the requirements specified on grant Table A and described in this funding agreement, we will give the institution an opportunity to appeal against the application of any such reduction. We will provide guidance to the institution on any appeals process, including the timetable and format for appeals and on our broad approach to considering them. We will decide whether or not to accept the appeal (in whole or part), before finalising the level of the reduction that we will apply.
38. We will not invite appeals where changes to grant arise for other reasons, including the formulaic recalculation of allocations arising from data assurance work or other data amendments.

## Annex B: Conditions of funding regarding regulated fees

1. In accordance with the Secretary of State's duty under section 23 of the Higher Education Act 2004, the Secretary of State will impose a condition on grants to the Office for Students (OfS) for the period from 1 April 2018 to 31 July 2019, requiring the OfS in turn to impose a condition throughout that period, in accordance with section 24 of that Act, on financial support given to the governing body of a relevant institution.
2. An equivalent condition has been imposed on grant made by the Secretary of State to the Higher Education Funding Council for England (HEFCE) in respect of the academic year 2017-18, and will continue to apply in relation to the remainder of that academic year. Pursuant to transitional arrangements<sup>11</sup> relating to the implementation of the Higher Education and Research Act 2017, from 1 April 2018 the OfS will carry out the former functions of HEFCE and the Director of Fair Access to Higher Education including those relating to the making and enforcing of grants. Accordingly, the condition of funding imposed on relevant institutions for the academic year 2017-18 will continue to apply, with references to HEFCE or to the Director having effect as if they were references to the OfS.
3. The condition that the OfS will impose on the governing body of each relevant institution is set out in paragraphs 4 onwards below. That condition must provide, in the event of a failure to comply with the condition, for the imposition of the financial requirements described in paragraphs 11 to 14, including the principles described in paragraphs 13 and 14. Terms defined in Part 3 of the Higher Education Act 2004 have the same meaning when used in this annex and certain key terms are further described below.

### Condition to be imposed by the OfS on the governing body of each relevant institution

4. It is a condition of funding that:
  - a. Where an institution has an approved plan ('the plan') by the Director of Fair Access to Higher Education or by the OfS applying to students studying in the academic year 2018-19, its governing body must secure that in respect of that academic year the fees payable by a qualifying person in connection with their undertaking a qualifying course do not exceed the limit (which must not exceed the higher amount) provided for in the plan for that course and for that academic year, and
  - b. The governing body must comply with the general provisions of the plan.
  - c. Where an institution does not have an approved plan for a student cohort in the academic year 2018-19, its governing body must secure that in respect of that academic year the fees payable by a qualifying person in connection with their undertaking a qualifying course do not exceed the basic amount.
5. 'Fees' has the meaning set out in Section 41 of the Higher Education Act 2004 and in the Education (Student Fees) (Exceptions) (England) Regulations 1999<sup>12</sup>, which continue to apply.

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<sup>11</sup> Subject to parliamentary scrutiny.

<sup>12</sup> Statutory Instrument 1999/2265.

For students starting pre-registration courses in nursing, midwifery and allied health professions on or after 1 August 2017, institutions should meet, and not charge students for, the costs of Disclosure and Barring Service checks, occupational health checks and the provision of uniforms, where these are required for their participation on a course or course placement.

6. Qualifying courses and persons have the meaning prescribed in the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007, as amended<sup>13</sup>.
7. Details of the higher and basic amounts are outlined in paragraphs 8 to 10 below. For these purposes an 'eligible institution' means an institution listed in the Schedule to the Higher Education (Basic Amount) (England) Regulations 2016 and the Schedule to the Higher Education (Higher Amount) (England) Regulations 2016, each as amended<sup>14</sup>.
8. The prescribed amounts for 2018-19 for **students starting their full-time courses before 1 September 2012** reflect provisions in the Higher Education Act 2004 and are subject to overall limits set out in the Student Fees (Amounts) (England) Regulations 2004<sup>15</sup> as amended by Regulation 3 of the Student Fees (Basic and Higher Amounts) (Approved Plans) (England) (Amendment) Regulations 2012<sup>16</sup>. For these courses:
  - a. The basic amount is £1,380 (£680 where Regulation 5 of the Student Fees (Amounts) (England) Regulations 2004 applies).
  - b. The higher amount is £3,465 (£1,725 where Regulation 5 of the Student Fees (Amounts) (England) Regulations 2004 applies).
9. For **students starting full-time courses on or after 1 September 2012**<sup>17</sup>, for an academic year beginning on or after 1 August 2017, the prescribed amounts are subject to overall limits that are set out in regulation 6 of the Higher Education (Basic Amount) (England) Regulations 2016 and regulation 6 of the Higher Education (Higher Amount) (England) Regulations 2016. For these courses, the basic amount is £6,165 for an eligible institution and £6,000 for any other institution and the higher amount is £9,250 for an eligible institution and £9,000 for any other institution, except where any of the following exceptions apply under regulation 7 of both sets of regulations:
  - a. The basic amount is £3,080 for an eligible institution and £3,000 for any other institution and the higher amount is £4,625 for an eligible institution and £4,500 for any other

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<sup>13</sup> Statutory Instrument 2007/778, which has been amended, at the time of writing by Statutory Instruments 2007/2263, 2008/1640, 2011/87, 2012/1653 and 2016/584 and further amended (in relation to 'persons granted stateless leave and their family members') for 2018-19 by Statutory Instrument 2018/137.

<sup>14</sup> Statutory instruments 2016/1205 and 2016/1206 respectively. The Schedules to both instruments, which identify eligible institutions, are due to be updated ahead of Academic Year 2018-19, subject to parliamentary scrutiny. A list of institutions with a TEF award for 2018-19 has been published on HEFCE's website at [www.hefce.ac.uk/tefoutcomes/#/](http://www.hefce.ac.uk/tefoutcomes/#/).

<sup>15</sup> Statutory Instrument 2004/1932.

<sup>16</sup> Statutory Instrument 2012/433.

<sup>17</sup> Certain students, such as those transferring or on 'end-on' courses, are treated differently and the details are set out in regulation 5 of the Higher Education (Higher Amount) (England) Regulations 2016 and regulation 5 of the Higher Education (Basic Amount) (England) Regulations 2016.



institution for the final academic year of a course where that academic year is normally required to be completed after less than 15 weeks' attendance.

- b. The basic amount is £920 for an eligible institution and £900 for any other institution and the higher amount is £1,385 for an eligible institution and £1,350 for any other institution for:
  - i. An Erasmus year<sup>18</sup>.
  - ii. An academic year of a course provided in conjunction with an overseas institution which is not an Erasmus year:
    - 1) During which any periods of full-time study at the institution in the UK are in aggregate less than 10 weeks.

Or

  - 2) If in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution in the UK (disregarding intervening vacations) exceeds 30 weeks.
- c. The basic amount is £1,230 for an eligible institution and £1,200 for any other institution and the higher amount is £1,850 for an eligible institution and £1,800 for any other institution for an academic year of a sandwich course (which is not an Erasmus year):
  - i. During which any periods of full-time study are in aggregate less than 10 weeks.

Or

  - ii. If in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution (disregarding intervening vacations) exceeds 30 weeks.

- 10. For **students starting part-time courses on or after 1 September 2012**<sup>19</sup>, for an academic year beginning on or after 1 August 2017, the prescribed amounts are subject to overall limits that are set out in regulation 8 of the Higher Education (Basic Amount) (England) Regulations 2016 and regulation 8 of the Higher Education (Higher Amount) (England) Regulations 2016. For these courses, the basic amount is £4,625 for an eligible institution and £4,500 for any other institution and the higher amount is £6,935 for an eligible institution and £6,750 for any other institution.

## Financial requirements and penalties

- 11. Where there is a failure to comply with the condition set out in paragraph 4.a above, the financial requirement in relation to fees charged which exceed the limit provided for in the plan but do not exceed the higher amount, will be that imposed in accordance with section 37(1)(a)

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<sup>18</sup> 'Erasmus year' is defined in Regulation 4 of Statutory Instrument 2013/1728, which amends the definition given in the Education (Student Support) Regulations 2011 (Statutory Instrument 2011/1986).

<sup>19</sup> Certain students, such as those transferring or on 'end-on' courses, are treated differently and the details are set out in Regulation 5 of the Higher Education (Higher Amount) (England) Regulations 2016 and Regulation 5 of the Higher Education (Basic Amount) (England) Regulations 2016.

of the Higher Education Act 2004 and the Student Fees (Approved Plans) (England) Regulation 2004<sup>20</sup> ('the Approved Plans Regulations').

12. Where there is a failure to comply with the condition set out in paragraph 4.b above, the financial requirement will be that imposed in accordance with section 37(1)(a) of the Higher Education Act 2004 and the Approved Plans Regulations.
13. Where there is a failure to comply with the condition set out in paragraph 4.a above, and the fees charged exceed the higher amount as well as the amount provided for in the plan, the financial requirement will be that imposed under paragraph 11 and, in addition, the amount determined by the OfS in accordance with the following principles:
  - a. An amount of the teaching grant from the OfS which in the opinion of the OfS equals 110 per cent of the amount each student on a course has been charged in excess of the relevant higher amount, multiplied by the number of students the OfS believes to have been overcharged.
  - b. That the amount determined under sub-paragraph a will be repaid by the institution to the OfS, or withheld from grant, and retained until the institution has satisfied the OfS that reasonable efforts have been made to repay the amount charged in excess of the higher amount, either to every qualifying person overcharged, or to the Student Loans Company, as the case may be. Once the OfS is so satisfied by a date it determines, the amount retained by the OfS, or a proportion of that amount, will be repaid or given in grant to the institution.
  - c. The following further principles also apply:
    - i. Where it appears to the OfS that an institution does not intend to comply with the higher amount fee cap, an amount up to the maximum of the total teaching grant from the OfS for the relevant academic year and any future grant period may be withheld from grant.
    - ii. Where it appears to the OfS that a breach of the higher amount fee cap is minor or accidental there will be no financial penalty additional to that set out in sub-paragraphs a and b, and
    - iii. In any other circumstances, an amount in the current grant period which the OfS considers appropriate in view of the severity of the failure to comply with the higher amount fee cap, up to a maximum of £500,000 less any amount already imposed by the OfS under paragraph 11, to be repaid by the institution to the OfS or withheld from grant.
  - d. An amount determined under sub-paragraph c will not exceed in any grant period the total amount received from the OfS in that grant period, less any amount withheld under sub-paragraphs a and b and the amount of any financial requirement imposed under paragraphs 11 or 12. An amount determined under sub-paragraph c will not be paid or repaid to the institution.

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<sup>20</sup> Statutory Instrument 2004/2473, as amended, at the time of writing, by Statutory Instruments 2012/433 and 2012/765.

14. Where there is a failure to comply with the condition under paragraph 4.c, the financial requirement will be the amount determined by the OfS in accordance with the following principles:
- a. An amount of the teaching grant from the OfS which in the opinion of the OfS equals 110 per cent of the amount each student on a course has been charged in excess of the basic amount, multiplied by the number of students the OfS believes to have been overcharged.
  - b. That the amount determined under sub-paragraph a will be repaid by the institution to the OfS or withheld from grant, and retained until the institution has satisfied the OfS that reasonable efforts have been made to repay the amount charged in excess of the basic amount, either to every qualifying person overcharged, or to the Student Loans Company, as the case may be. Once the OfS is so satisfied by a date it determines, the amount retained, or a proportion of that amount, will be returned or given in grant to the institution.
  - c. The following further principles also apply:
    - i. Where it appears to the OfS that an institution does not intend to comply with the basic amount fee cap, an amount up to the maximum of the total teaching grant from the OfS for the relevant academic year and any future grant period may be withheld from grant.
    - ii. Where it appears to the OfS that a breach of the basic amount fee cap is minor or accidental there will be no financial penalty additional to that set out in sub-paragraphs a and b, and
    - iii. In any other circumstances, an amount in the current grant period which the OfS considers appropriate in view of the severity of the failure to comply with the basic amount fee cap, up to a maximum of £500,000, to be repaid by the institution to the OfS or withheld from grant.
  - d. An amount determined under sub-paragraph c will not exceed in any grant period the total amount received from the OfS in that grant period, less any amount withheld under sub-paragraphs a and b. An amount determined under sub-paragraph c will not be paid or repaid to the institution.

# Annex C: Audit Code of Practice

## Overview

1. In this Audit Code of Practice (the Code) the word ‘must’ denotes a mandatory requirement under the terms and conditions of funding, whereas ‘should’ denotes our view of good practice.
2. The Code sets out what we require higher education institutions (HEIs) to have in place to provide themselves and us with adequate assurance on good governance, internal controls, the management of risk and achieving value for money (VFM). How these requirements are met is for HEIs to decide themselves.

## Governing bodies of HEIs

3. The responsibilities of governing bodies are set out at paragraph 22 of the terms and conditions of OfS funding and paragraph 21 of the terms and conditions of UKRI funding relating to funds administered through Research England. Governing bodies are responsible for the appointment and removal of external and internal auditors. Governing bodies are also responsible for appointing outsourced internal audit providers, on the advice of the Audit Committee, and for choosing to move between outsourced and insourced internal audit provision, also after taking advice from the Audit Committee. Staff appointments and terminations for insourced internal audit staff are a matter for management, with the Audit Committee advising on the appointment and termination of the Head of Internal Audit.

## Audit committees in HEIs

4. Each HEI must have an audit committee which follows best practice in higher education corporate governance. The audit committee is responsible for assuring the governing body about the adequacy and effectiveness of:
  - risk management, control and governance
  - VFM
  - the management and quality assurance of data.
5. The Committee of University Chairs has published detailed guidance about audit committees (‘Handbook for members of audit committees in higher education institutions’, HEFCE 2008/06<sup>21</sup>). This reflects best governance practice, and the Office for Students (OfS) and Research England expect HEIs to take account of such guidance in meeting the required standards or explain why the guidance is not being applied and good practice is not being followed.
6. An audit committee can undertake whatever work<sup>22</sup> it considers necessary to fulfil its role. This should include assuring itself about the effectiveness of its internal audit function and its external auditors. Audit committees will only be able to provide the necessary assurances if they are supported by suitably resourced internal audit and external audit functions, operating

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<sup>21</sup> Available at

[http://webarchive.nationalarchives.gov.uk/20120118181328/http://www.hefce.ac.uk/pubs/hefce/2008/08\\_06/](http://webarchive.nationalarchives.gov.uk/20120118181328/http://www.hefce.ac.uk/pubs/hefce/2008/08_06/).

<sup>22</sup> As described in HEFCE 2008/06.

to recognised professional standards. They should also consider evidence-based assurances from management.

7. Members of the audit committee must not have executive authority. Audit committees should include a minimum of three lay members of the governing body. Audit committee members should not be members of an HEI's finance committee or its equivalent. This is because it would create a potential conflict of interest when the audit committee is considering issues involving the finance committee. If an HEI's governing body determines that cross-representation involving one member is essential, this should be the subject of an explicit, recorded resolution, which sets out the rationale for such a decision – but it should not be an option for the chair of either committee or the chair of the governing body.
8. The committee must produce an annual report for the governing body and the accountable officer. The report must cover the financial year and include any significant issues up to the date of signing the report and its consideration of the financial statements for the year. The report must be presented to and reviewed by the governing body before the audited financial statements are signed.
9. The report must include the committee's opinion on the adequacy and effectiveness of the HEI's arrangements for:
  - risk management, control and governance
  - economy, efficiency and effectiveness (VFM)
  - management and quality assurance of data submitted to the Higher Education Statistics Agency, the Student Loans Company, HEFCE, the OfS, Research England and other bodies.
10. The final annual report to the governing body and the accountable officer must be shared with the OfS each year, and, on request, with Research England.

## **Internal audit arrangements in HEIs**

11. Internal audit is a vital element in good corporate governance since it provides governing bodies, audit committees and accountable officers with independent assurance about the adequacy and effectiveness of risk management, control and governance, and VFM.
12. Consequently each HEI must have a suitably resourced internal audit function which must comply with the professional standards of the Chartered Institute of Internal Auditors. Internal audit terms of reference must make clear that its scope encompasses all the HEI's activities, the whole of its risk management, control and governance, and any aspect of VFM delivery.
13. The internal audit service must produce an annual report which must relate to the financial year and include any significant issues, up to the date of preparing the report, which affect the opinions. It must be addressed to the governing body and the accountable officer and must be considered by the audit committee.
14. The report must include the internal auditor's opinions on the adequacy and effectiveness of the HEI's arrangements for:
  - risk management, control and governance
  - economy, efficiency and effectiveness (VFM).
15. The final annual report to the governing body must be shared with the OfS each year, and, on request, with Research England.

16. The head of internal audit must have direct access to the HEI's accountable officer, the chair of the audit committee and, if necessary, the chair of the governing body.
17. Where internal audit is provided from an outside source, market testing should be undertaken at least every five years.

## **External audit arrangements in HEIs**

18. External audit must provide an opinion to the governing body on whether funds (including public funds) have been applied for the intended purposes and on whether the financial statements provide a true and fair view of the financial results for the year. External audit must also form a view about whether an HEI is a going concern. External auditors of HEIs do not have a duty of care to the OfS and Research England.
19. HEIs may ask external auditors to provide additional services. The audit committee must agree all significant matters with a bearing on the auditor's objectivity and independence. Additional work must not impair the independence of the external audit opinion.
20. HEIs must disclose separately, by way of a note to the financial statements, the fees paid to their external auditors for other services.
21. External auditors must issue a report (or reports, if more than one, covering different stages of the annual audit) to those charged with governance, which records accounting issues and control deficiencies arising from the audit. The OfS and Research England would expect any issues around the use of charitable assets for non-charitable purposes to be highlighted in such reports. The HEI's management must provide written responses to any recommendations made or issues raised. The report(s), including management response, are one of the annual accountability returns which must be submitted to the OfS.
22. The report(s), with management responses, must be made available to the HEI's audit committee in time to inform the committee's annual report.

## **Audit report**

23. The external auditors must report whether in all material respects:
  - a. The financial statements give a true and fair view of the state of the HEI's affairs, and of its income and expenditure, gains and losses, changes in reserves and cash flows for the year. They should take into account relevant statutory and other mandatory disclosure and accounting requirements, and OfS and Research England requirements.
  - b. The financial statements have been properly prepared in accordance with the financial reporting standards (FRS102) and the 'Statement of recommended practice: Accounting for further and higher education', and relevant legislation.
  - c. Funds from whatever source administered by the HEI for specific purposes have been properly applied to those purposes and managed in accordance with relevant legislation.
  - d. Funds provided by the OfS and Research England have been applied in accordance with these terms and conditions and any other terms and conditions attached to them.
  - e. The requirements of the OfS's accounts direction have been met.
24. Auditors should have regard to the specific requirements of the terms and conditions such as compliance with those relating to increases in financial commitments thresholds, or other

issues of non-compliance, in their management letters or reports, as set out in paragraph 23 above.

25. Market testing should be undertaken at least every seven years. One named individual partner in the firm is normally responsible for the HEI's audit; they should not hold this position for more than 10 consecutive years.

## **OfS and Research England access to auditors**

26. The OfS and Research England may wish to communicate with an HEI's external or internal auditors, particularly in connection with an assurance review (until July 2018) or an accountability and governance review (from 1 August 2018 until 31 July 2019) and should have unrestricted access to do so. This will normally be arranged through the HEI's accountable officer or representative. The OfS and Research England will exchange letters where necessary with both parties to deal with confidentiality and the terms under which access is given.

## **Provision of audit services**

27. Internal and external audit services must not be provided by the same firm or provider.

## **Auditors' access to information**

28. Internal and external auditors must have unrestricted access to information – including all records, assets, personnel and premises – and be authorised to obtain whatever information and explanations the head of internal audit service or the external auditor considers necessary.

## **Restriction on auditors' liability**

29. Where the internal audit service is provided through a contractual arrangement with an external provider, the provider may ask the HEI to agree to a restriction in the internal auditors' liability arising from any default by the auditors. Normally such liability should be without limit. However, HEIs may negotiate a restriction in liability so long as the decision is made on an informed basis and the liability remains at such a level as to provide reasonable recourse for the HEI. The governing body, through the audit committee, must be specifically notified of any request for a liability restriction.
30. HEIs must not agree to any restriction in external auditors' liability in respect of the external audit of their annual financial statements.
31. For other types of work performed by the external auditors, the provider may ask the HEI to agree to a restriction in the auditors' liability arising from any default by the auditors. However, as with internal audit services, HEIs may negotiate a restriction in liability if the decision is made on an informed basis and the liability remains at such a level as to provide reasonable recourse to the HEI. The governing body, through the audit committee, should be notified of any liability restriction agreed.

## **Appointment, removal or resignation of internal and external auditors**

32. Governing bodies are responsible for the appointment and removal of external and internal auditors. Where auditors cease to hold office for any reason, they should provide the governing body with either a statement of any circumstances connected with their removal which they consider should be brought to the governing body's attention, or a statement that there are no

such circumstances. Any such statements must also be sent to the OfS by the accountable officer.



# Annex D: Approval of increases in financial commitments

## Introduction

1. A higher education institution (HEI) must get prior written approval from the Office for Students (OfS) to increase its financial commitments before it agrees to any new financial commitment meeting either of the following criteria:
  - a. The OfS has informed the HEI that it is considered to be 'at higher risk' or
  - b. The OfS has informed the HEI that it wishes to engage with it on the basis of 'focused dialogue'.
2. If an HEI does not meet the criteria above it will not need to seek the OfS's approval before it increases its financial commitments. It will, however, need to have included any planned future borrowing in its financial forecasts submitted to the Higher Education Funding Council for England (HEFCE) or to the OfS. If an HEI has not previously included an increase in financial commitments in its submitted forecasts it must report material changes in its financial performance and position relative to its submitted forecasts. It is likely that significant increases to an HEI's financial commitments will trigger this reporting requirement and it will be required to provide detailed information about its new financial commitments as part of that reporting. This will allow the OfS to:
  - a. Consider the impact of this borrowing on the HEI's financial sustainability.
  - b. Decide whether the HEI's risk status, or the level of engagement that the OfS has with the HEI, should be changed.
  - c. Ask the HEI to develop an action plan to mitigate increased risk if the OfS decides to increase the HEI's risk status or level of engagement. This will provide the OfS with a similar level of assurance to that gained by HEFCE through the conditions it imposed through its financial commitment approval process.

## Definitions

### Financial commitment

3. Financial commitments should be defined as those that are on balance sheet, in accordance with accounting standards.
4. Financial commitments include:
  - all financial commitments, whether self-financing or not, drawn or undrawn
  - finance leases
  - service concession arrangements
  - Private Finance Initiative arrangements which are accounted for as loans or finance leases in accordance with the requirements of Financial Reporting Standard 102
  - repayable grants, such as from the HEFCE Catalyst Fund.
5. Pension fund liabilities, interest rate hedges (such as swaps) and all provisions should be excluded from financial commitments.

## Our response

6. We expect HEIs to include their financial commitments plans as far as possible in their annual financial forecasts submissions, to enable the OfS to review them at an early stage. Where the OfS approves the application for higher financial commitments, it will write to the HEI setting out the revised commitment level. As part of this approval it may set out additional conditions which will need to be adhered to.

## Information required

7. All applications for higher financial commitments must be **signed by the accountable officer**. In signing the application, the accountable officer is confirming that the institution's governing body has reviewed the terms and conditions of the financial commitment providing assurance over value for money, and has reviewed affordability and compliance with banking covenants under different scenarios (meaning that the proposed financial commitments have been stress tested). In addition we ask for confirmation that the student interest has been considered in any application.
8. We set out in Table 1 the information we require to consider a request for an increase in financial commitments. This addresses the issues on which we would expect the institution's own governing body to seek assurance before approving additional financial commitments. The main focus is on affordability and risk, not necessarily on the individual project.

**Table 1: Information required by the OfS to consider a request to increase financial commitments**

Financial commitments
<p><b>1. There should be a reasonable case for the new investment.</b></p> <p>Information required:</p> <ul style="list-style-type: none"><li>a. A brief description of the new investment.</li><li>b. An explanation of how it broadly fits with the institution's mission and strategic priorities.</li><li>c. Confirmation that the institution has considered appropriate guidance on appraising investment decisions.</li></ul> <p>A description of how the student interest will be taken into account.</p>
<p><b>2. The new financial commitments or refinancing arrangement (where these will result in an increase to financial commitments) should be consistent with the institution's financial strategy and represent good value for money.</b></p> <p>Information required:</p> <ul style="list-style-type: none"><li>a. An explanation of why additional finance or refinancing is necessary and how this fits with the financial strategy.</li><li>b. The forms of finance considered and the selection process and criteria.</li></ul> <p>The net present value for each financing option, and a brief explanation of why the chosen method was selected.</p>

**3. Details of the new financial commitments.**

Information required:

- a. Details of the chosen option, including name of lender, value of new financial commitment, repayment period, basis of repayment and financial covenants.

Terms and conditions of the financing (such as a copy of the offer letter) and an evaluation of the risks and uncertainties.

**4. The new investment and financial commitments must be affordable.**

Information required:

An update of the latest financial forecasts, to include the impact of the new investment and financial commitments, and demonstration that they are affordable. This update must include any other material changes in the institution's financial prospects, including guarantees to third parties.

**5. The institution's governing body must have made an informed decision about the new investment and financial commitments.**

Information required:

- a. Details of when the governing body approved the new investment and financial commitments, and a minute of the decision reached.

A summary of the information the governing body received in reaching its decision.

**6. Details of the new commitment level.**

Information required:

- a. Details of existing financial commitments (including the lender, terms, interest rate and financial covenants) and of the new financial commitments.

A calculation of the new commitment level required.

**1. There should be a reasonable case for the new investment.**

Information required:

- a. A brief description of the new investment.
- b. An explanation of how it broadly fits with the institution's mission and strategic priorities.
- c. Confirmation that the institution has considered appropriate guidance on appraising investment decisions.

A description of how the student interest will be taken into account.

## Annex E: Related undertakings

1. 'Institution' means the institution including its **related undertakings**, as defined in paragraphs 2 and 3, unless such undertakings:
  - a. Are subject to a separate funding agreement directly with the OfS.
  - b. Are subject to separate terms and conditions of UKRI funding in relation to funds administered by Research England.
  - c. Have been designated by the Secretary of State as institutions in the further education sector which have their own contract with the Education and Skills Funding Agency or
  - d. Are schools as defined by section 4 of the Education Act 1996 or multi-academy trusts.
2. An 'undertaking' includes a body corporate, a partnership, an unincorporated association or a trust. An undertaking will normally be regarded as a related undertaking of the institution if any of the following apply:
  - a. The institution controls that undertaking.
  - b. The institution and another undertaking or other undertakings related to the institution together control that undertaking.
  - c. Another undertaking or other undertakings related to the institution control that undertaking.
  - d. That undertaking is recognised by the OfS and Research England as a 'connected institution', as defined by section 27 of the Teaching and Higher Education Act 1998.
  - e. We consider that the sole purpose, or one of the main purposes, of registering students at that undertaking is to avoid or minimise regulation by the OfS and Research England, to optimise funding or to manipulate data for regulatory or other purposes.
  - f. We consider that the undertaking was established by or is operated for the primary benefit of the institution.
3. The OfS and Research England may, at their discretion, decide to treat a related undertaking as a separate institution for funding, regulatory and other purposes if they consider that the undertaking has a separate historic identity from its parent institution.
4. For the purpose of paragraph 2, an undertaking is under the 'control' of another if any of the following apply<sup>23</sup>:
  - a. That other holds or is entitled to acquire a majority of the shares in the undertaking.
  - b. That other holds or is entitled to acquire a majority of the voting rights in the undertaking.
  - c. That other has or is entitled to acquire the right to appoint or remove a majority of the board of directors or other governing body of the undertaking.
  - d. That other has or is entitled to acquire the right to exercise dominant influence over the undertaking by virtue of provisions contained in the undertaking's articles of association

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<sup>23</sup> The expressions 'voting rights in an undertaking', 'right to appoint or remove a majority of the directors', 'right to exercise a dominant influence' and 'control contract' have the meanings given in schedule 7 to the Companies Act 2006.

or any other constitution, control contract, memorandum of understanding or other document regulating the undertaking or any other undertaking.

- e. That other has or is entitled to acquire the right to a share of more than half the assets in the event of a winding up or in any other circumstances, or of more than half the income, of the undertaking.
  - f. Both are in common or overlapping ownership or are managed on a uniform basis or have a significant number of directors (or equivalent) or senior management in common.
  - g. That other has or is entitled to acquire the power, by any other means, to secure that the affairs of the undertaking are conducted in accordance with its wishes, or the undertaking is habitually conducted in accordance with the wishes of the other.
5. Where a school (as defined in paragraph 1) or multi-academy trust is under the control of the institution and delivers higher education, the expectation is that higher education students would be reported through the institution, but students not studying at higher education level in school would be excluded.
6. Where a student union is under the control of the institution, it is excluded from the definition of related undertakings, except where it delivers higher education.

## Annex F: Definitions and abbreviations

<b>Accountable officer</b>	A senior officer (normally the head) of an institution responsible and accountable to the OfS and Research England (and ultimately to Parliament) for ensuring that the institution uses OfS and Research England funds in ways that are consistent with the purposes for which those funds were given, and complies with the conditions attached to them. These include the conditions set out in the Further and Higher Education Act 1992 and in these terms and conditions.
<b>Accounting officer (of the OfS)</b>	As accounting officer, the chief executive of the OfS has a personal responsibility to safeguard public funds and achieve value for money as set out in HM Treasury guidance, 'Managing public money', and any subsequent guidance. This includes responsibility for the public funds allocated by the OfS to higher and further education institutions and other bodies for education and associated purposes.
<b>Accounts direction</b>	The OfS publishes an accounts direction, which states the OfS's and Research England's financial reporting requirements. HEIs and their external auditors must comply with it.
<b>Annual accountability return</b>	A streamlined accountability process between the OfS and institutions, linked to an assessment of institutional risk, which comprises an exchange of documents and dialogue during a specific period each year.
<b>ESFA</b>	Education and Skills Funding Agency
<b>FRS</b>	Financial Reporting Standards
<b>Governing body</b>	The university council, board of governors or other body ultimately responsible for the management and administration of the institution's revenue and property, and the conduct of its affairs.
<b>HEFCE</b>	Higher Education Funding Council for England
<b>HEI</b>	Higher education institution
<b>HERA</b>	Higher Education and Research Act 2017
<b>HESA</b>	Higher Education Statistics Agency
<b>JANET</b>	High-speed computer network supported by all the four higher and further education funding bodies, which links universities and colleges in the UK. SuperJANET is the enhanced network.
<b>MDS</b>	Medical and Dental Students survey
<b>OfS</b>	Office for Students
<b>Regularity</b>	Regularity is a public finance requirement for funds to be applied only to the extent and for the purposes authorised by Parliament.
<b>Research England</b>	The Research England committee of UKRI. References to Research England in these terms and conditions relate to UKRI functions that are exercised by its Research England committee under Section 97 of the Higher Education and Research Act 2017, but should be read as including UKRI, which retains responsibility for those functions.

<b>Secretary of State</b>	Secretary of State for Education
<b>SORP</b>	Statement of Recommended Practice
<b>TRAC</b>	Transparent Approach to Costing
<b>the Code</b>	HEFCE's Audit Code of Practice
<b>UKRI</b>	United Kingdom Research and Innovation
<b>VFM</b>	Value for money

References to the **financial position, financial statements, financial commitments or borrowings** of the institution mean the consolidated financial position, financial statements, financial commitments or borrowing of the institution and its subsidiary undertakings, as defined in the Companies Act 1985 and revised by the Companies Act 1989 and 2006, and in accordance with the financial reporting standards.

**Shall** and **must** denote mandatory requirements, and **should** denotes our view of good practice.



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