

Office for
Students



Consultation on the Office for Students' approach to reportable events

Analysis of responses to consultation
and decision

Reference OfS 2021.45

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Contents

Introduction	3
What we were consulting on	3
Feedback and analysis	3
Final decision and implementing our policy	3
Amendments to the definition of a ‘reportable event’	6
Revised definition.....	6
Consequential amendments to the regulatory framework.....	11
Revised guidance on reportable events	14
General comments.....	14
Identifying matters that should be reported	15
Timing for submitting a reportable event	16
Informing the OfS of a reportable event	18
Assessing a reportable event and OfS engagement with providers.....	18
Illustrative list of examples	25
General comments.....	25
Specific events in Table 1	27
Impact of our proposals	31
Interactions with other consultations	33
Abbreviations	35
Annex A: The consultation	36
Background.....	36
Characteristics of respondents.....	36
Annex B: Summary of comments about Table 1	37
A – Matters relating to a provider’s ownership, legal form or corporate structure	37
C – Matters relating to the quality and standards of a provider’s courses	37
D – Matters relating to student and consumer protection	38
E – Matters relating to a provider’s financial viability or sustainability	38
F – Matters relating to management and governance	39
G – Matters relating to information provision	40
Annex C: Amendments to the regulatory framework taking effect from 1 January 2022	41
Condition F3: Provision of information to the OfS	41
Annex D: Revised Table 1 of revised Regulatory advice 16	47
Definitions	52

The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Our four regulatory objectives

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

Introduction

What we were consulting on

1. A 'reportable event' is a standing requirement placed on each registered provider to report certain events or matters to the Office for Students (OfS). This requirement is imposed through a Notice issued under ongoing condition of registration F3 which reflects the OfS's statutory power to compel the production of information under section 8(1)(b) of the Higher Education and Research Act 2017 (HERA). We use reportable events alongside lead indicators and other intelligence, such as complaints and notifications, for early identification, and close to real-time warnings, that a provider risks not meeting our regulatory requirements. Relying on each provider to identify and report reportable events is therefore an important part of a proportionate, risk-based approach to regulation.
2. Our consultation sought views on amendments to the definition of 'reportable events' in the OfS's regulatory framework and on revised guidance (Regulatory advice 16) to help providers to understand and meet the OfS's reporting requirements. The revised definition was set out in the consultation document and the revised guidance was appended to that document.¹

Feedback and analysis

3. We undertook a qualitative analysis of the feedback that we received. In this document we identify and discuss the most significant issues raised by respondents.

Final decision and implementing our policy

4. We have decided to implement our proposals in substantially the same form that we consulted on. Alongside this document, we are publishing:
 - a. Amendments to the regulatory framework, to implement our revised definition of reportable events and the other consequential changes set out in Annex C to this document
 - b. A revised version of Regulatory advice 16: Reportable events
 - c. A Notice under ongoing condition of registration F3 to every registered provider, through which our revised reporting requirements will be implemented.
5. Our revised approach will take effect from 1 January 2022. This gives providers and other stakeholders an opportunity to familiarise themselves with these arrangements, before they take effect.
6. We have made minor changes to the proposals on which we consulted, including to our revised definition of reportable events. We have made these amendments in response to the feedback that we received. These amendments are highlighted in this document, and reflected

¹ The consultation document and revised guidance on which we consulted are available at: www.officeforstudents.org.uk/publications/consultation-on-reportable-events/.

in revised Regulatory advice 16. They are intended to provide greater clarity and to allow for a more risk-based approach.

7. In reaching our final decision about these matters, we have had regard to the OfS's general duties in section 2 of HERA. In our view, the general duty which is likely to be particularly relevant is the duty under s.2(g) of HERA to have regard to, so far as relevant, the principles of best regulatory practice, including the principles that all regulatory activities should be transparent, accountable, proportional, consistent, and targeted only at cases in which action is needed. We have also had regard to the Regulators' Code in reaching our final decision.
8. We have also had regard to any relevant statutory guidance issued to the OfS by the Secretary of State under section 2(3) of HERA, and in particular:²
 - a. the Minister of State's comments in the guidance dated 14 September 2020, that:
 - i. 'I also support the OfS's commitment to continue to act with transparency and accountability, making clear what reporting is required from which providers and why.'
 - ii. 'I would like to see immediate progress... to reduce unnecessary bureaucracy: to ensure the higher education regulatory system is truly proportionate, risk-based, transparent and accountable.'
 - iii. '...there is now an opportunity to consider how we can continue to reduce the bureaucratic burden on providers for the long term, enabling them to continue to focus on delivering high quality outcomes for students next year and beyond, while also ensuring you are equipped to deliver the range of functions granted to you under the Higher Education and Research Act 2017 (HERA).'
 - b. the Secretary of State's comments in the guidance dated 8 February 2021 that 'In addition to reducing bureaucracy in the areas outlined in Minister Donelan's letter [of 14 September 2020], I would like the OfS look across everything that it does to identify further opportunities to reduce unnecessary bureaucracy and reporting requirements for providers [...] In my view, to date, the OfS has not been sufficiently risk-based. A risk-based approach to regulation should consider the overall regulatory burden faced by providers, including data gathering, reporting and monitoring, not just the application of conditions of registration. It is my view that there are further opportunities for the OfS to ensure that providers with consistently strong performance face minimal regulatory burden. I would like the OfS to implement a markedly more risk-based model of regulation, with significant, meaningful and observable reductions in the regulatory burden upon high quality providers within the next 12 months.'
9. We have also had due regard to our obligations under the public sector equality duty and our consideration of relevant issues is set out in more detail in the section on 'Impact of our proposals' below. We have concluded that, overall, the revisions to our reporting requirements will have a neutral impact on individuals on the basis of their protected characteristics.

² The guidance is available at: www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/.

10. For the reasons set out in this document, we consider that our revised approach provides greater clarity about our reporting requirements and will better assist providers in understanding and meeting their reporting obligations. In so doing, it will help to minimise regulatory burden. Our revised requirements also provide for a more risk-based approach. Our revised approach does not change the broad scope of the substantive matters that must be reported to us. We consider our approach to be proportionate and appropriately risk-based; our approach targets regulatory attention on the basis of risk, which also ensures that OfS resources are used in an efficient way.

Amendments to the definition of a ‘reportable event’

Revised definition

We asked respondents whether they agreed or disagreed with our proposed revision to the definition of a reportable event, and their reasons for this. They were also asked for comments on proposed consequential amendments to the guidance in the regulatory framework underpinning condition F3 (provision of information to the OfS).

11. We received 98 responses to the consultation. 57 respondents said, expressly, that they ‘agreed’ with the revised definition of a reportable event. This compared to nine respondents who said, expressly, that they ‘disagreed’, and two respondents who stated that they ‘neither agreed or disagreed’. Other respondents did not answer this question expressly and so we have not included them in this data. The majority of respondents also provided detailed comments in their responses, with many qualifying their responses to this ‘agree/disagree’ question. For example, some of those who said that they ‘agreed’, expressed reservations about some aspects of the proposed revised definition, and some of those who said that they ‘disagreed’ were supportive of some aspects of our proposals. We have set out below our qualitative analysis of the comments received on this proposal.
12. Many respondents considered the revised definition to be an improvement on the current definition,³ which some said was difficult to interpret and created regulatory burden, with too much focus on what some respondents considered to be ‘relatively trivial matters’. Positive comments made by respondents in support of the proposed revised definition included:
 - It is clearer and more specific in scope, providing a much stronger link between reportable events and their impact on matters which relate directly to a provider’s regulatory obligations to the OfS. Some respondents considered that this would enable providers to identify reportable events more easily, and in doing so, reduce over-reporting to the OfS.
 - It is more proportionate and risk-based, facilitating the collection of regulatory information without unnecessary bureaucratic burden and allowing regulatory action to be focused where it is most needed.
 - The reference to ‘negative impact’, instead of ‘materiality’, in the overarching definition, and the inclusion of the ‘materiality test’ that the OfS will apply to providers’ reporting decisions, provides greater clarity. Some respondents agreed that, in interpreting the ‘reasonable judgement of the OfS’, it was reasonable to prioritise the interests of students and the taxpayer over a provider’s commercial or reputational interests.
 - It better supports institutional autonomy as it will enable providers to make confident reporting decisions and judgements within their internal governance framework, utilising their comprehensive understanding of their own context.

³ The previous version of Regulatory advice 16 is available at: www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/.

13. However, a number of respondents disagreed with some or all of the revised definition. Common themes in these responses included:

- Disagreement with the removal of ‘materiality’ from the overarching definition of a reportable event. Some respondents considered that an assessment of materiality is critical for providers in deciding whether or not to report an event, and should remain in the overarching definition.
- Disagreement with the reference to ‘events or matters that, in the reasonable judgement of the OfS, negatively affect or could negatively affect’ in the overarching definition. Some respondents commented that many reportable events, including some of those deemed to be ‘always reportable’ in the proposed guidance, are not necessarily ‘negative’ in their effect, citing examples such as the opening of a new campus, a change of control, or changes to a provider’s board or accountable officer. Some respondents also considered that the wording of ‘could negatively affect’ lacks clarity, leaving too much open to interpretation by a provider. Several respondents suggested that the OfS should instead focus on the likelihood of a negative effect and/or have a separate process for reporting requirements which do not have the negative effects described in the definition.
- The emphasis on the ‘reasonable judgement of the OfS’ is neither objective nor criteria-based. Providers will have to predict what the OfS’s judgement might be, which could lead to over- or under-reporting. Some suggested that the test (of what is material) should centre on provider judgement, rather than OfS judgement.
- The proposed test that the OfS will apply when interpreting ‘in the reasonable judgement of the OfS’ suggests that the interests of students and the taxpayer sit in tension with a provider’s commercial or reputational interests. However, this is not always the case – they are often aligned – and expressing the test in this way may conflict with a provider’s efforts to ensure value for money and to secure financial viability and sustainability (which in turn is critical to compliance with condition D). It was therefore suggested that the weighting of these factors should be re-considered. Some respondents also queried whether and how the interests of prospective students and applicants should be regarded.
- Governing bodies of providers which are charities may risk breaching their legal duties as charity trustees if they place the interests of taxpayers and students generally above their own students in decision-making. This may also conflict with their duties under charities law, such as carrying out a charity’s purpose for the public benefit and managing its resources effectively. More widely, some respondents suggested that our guidance should align more closely with the Charity Commission’s guidance on reporting serious incidents.
- The scope of the revised definition is not sufficiently proportionate and risk-based. Some respondents took the view that events or matters relating to ‘the provider’s ability to comply with its conditions of registration’ were very broad, potentially resulting in many reportable events and/or over-reporting of matters to the OfS. In addition, some respondents referred to the OfS’s commitment to ensure that providers deemed ‘low risk’ were subject to less regulatory burden and queried how our proposals reflected that commitment. There were also wider points made that changes to the B conditions following consultation would

increase reporting burden for all providers. Some queried the scope of our reporting requirements and specifically suggested that they should not relate to apprenticeship provision as it is a commercial contract between provider and employer.

- Without the specific examples (which we proposed to set out in the revised guidance rather than in the regulatory framework), the definition in the regulatory framework lacks clarity. Having to read across the regulatory framework and the guidance will increase administrative burden, both for providers and the OfS.
- Queries about whether the limb of the definition which refers to degree awarding powers (DAPs) and university title applies to all registered providers or only to those that hold degree awarding powers or university title. Several respondents suggested that it should be the latter. Additionally, some respondents queried whether the reporting requirements related only to initial eligibility for DAPs or to ongoing requirements as well. It was suggested that the requirements in the regulatory framework apply only to the initial authorisation of DAPs rather than on an ongoing basis and that this limb overlaps with the requirements of the B conditions, and so places unnecessary burden on providers.

OfS response

Scope of our revised definition

14. We have set out in Annex C to this document the revisions to the regulatory framework that we have decided to make following this consultation. This includes our revised definition of a reportable event. We have decided to adopt the revised definition on which we consulted, with one clarification relating to the limb on degree awarding powers (see below). These amendments will take effect from 1 January 2022.
15. Our revised definition focuses on areas which relate directly to a provider's regulatory obligations to the OfS. The OfS regulates registered higher education providers in respect of all their higher education courses.⁴ This covers all types of higher education provision, including apprenticeships. Therefore, our reporting requirements apply to all higher education provision, including apprenticeship provision, delivered by registered higher education providers.
16. The reporting obligations relating to any negative effect on a provider's eligibility for degree awarding powers or university title, or its ability to comply with the criteria for degree awarding powers, apply only to providers who hold degree awarding powers or university title, or who have submitted an application to the OfS for either and for which we have yet to reach a final decision. We have made this clear in our revised definition set out in Annex C and in revised Regulatory advice 16. This element of the definition extends to those who have submitted an application to the OfS, to ensure that we are able to assess that application on the basis of the correct information. It is apparent from the way in which they are framed, that the criteria set out in Annex C of the regulatory framework – Guidance on the criteria for the authorisation of DAPs – apply on an enduring basis. Our ongoing reporting requirements in this area, which

⁴ Section 83(1) of HERA defines a 'higher education course' as a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

reflect the enduring requirements of the degree awarding powers criteria, are also outlined in paragraphs 282 and 305 of the regulatory framework.

17. Quality and standards and equality of opportunity are at the heart of our work, and our other regulatory requirements underpin them. That does not mean that those other requirements – consumer protection, financial viability and sustainability, management and governance and so on – are not important. It is essential that our reporting requirements support our assessment of the risk of breach of any and all of our conditions of registration.
18. Many providers have reported that the current definition of ‘reportable event’ is not sufficiently clear to allow them to be confident about the matters that they are required to report to the OfS. Our revised definition, and supporting guidance, on which we consulted, sought to address that issue. It is apparent from consultation responses that many providers would like the OfS to go further; to provide greater certainty about what is, and what is not, reportable and about what is and is not ‘material’. However, we do not consider that to be appropriate.
19. The OfS is, predominantly, a principles-based regulator and we are taking a principles-based approach to reporting requirements. This reflects the diverse nature of the sector that we regulate and the wide range of providers that are registered with the OfS. The judgement about whether to report a particular matter as a reportable event is for an individual provider to determine. This is because a reportable event for one provider may not be a reportable event for another provider. In our view, specifying an exhaustive list of events to be reported, or an exhaustive list of factors for providers to consider when deciding whether to report an event, would introduce a rules-based system which would increase burden for all providers (since it could not take context into account to the same degree) and risks tick-box compliance on the part of providers.
20. Relating our requirements to events or matters that ‘negatively affect or could negatively affect... [etc]’ supports a risk-based approach to reportable events, focusing our attention on areas of increased regulatory risk. We consider that our approach reduces regulatory burden for providers that do not pose an increased risk. Respondents referred to some of the events that we had indicated would be ‘always reportable’, such as a change of accountable officer, opening a new campus or a change of control, suggesting that their inclusion is inconsistent with our revised definition because they are not necessarily ‘negative’ in their effect. However, the appointment of a new accountable officer could have a negative effect on a provider’s ability to comply with the E conditions (management and governance) if that individual is subsequently judged not to be a ‘fit and proper person’ or does not discharge their responsibilities to the OfS under the regulatory framework. Given the accountable officer’s responsibilities to the OfS, it is of course essential that any new appointment is reported to the OfS. A change of control ‘could’ negatively affect a provider’s eligibility for registration with the OfS or its ability to comply with one or more of its conditions of registration. Similarly, opening a new campus could, for example, result in concerns about quality and standards (the B conditions) if it is not properly managed. These matters are ‘always reportable’, to avoid any ambiguity. In our view, our illustrative list of examples of other events or matters that may fall within the scope of the reporting requirements, is not inconsistent with our revised definition of a reportable event.

Materiality test

21. Our revised definition centres on events and matters that ‘in the reasonable judgement of the OfS’ negatively affect or could negatively affect the key areas which relate to a provider’s obligations to the OfS. The revised definition also sets out the test that we will apply in interpreting ‘the reasonable judgement of the OfS’. The definition must centre on the OfS’s judgement: we must decide for ourselves whether we consider an event or matter to be reportable or not. This is because the reporting requirement flows from a condition of registration (ongoing condition F3 – see below) and it is for the OfS to decide whether the requirements of a condition of registration are met. Similarly, it is for the OfS to decide whether a provider satisfies the eligibility requirements for registration and the requirements for degree awarding powers and university title (if relevant); the other areas, that underpin the definition of a ‘reportable event’, together with the ability to comply with conditions of registration.
22. The concept of ‘materiality’ is now included in the test the OfS will use to judge whether a provider has met its reporting obligations; in other words, how we will interpret ‘the reasonable judgement of the OfS’. Setting out this test clarifies the way in which providers should consider ‘materiality’ when deciding what to report and we expect will enable providers to reach decisions about what to report more easily. Considerations of ‘materiality’ remain central to a provider’s reporting decisions. In our view, it is useful to express the test in terms of the prioritisation of the interests of students and taxpayers above the provider’s own commercial, reputational or other interests, given the context in which we have seen examples of under-reporting to date. Clearly-relevant matters have not been reported or were reported in a way that served to minimise their significance because, in our view, the providers concerned were seeking to prioritise their own reputational or other interests, and to reduce the likelihood of regulatory scrutiny.
23. We recognise that the interests of providers do not necessarily sit in tension with the interests of students; our ‘materiality test’ does not suggest that they do. Nor do we think it necessary to qualify or further define ‘students’; our test is intentionally broad. The key issue is simply that a provider does not prioritise its own commercial, reputational or other interests above those of students or taxpayers, in deciding whether an event or matter is material and so whether it needs to be reported. The reference to ‘taxpayers’ is important. We are clear in our regulatory framework that, in addition to seeking to ensure that students receive value for money (one of our four primary regulatory objectives), we will seek to mitigate the risk that the sector does not deliver value for money for taxpayers and citizens who invest in higher education through the allocation of public grant funding, the public subsidy to the student finance system and research funding by UKRI. We also note that taxpayers and students are not discrete groups; many students are taxpayers too.
24. We are not persuaded that our revised definition will pose particular difficulties for registered providers which are also charities. We anticipate that for most (if not all) such providers, their charitable purpose will be the advancement of education for students as charitable beneficiaries. In our view, the framing of the materiality test does not of itself place governing bodies of charitable providers in a position that would conflict with their duties as trustees. Charity trustees are, in effect, in the same position as directors of providers which are companies, and who will need to consider the interests of students and taxpayers above the commercial interests of their providers, in making decisions about whether an event or matter

is reportable. The materiality test relates to decisions about what should be reported to the OfS, and not to how a provider conducts its everyday business.

Consequential amendments to the regulatory framework

25. There were mixed views about our proposal to move the examples of reportable events out of the regulatory framework and into a revised guidance document. Some respondents suggested that by making this change, the OfS would be able to streamline and simplify the information in the regulatory framework, whilst providing more detail in the revised guidance document. They also commented that this change would ensure there was no duplication of information, reducing burden on providers to check multiple documents.
26. Other respondents were concerned about this change, suggesting that it would afford the OfS increased freedom to make alterations to the list of example reportable events, without any consultation or scrutiny from providers. In this regard, respondents noted the more permanent status of the regulatory framework – and the legal requirement for us to consult on changes to it – and that the regulatory framework is expressed to take precedence over guidance documents. Respondents suggested that a lack of long-term stability in reporting requirements would hinder providers' ability to implement robust and consistent internal reporting protocols, resulting in increased burden to track changes and ensure compliance.
27. As a result, some respondents wanted to understand the criteria for altering the list of example reportable events, asking that the OfS limits changes or commits to consulting on any changes. They stated that this would increase sector confidence in the OfS and mitigate against potential regulatory 'creep'. Some respondents suggested that all examples, or as a minimum the 'always reportable' events, should remain in the regulatory framework. In addition, a number of respondents asked the OfS to ensure that it clearly communicates changes to the sector, so that our expectations are clear and to prevent avoidable breaches of reporting requirements. Some also requested that the OfS regularly cross-checks all published information about reportable events to ensure this it is consistent and up to date.
28. Some respondents expressed uncertainty about our proposed change to paragraph 491b of the regulatory framework, in which we refer to the time frame for reporting set out in the relevant F3 Notice. They said it was unclear how the OfS will decide to issue an F3 Notice in the context of reportable events, and whether an F3 Notice would need to be issued prior to an event being reported (or whether this refers to a standard F3 Notice determining timescales for reportable events). Respondents also asked for more clarity about how this process would work for reportable events which are self-reported by a provider and suggested that the revised F3 Notice would benefit from clearer alignment with the five-day timeframe detailed in paragraph 29 of the proposed revised guidance document on which we consulted.

OfS response

29. Section 8(1)(b) of HERA⁵ requires the OfS to ensure that the ongoing conditions of registration of each registered higher education provider include a condition that 'requires the governing body of the provider to provide the OfS, or a person nominated by the OfS, with such

⁵ Available at: https://www.legislation.gov.uk/ukpga/2017/29/pdfs/ukpga_20170029_en.pdf [PDF].

information for the purposes of the performance of the OfS's functions as the OfS may require it to provide'. To give effect to this statutory requirement, our regulatory framework includes ongoing condition of registration F3, which states that 'for the purpose of assisting the OfS in performing any function or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must provide the OfS, or a person nominated by the OfS, with such information as the OfS specified at the time and in the manner and form specified'.

30. The enduring requirement to submit reportable events is imposed through a Notice issued under ongoing condition of registration F3 which reflects the OfS's statutory power to compel the production of information, both of which are summarised above.
31. At the time of publication of this document, we are also issuing an F3 Notice to all registered providers. The F3 Notice 'switches on' the new reporting requirements, which reflect the revised definition of a reportable event, with effect from 1 January 2022. In taking this approach, we are giving providers time to familiarise themselves with the revised reporting requirements before they come into force. Where a provider is registered after the date of issue of this document and the F3 Notice (20 October 2021), the revised arrangements will apply from whichever date is the later of the date of registration and 1 January 2022. The F3 Notice issued to the provider on registration will make this clear.
32. The F3 Notice is structured to reflect the structure of the revised guidance in Regulatory advice 16 and to set out the provider's reporting obligations in the following categories:
 - (a) Events or matters that are 'always reportable' for all providers, as set out in Table 1 of Annex A of Regulatory advice 16, as may be revised from time to time.
 - (b) Any events or matters that are always reportable for an individual provider. Some providers have additional bespoke reporting requirements as a result of the OfS's risk-based approach to regulation. For those providers, these requirements are listed in the Notice.
 - (c) Events or matters that may be reportable because they otherwise fall within the definition of a 'reportable event'. These are matters for which the provider is expected to make a judgement about reporting.
33. Our revised reporting requirements are explained further in revised Regulatory advice 16 and that document constitutes the 'guidance' referred to in revised paragraph 494 of the regulatory framework (see Annex C of this document). The F3 Notice reflects the time frame for reporting (now five working days) set out in revised Regulatory advice 16 and explained further below.
34. In the future, we may identify further events and matters that are 'always reportable' for an individual provider. We may do this where we consider that the provider represents increased regulatory risk. We may then reissue the F3 Notice to that provider, to include those matters. This means that the reporting requirements relating to reportable events for that provider will be set out in a single F3 Notice. This approach enables us to target regulatory attention on the basis of risk and so to ensure that our resources are used in an efficient way.
35. Existing requirements for reportable events, including the temporary arrangements that we imposed during the acute phase of the coronavirus pandemic, will cease to apply when the revised reporting arrangements come into force on 1 January 2022.

36. We note the comments made by respondents about the prevailing circumstances in which the higher education sector is operating and the ongoing effects of the pandemic. Our view is that to continue with a reduced number of reportable events, as we have done during the acute phase of the pandemic, is not a sustainable position. We are not currently receiving reportable events that are relevant to compliance with a range of conditions of registration and this limits our ability to operate a risk-based monitoring approach and to protect the interests of students and taxpayers.
37. The higher education sector is dynamic and changing and may also be affected by changes in the external environment, a recent example being the coronavirus pandemic. The statutory basis for our reporting requirements, and the way in which we impose them through an F3 Notice, means that we already have flexibility to amend our reporting requirements in response to such changes, without consultation. In response to the pandemic, we suspended some of our reporting requirements and introduced some very specific new requirements, to reduce burden on providers in the exceptional circumstances that they were facing. It is essential that we retain this flexibility to amend our reporting requirements, to ensure that our approach to reportable events is sufficiently responsive and fit for purpose.
38. We consulted on this occasion because our proposals involved changes to the regulatory framework, including to our definition of a reportable event. We may consult in the future, in the event of a substantial policy change to our approach. Where we consult in future on changes to our conditions of registration, we may also include proposed changes to reporting requirements to support those proposals, in that consultation. We consider our consultations on our approach to the regulation of quality and standards, below.
39. We do not expect to consult each time we identify or remove one or more 'always reportable' events for one or more providers, or each time we wish to amend the guidance to draw attention to other matters or events that may, in principle, fall within the scope of our reporting requirements. Doing so would mean that we could not flex our reporting requirements sufficiently quickly, in response to risks presented by changes in an individual provider's circumstances or in the external environment, or to improve the usefulness of the guidance in response to reporting patterns we see.
40. We have framed the F3 Notice so that it refers to the list of 'always reportable' events set out in Table 1 of Annex A of revised Regulatory advice 16, as may be revised from time to time, rather than listing the events within the F3 Notice itself. It follows that we are able to make changes to the list of 'always reportable' events in Regulatory advice 16 without needing to issue a new F3 Notice. We consider this to be a proportionate and appropriate approach since the F3 Notice is simply the mechanism through which we impose the reporting requirements.
41. Similarly, the F3 Notice does not set out the illustrative list of examples of events and matters that may, in principle, fall within the scope of our reporting requirements, and which are also set out in Table 1 of Annex A of revised Regulatory advice 16. These are matters that may, in principle, fall within the overarching definition of 'reportable event' and, if they do so, must be reported as such. Other events or matters not set out in Table 1 of Annex A but which fall within the overarching definition of a reportable event set out paragraph 494 of the regulatory framework, would also be reportable under the F3 Notice.

42. Where we make amendments to Table 1 of Annex A of revised Regulatory advice 16, we will notify all registered providers in writing. We recognise the importance of clarity about our reporting requirements and note that the effectiveness of our requirements will be undermined if changes we make are not communicated to providers.

Revised guidance on reportable events

General comments

We asked for comments about our proposed guidance on reportable events.

43. Many respondents broadly welcomed our revised approach and the revised guidance, considering it to be appropriately 'principles-based', 'proportionate' and 'risk-based'. In doing so, some recognised the importance of reportable events in the OfS's risk-based approach to regulation and some noted the importance of supporting institutional autonomy. Some commented that the revised guidance provided improved clarity, openness and transparency about providers' reporting obligations. In particular, respondents welcomed our inclusion of a list of 'always reportable' events and factors that are likely to be relevant to a provider's judgement about complying with its reporting obligations in relation to some common events or matters that may, in principle, fall within the scope of our reporting requirements. Some respondents also supported our use of examples in the guidance, to demonstrate contextual factors that may be relevant to reporting decisions.
44. However, some respondents were less positive about the proposed guidance. Comments included that the guidance was still too complicated, should be shorter and more focused 'on the key issues', and would benefit from a different layout without lengthy paragraphs of text. Some respondents suggested that, previously, the OfS's reporting requirements had lacked clarity and caused confusion, in many cases because of providers' difficulties in interpreting the OfS's judgement about what should be reported (or 'materiality'), so that providers took different views to those held by the OfS. Some respondents suggested that the revised guidance had not fully addressed these issues and so would not prevent over-reporting or under-reporting. Some suggested that the OfS should set out more examples to illustrate the 'reasonable judgement of the OfS'.
45. Some respondents queried how the proposed guidance reflected the OfS's risk-based approach to monitoring and, more specifically, how the reporting requirements might be adjusted for providers which the OfS considered to be 'lower risk'. In a similar vein, a number of respondents suggested that the OfS should be more transparent about the risk profile of each provider, with some suggesting that this should be shared with the provider. Respondents suggested that this would better support a risk-based approach to regulation, enabling providers to understand how their own risk assessments correspond to OfS risk assessments and so to make more proportionate decisions about reporting in relation to events and matters that are 'not always reportable'.
46. Some respondents referred to existing, temporary, arrangements for reportable events, introduced by the OfS in response to the coronavirus pandemic, which were broadly welcomed. They queried how the proposals would relate to those arrangements, and how we

might approach 'major adverse events' in the future. Some took the view that it was 'too soon' for the OfS to reintroduce wider reporting requirements and that we needed to recognise the significant pressures that providers are still under as a result of the pandemic. Some also suggested that it may take time for providers to review internal processes to ensure the revised guidance could be adhered to.

Identifying matters that should be reported

47. Many respondents commented on the approach that we proposed to take where our judgement of 'materiality' – whether an event or matter should have been reported – differs from that of the provider. Some respondents welcomed our proposal that we would be unlikely to draw negative conclusions in those circumstances, where it was clear that the provider had properly considered our reporting requirements. In that regard, some respondents also welcomed our suggestion that providers might consider recording their decisions to report or not to report, where that decision is finely balanced, to enable them to demonstrate to the OfS that the decision had been taken with due care and attention.
48. In our proposed guidance, we noted that we would be more likely to take further regulatory action in relation to a provider's reporting decisions where we judged that the provider had not made a reasonable decision, for example where it had deliberately or recklessly failed to report a significant event or had acted dishonestly or tried to cover up information. This approach was also welcomed by some respondents. Similarly, some respondents commented on our indication that 'a pattern of over-reporting' may cause us to reconsider the provider's risk assessment under the 'E conditions' (management and governance), welcoming that we had not said that we would do so for a single instance of 'over-reporting'. Some respondents suggested that this section of the guidance should emphasise the importance of providers effectively using their internal governance processes to assess and manage reportable events.
49. However, other respondents expressed concerns about this aspect of our guidance and common themes included:
- There will continue to be a general tension or difference between the judgement of a provider and the OfS, which the revised definition and guidance does not resolve.
 - The OfS will be making a judgement on the 'materiality' of a matter or event in hindsight, after it has been reported. It is important that what was known, or could have been foreseen, by the provider at the time of the report is properly taken into account by the OfS when we are making judgements about 'materiality' and whether a provider has complied with its reporting obligations. Some respondents also referred to our timescales for reporting, which they considered we should take into account when assessing a provider's decision to report or not to report.
 - Several respondents noted our indication that we may be more likely to intervene in relation to a failure to comply with reporting requirements, where we had become aware of a matter from other sources. Some respondents commented that media reporting and social media stories may lack context and accuracy and suggested that it would be more appropriate for the OfS to investigate such matters and to discuss them with the provider concerned, rather than moving straight to regulatory interventions or sanctions.

- Many respondents made points in relation to the OfS's 'narrative' on under-reporting and over-reporting. For example, some questioned whether an institution would ever deliberately 'over report' a matter that it knew did not meet the definition or suggested that some over-reporting should be expected given potential differences in judgement between the OfS and providers. Several respondents considered that under-reporting should be more of a regulatory priority for the OfS, than over-reporting.

Timing for submitting a reportable event

50. Some respondents welcomed our revised guidance on reporting timeframes and in particular, our distinction between events that have yet to happen and events that have already happened, reflecting the different circumstances that providers might face when making decisions about reporting. However, others suggested that our guidance on timeframes should be simplified and clarified, for example by referring to the different elements of the revised definition of a reportable event.

Reporting within five days

51. Many respondents commented on our requirement for providers to report an event within five days. They did so in the context of events that have already happened and events that have yet to happen and, in some cases, seemed to conflate the two.
52. Many respondents considered the timeframe to be challenging or even unreasonable and suggested that it would put considerable pressure, and increase regulatory burden, on providers. Some suggested that the timeframe may provide insufficient time for a provider to investigate a matter properly, to the extent necessary to enable a full and accurate report to be made to the OfS. Some noted that, for a provider with a complex organisational structure, the accountable officer and other senior staff may feel pressure to report events without full understanding or knowledge, just to meet the timescales. Some respondents considered that, where an event is yet to happen, providers may struggle to identify materiality within such a short timeframe. These issues may, some respondents considered, increase the risk of over- or under-reporting by providers. It was also suggested that meeting the five-day reporting timescale may simply divert a provider's attention away from the more important matter of dealing with the issue itself.
53. Some respondents noted the role in strategic and critical oversight played by providers' governing bodies and suggested that the reporting timeframe may provide insufficient time for meaningful engagement with a governing body about the event or matter to be reported. Respondents considered this to be a particular issue for providers with complex governance structures and for smaller providers (for example, specialist, small to medium enterprises (SMEs) and micro-providers), who they said may find it more difficult to schedule governing body meetings. Some respondents suggested this could result in reduced governing body oversight and so impinge on institutional autonomy.
54. Many of the comments on this issue focused on the fact that we had proposed a 'five-day' reporting timeframe. Many did not agree with a five calendar-day timeframe suggesting that this would increase pressure on providers and result in unreasonable weekend working where an event or matter occurred at the end of the working week. Some suggested alternative timescales – including five working days, seven calendar days or even 10 or 14 days – which

they considered more reasonable. Some suggested variable timescales depending on, for example, the amount of information to be reported, whether there were overlapping reporting requirements with other bodies (and so increased burden on the provider) or the type or complexity of the event or matter. On the latter point, suggestions included provision of longer timeframes for less serious matters (perhaps to align with more routine reporting) or, conversely, longer periods for more complex or serious matters, to provide time for meaningful engagement with governing bodies on the issue.

55. Some respondents welcomed the flexibility of being able to report ‘as soon as reasonably practicable and without undue delay’ if providers were unable to meet the five-day requirement in exceptional circumstances beyond their control. However, some sought additional clarity on the circumstances in which this might apply in practice and on how the OfS would judge whether or not there had been such circumstances. Some respondents considered that this timing should apply to all events – and not just in exceptional circumstances – so that there should be no fixed timeframes for reporting at all. This was considered by some to be a more reasonable, proportionate and risk-based approach.
56. A number of respondents suggested that we should consider using the approach taken by the Information Commissioners Office. This allows an initial report to be submitted followed by further information when it becomes available.

Events that have yet to happen

57. Many respondents commented specifically on our guidance relating to events that have yet to happen. Some respondents suggested that providers should not be required to report this type of event at all. Reasons given included that many such events would not materialise and so reporting them would place unnecessary burden on providers and the OfS, and that having to report such matters may make providers more risk averse, stifling innovation and diversity in the sector.
58. Our draft guidance referred to when a provider or owner ‘is planning or can foresee’ an event or matter which is yet to happen. Some respondents suggested that this was too broad, lacked clarity about who within the provider would do the ‘foreseeing’ and, consequently, would increase the risks of over-reporting. Several respondents suggested alternative wording, such as events or matters where are ‘reasonably foreseeable’, ‘reasonably likely’, ‘highly likely to materialise’ or ‘highly likely to have a significant impact on the conditions of registration’.
59. In our draft guidance, we distinguished between events that may be relevant to a provider’s eligibility for registration with the OfS (reporting within five days of the event ‘being first contemplated’) and those that may be relevant to a provider’s compliance with conditions of registration or to authorisation for degree awarding powers or university title (reporting within five days of the provider ‘becoming aware’ that the event may have that effect). Some respondents queried the reasoning for that distinction, suggesting that it made the guidance unnecessarily complicated, and more difficult to understand.
60. Some respondents broadly welcomed our clarification of the term ‘first contemplated’ (in relation to events that may be relevant to a provider’s eligibility for OfS registration), in particular our clarification that it would not include initial informal discussions by individual office holders. However, others suggested that the term is too broad and ambiguous,

particularly in the context of strategic events such as a change of control, and that our explanation lacked clarity. Respondents queried whether, for example, a governing body's 'first formal discussion' would include 'blue sky' or 'away day' discussions, especially where lots of different options were discussed. Some sought more clarity on the role of owners or shareholders of the provider in determining when a matter is 'first contemplated' and some suggested that the reporting requirement should apply only when a provider has resolved to take action.

Informing the OfS of a reportable event

61. Some respondents welcomed the references in the guidance to the role of a provider's governing body and specifically its ability to put in place appropriate arrangements to delegate authority for reporting matters and events to the OfS. Respondents considered that this would ameliorate some of the challenges that they perceived were posed by our timeframes for reporting.
62. A small number of respondents requested further clarity about reporting requirements where events or matters relate to more than one registered provider, for example where they are part of a partnership arrangement.
63. Many of the comments on this issue focused on the existing mechanics for submitting a reportable event to the OfS, which involve uploading a template spreadsheet and supporting evidence to the OfS portal. Some respondents suggested that the spreadsheet is not user friendly and that an online form should be used instead. Some suggested that the portal is inflexible because it does not allow providers to make further uploads in relation to an initial report, for example to provide further updates or to indicate that the matter had been resolved. These issues were said to increase administrative burden on providers.
64. Some respondents considered that the OfS should provide more guidance about the supporting information that the OfS requires for different types of reportable event, including where the events or matters relate to more than one provider in a partnership arrangement. Some respondents referred to 'Annex B: Additional guidance on the submission of specific types of reportable event', which we published alongside Regulatory advice 16 in October 2019, and suggested that this should be retained and updated in line with the revised guidance.

Assessing a reportable event and OfS engagement with providers

65. Many respondents commented on our proposed approach to the assessment of a reportable event, in particular on how we proposed to communicate and engage with providers during the process.
66. Many respondents welcomed our indication that we would notify a provider of next steps following submission of a reportable event, including where we proposed to take no further action at that time or where we were proposing to investigate the matter further. Respondents considered that this would enable reportable events to be 'closed' by providers, reducing burden, or would prompt providers to conduct further investigation or gather further evidence.

67. Many respondents commented more broadly on the OfS's communication with providers to date and criticised what they considered to have been a lack of (timely) response and feedback from the OfS following submission of a reportable event. Some considered that OfS messaging about reportable events had been 'confused' or 'unhelpful'. Many respondents were much more positive about the OfS's approach to provider engagement during the coronavirus pandemic, in particular the provision of a named contact at the OfS, and many were keen for this approach to be retained by the OfS.
68. More generally, respondents suggested that opportunities for informal discussion with the OfS would be useful when providers were considering whether an event is reportable, particularly in complex, exceptional or unusual cases. Respondents suggested that informal dialogue would help to build understanding of our reporting requirements and would highlight differences between OfS judgement and provider judgement, which they considered may help to prevent over- and under-reporting.
69. Many respondents also suggested that the OfS should provide feedback to a provider where the OfS judged that an event or matter did not meet the materiality test and so need not have been reported. Respondents suggested that this would improve transparency and may help to prevent over- or under-reporting, by that provider, in the future. One respondent suggested that this would follow good practice guidance from the Information Commissioners Office.
70. Some respondents also commented more broadly about information that they considered the OfS should provide or publish about reportable events, to support providers in making decisions about 'materiality' and reportable events, improve transparency and demonstrate proportionate and consistent decision-making on the part of the OfS. Suggestions included guidance and/or training sessions to support best practice and 'calibration' on reportable events, for example on what is 'material' and should be reported and tips on avoiding 'over' and 'under' reporting. Some respondents also suggested that the OfS should publish summary data about the number of reportable events received, such as data on 'over-reporting' and on numbers of reportable events where we take no further action and where we carry out further investigations.
71. Some respondents commented more generally on our assessment process and/or requested more clarity about our proposed approach. Common themes included:
- The assessment process lacks transparency and it is not sufficiently clear how the OfS will make judgements about reportable events. Some respondents queried how long the OfS would keep records of reportable events. More specific queries included how the OfS would assess whether the provider '*has in place sufficient and appropriate resource and expertise to be able to provide reliable and timely information*' (paragraph 491e of the regulatory framework).
 - It is not clear how the OfS's assessment will take into account the context and circumstances of different types of provider, such as SMEs, providers without a 'board' or with an atypical structure, and providers specialising in transnational education.
 - There may be potential inconsistencies in the judgements about reportable events reached by OfS assessors. Some respondents queried whether OfS decision-making processes would be periodically reviewed to ensure they remained fit for purpose.

- The guidance should be more transparent about the actions the OfS may take as a result of a reportable event, including how it may use its powers of intervention and sanction. Some suggested that the guidance ought to make clear that providers can challenge the OfS's regulatory judgements and should explain how they can do this.
- The guidance should set out timescales for the assessment process and timescales in which the OfS would respond to providers following submission of a reportable event. Some suggested specific timeframes for the OfS to respond within, such as 28 days.

OfS response

Our approach to reportable events

72. The OfS takes a risk-based approach to regulation. This means that we focus regulatory attention on those providers that are at greatest risk of breaching their conditions of registration and, in doing so, deliver on our commitment that providers that do not pose specific increased risk should experience less regulatory burden.
73. Reportable events are an important component of this risk-based approach. They provide us with information in 'real time' in a way that other sources of information, such as from routine data collections, may not. Information that we receive from students and other parties, through our notifications process, would not by itself allow us to maintain a reliable assessment of the regulatory risk posed by a provider. Without reportable events, we would need to consider other ways in which to collect information, such as more frequent routine reporting for all providers. That would increase regulatory burden for all providers. We explain our risk-based approach in our revised guidance on reportable events (Regulatory advice 16). In doing so, we are also responding to previous requests from providers for more extensive guidance on our reporting requirements and the reasons for having them. Our guidance for registered providers on our approach to monitoring and intervention⁶ explains in more operational detail our overall principles-based and risk-based approach.
74. We rely on each provider to identify and report events and matters that may be of regulatory interest to us, through reportable events. Our revised definition explicitly links reportable events to areas that relate directly to a provider's regulatory obligations to the OfS. The judgement about whether to report a particular matter as a reportable event is for an individual provider to determine. Where an event or matter relates to more than one registered provider, in a partnership, each provider must make its own judgement about whether the event or matter should be reported as a reportable event. This requirement for provider judgement is important because what is a reportable event for one provider may not be a reportable event for another provider. We have explained above why we consider our revised definition to be appropriate and, in particular, why our definition must be founded on the 'reasonable judgement of the OfS'.
75. We have also explained above how we will adapt our approach to reflect the level of risk posed by a particular provider. Where we consider there to be an increased risk that a provider will breach one or more conditions of registration, we may impose additional reporting

⁶ Available at: www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

requirements on it, through an F3 Notice. We have identified some events or matters as 'always reportable' for all providers. These are events and matters that we consider a reasonable provider would always decide are reportable. This removes ambiguity and we do not consider this to be incompatible with our risk-based approach or to our statements that judgements about what to report are for providers to determine.

76. In our consultation on publishing regulatory information about providers, we proposed that we would not normally publish a provider's 'risk profile', because a 'risk profile' is not equivalent to a regulatory judgement.⁷ We expect to publish the outcomes of that consultation later in 2021. We do not usually share our 'risk profile' with a provider. Where we consider a provider to be at increased risk of breach and decide to intervene, we may then engage with the provider. We expect providers to make judgements about what to report, based on the knowledge of their own individual circumstances. We consider this to be a reasonable approach for us to take and in line with our principles-based approach to regulation.
77. We have considered whether to make further amendments to our revised guidance, other than those referred to in this document, in response to other comments made by respondents. However, we have decided not to do so. Many of the comments about the clarity of the guidance were framed within comments that the OfS should be more 'rules-based' in its approach to reporting requirements. That we should remove more, or all, of the judgement that providers are required to make about what to report and what not to report. For the reasons set out above, we do not consider that to be appropriate. We are also mindful that many respondents made positive comments about our proposed revised guidance, indicating that it provided greater clarity about our reporting requirements.
78. In revised Regulatory advice 16, we have explained the approach that we will take where our judgement about whether a matter should have been reported differs from that of a provider. In doing so we have sought to be transparent about our approach. We have been clear that we are unlikely to draw negative conclusions about such a difference in judgement where a provider is able to evidence that it has properly considered the matter. We recognise that reporting decisions may be finely balanced.
79. In deciding whether to take regulatory action in relation to a provider's reporting decisions we will consider the intervention factors set out in paragraph 167 of the regulatory framework. It is apparent from those factors that provider behaviour plays an important role in our assessments of when and how to intervene. Providers which report issues to us might reasonably expect us to take that into account when deciding what action to take. Similarly, where we become aware of a matter from other sources, rather than from the provider, that is a relevant factor. In the latter circumstances, we would of course need to make sure that we fully understood the matter, which would usually involve discussions with the provider concerned. In our decision-making, we must also have regard to our general duties set out in section 2 of HERA and other relevant factors. In particular, we are required to act reasonably and proportionately in deciding what action to take, if any.

⁷ During the initial registration process, the OfS assesses for each provider the risk of a future breach of each ongoing condition of registration. This assessment forms the basis of a 'risk profile' for that provider. The OfS then monitors a registered provider in relation to its conditions of registration and this monitoring is used to update the provider's 'risk profile'.

80. As we note above, we are also now issuing a revised Notice under ongoing condition of registration F3 to each registered provider, which ‘switches on’ the revised reporting requirements with effect from 1 January 2022. This affords providers time to familiarise themselves with the revised arrangements. We have explained above why we think that continuing with a reduced number of reportable events (as we adopted during the acute phase of the coronavirus pandemic) is not a sustainable position. Our revised arrangements do not change the broad scope of the substantive matters that have to be reported to us.

Timescales and submission of reportable events

81. It is important that events are reported in a timely way. Without reportable events, we would not be able to maintain a reliable assessment of any regulatory risks posed by providers. However, we note the points made by respondents about the challenges that our proposed five-day timeframe may present. Therefore, we have decided to amend this to within five working days⁸ of the date that the event is identified, and this change is reflected in both revised Regulatory advice 16 and the Notice under ongoing condition F3 that we are issuing to all providers at this time.

82. The F3 Notice and revised Regulatory advice 16 also make clear that, where it is not possible to meet the five working day timeframe due to exceptional circumstances beyond the control of the provider, the event should be reported ‘as soon as reasonably practicable thereafter and without undue delay’. What is ‘exceptional’ will depend upon the individual circumstances of the matter and we consider that being more prescriptive about this term would not be helpful. Furthermore, we are not persuaded that this approach should be the default position; we consider it to be reasonable and necessary to include a specific timeframe, given the importance of timely reporting. We will consider whether a provider has met the timescales for reporting an event, as part of our assessment of the event, and will act reasonably and proportionately in doing so. Where a provider is reporting outside the ‘five working days’ timeframe, it should set out the reasons for this in its submission to the OfS. We have made this clear in revised Regulatory advice 16.

83. Similarly, we consider that applying different reporting timescales for different types of event – for example, a longer time period for more complex events – would introduce unnecessary ambiguity and complexity into our approach, which would be unhelpful for providers and for the OfS. We recognise that, in some exceptional circumstances beyond their control, providers may not be able to meet the ‘within five working days’ timeframe and our inclusion of the flexibility referred to above reflects that.

84. In revised Regulatory advice 16, we maintain the distinction between ‘events that have already happened’ and ‘events that have yet to happen’. Some respondents to the consultation reported that they found this distinction to be helpful. Others expressed views which were less positive. Many of the comments related to the ‘events that have yet to happen’ category, with some respondents appearing to conflate our description of events relevant to eligibility for registration (‘first contemplated’) and events relevant to compliance with conditions of registration or DAPs requirements (the provider ‘becoming aware’). We have formatted the relevant paragraph in revised Regulatory advice 16 to draw better attention to this distinction.

⁸ For these purposes, a ‘working day’ is any day that is not a Saturday, a Sunday or a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971.

85. It is important that we are notified of future events at an early stage, to enable us to assess, and if necessary to mitigate, any potential regulatory risks posed by those events. Informing us of a change of control, for example, when it has already happened, will impact our ability to do this. Conversely, where we are informed at a more formative stage, we will be able to engage with the provider so that it fully understands the regulatory implications of the event, which may shape the approach that the provider takes, particularly in relation to proposed corporate events. As we note in revised Regulatory advice 16, for some events, we may be unable to conclude our assessment and confirm any regulatory consequences of the event in advance of that event happening. This means that we would expect a provider to continue to engage with us as a transaction or event progresses, to enable us (and the provider) to understand and address its likely regulatory impact.
86. Our guidance in revised Regulatory advice 16 is clear that a provider's governing body is responsible for interactions between the provider and the OfS. We also note that it may not be practical for a governing body to make decisions itself about whether particular events or matters should be reported and so it may wish to put in place delegated authority to senior officers to ensure that the OfS is informed of reportable events. Where it does delegate authority, we expect the governing body to retain effective oversight of reporting arrangements. This is the lens through which our terminology of 'planning or can foresee' (an event that has yet to happen), and 'first contemplated' and 'becoming aware', should be understood. Our guidance states that 'first contemplated' does not mean initial informal discussions between individual office holders. However, the involvement of senior officers and owners, shareholders and/or the governing body, in a more formal sense, may trigger a reporting obligation. Depending upon the nature of an event and of any delegation to senior officers, it may be that a provider's governing body is not informed about a report until after it has been made to the OfS. However, the nature of events to be reported, and the requirement for governing body oversight, means that we expect governing bodies to be involved at appropriate points.
87. Where a provider is reporting an event that is not 'always reportable', a provider's judgement about when to report that event will be inextricably linked with its judgement about the materiality of that event (and so whether it is reportable).
88. Ultimately, we expect providers to make reasonable judgements about 'when' to report matters to the OfS, in the same way that we expect them to make reasonable judgements about 'what' to report to the OfS.
89. Our revised guidance states that, when submitting a reportable event, a provider must include all 'relevant information'; being information that the OfS would need to understand the implications of a reportable event for its regulation of a provider. As we note in our guidance, when we are assessing a reportable event, we may ask the provider (or other bodies) for further information, if this is required. We recognise that, where a provider is reporting an event that has yet to happen, subsequent developments, after the initial report, are likely to necessitate the submission of further information to the OfS. We will continue to engage with the provider concerned in those circumstances.
90. 'Annex B: Additional guidance on the submission of specific types of reportable events', which was published with the original Regulatory advice 16 in October 2019, will cease to apply once our revised arrangements come into force on 1 January 2022. In our view, our revised

definition and guidance are sufficiently clear to enable providers to make reasonable judgements about what to report and about the information to be included in a report. As we note above, where we think we need more information, we will ask for it.

91. We note the comments made by respondents about our process for the submission of reportable events. We have made some amendments to the forms to be submitted through the portal, and to the accompanying guidance, to align them with our revised definition and guidance and these will be launched on 1 January 2022. In particular, the form provides further explanation about the information to be submitted with a reportable event, and this includes an explanation of why the provider considers an event or matter to be material, where is it not 'always reportable'.
92. We are considering further development of the mechanisms through which providers submit information to us as a longer-term project. We are not able to provide any further details or timescales for that work, at this stage.

Assessment and engagement

93. Many respondents welcomed our approach to assessment and engagement, set out in our proposed guidance, and we have decided to adopt that approach in revised Regulatory advice 16.
94. We note the points made by some providers about the OfS's lack of response following previous submissions of reportable events. In revised Regulatory advice 16, we have set out how we will seek to address this in future, noting in particular that we will communicate with providers following submission of an event even where we have decided that no further action is required at that time. We have clarified that, in those circumstances, we may also explain to the provider the circumstances in which we may have a future interest in the event. We will not do so in every case. Whether we do so will depend upon the particular facts of the event and the provider's context.
95. Some respondents suggested that providers would find it helpful to discuss matters with the OfS, particularly in relation to the event or matters that are not 'always reportable' and so where a materiality judgement needs to be made to determine whether they are reportable. We recognise the challenges presented by our principles-based approach to reporting and will continue to engage with providers to build a shared understanding of our requirements, embedding aspects of the model of engagement that we operated during the pandemic. However, while we are able to provide guidance about our reporting requirements, it remains a provider's responsibility to determine whether a particular event should be reported or not, where those events are not 'always reportable'. This must be the case because what is material for one provider may not be material for another. Where we consider that a provider is not meeting our reporting requirements, we will of course engage with the provider on that issue.
96. As in all decisions that we make, when we are making decisions about a provider's compliance with our reporting requirements, or about any subsequent regulatory interventions, we must have regard to our general duties in section 2 of HERA. Our general duties include the need to have regard to, so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be transparent, accountable,

proportionate and consistent, and targeted only at cases in which action is needed. We must also have regard to other relevant matters, including the public sector equality duty (considered further below) and any relevant statutory guidance issued by the Secretary of State under section 2(3) of HERA.

97. We have robust processes in place to ensure consistency in decision making, including through compliance with the OfS's published scheme of delegation. Although it is not a legal requirement, we have published our scheme of delegation to provide additional transparency for stakeholders about who, within the OfS, is able to make decisions about particular matters.⁹
98. Further information about how the OfS will assess the risk of a future breach of a condition and the actions we may take to mitigate such risk, and information about enforcement action in relation to a breach of a condition, can be found in Regulatory advice 15: Monitoring and intervention, which we published in December 2020.¹⁰ We do not consider it necessary or proportionate to repeat that information in revised Regulatory advice 16, although we do include a link to Regulatory advice 15.
99. We recently consulted on our approach to the publication of information about providers and connected persons.¹¹ We expect to publish the outcomes of that consultation later in 2021.
100. We do not propose to publish generic data about reportable events that we have received, such as overall numbers or data about 'over' and 'under' reporting. We consider there to be limited value in us doing so given the varied nature of events and matters that may constitute a reportable event and the importance of individual context (of the provider concerned and of the event or matter itself). As we note above, where we consider that an individual provider is not meeting our reporting requirements, we will engage with that provider.

Illustrative list of examples

General comments

101. Many respondents supported the provision of an illustrative list of examples, including some events and matters that are 'always reportable' and the inclusion of factors for or against reporting in relation to events and matters that may, in principle, fall within the scope of our reporting requirements. Many suggested that this approach provided greater clarity about our reporting requirements and underpinned our principles-based approach to regulation, which was welcomed. Common themes in these responses included:

- The examples and factors for or against reporting will aid providers to make decisions about whether to make a report, although a few respondents suggested that it would be more helpful if factors were provided for a greater number of examples in the list.

⁹ The OfS's scheme of delegation is available at: www.officeforstudents.org.uk/about/who-we-are/our-board-and-committees/.

¹⁰ See www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

¹¹ See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers/.

- The grouping of events into themes corresponding to areas of regulatory interest made the list easy to navigate, although a small number of respondents suggested that the table should instead be divided into separate sections relating to the different limbs of the proposed new definition of reportable events.
 - Some respondents considered that the list of ‘always reportable’ events was appropriate (with some suggesting that it had reduced regulatory burden), and/or that the list of illustrative examples of events that may be reportable was sensible. However, some respondents considered that too much emphasis had been placed on some issues, such as financial risks, to the detriment of other areas.
102. However, some respondents considered our proposed approach to be inconsistent with a principles-based and risk-based approach to regulation and suggested that it would impose an undue burden on all providers, regardless of their individual circumstances. Many considered there to be too many ‘always reportable’ events in general and/or that some of the events, currently identified as such, should be subject to the materiality test instead. Some respondents suggested that there should be no ‘always reportable’ events at all, so that provider judgement must be applied in all cases, which they suggested would be more in keeping with the statement in our draft guidance that a judgement about whether to report an event is for a provider to determine.
103. Conversely, a few respondents advocated for a more rules-based approach with, for example, more ‘always reportable’ events and so less focus on providers having to make ‘materiality’ judgements, or more detailed guidance on how providers should make those materiality judgements. Some considered that this would be a less burdensome approach for providers.
104. Some respondents suggested other events or matters which they considered should be included in Table 1, including reporting on issues relating to student welfare, incidents of sexual and sex-based violence and harassment and issues relating to equality and diversity in the provider’s provision. In doing so, some noted that that the Charity Commission’s requirements covered (some of) these areas and queried why the OfS’s requirements did not.
105. Some respondents commented on perceived overlaps in our reporting requirements with those of other bodies, for example with the Education and Skills Funding Agency for further education colleges, and in information to be submitted to the designated data body (for example, in the Higher Education Students Early Statistics (HESES) return).¹² Some respondents suggested that the OfS should improve cross-system working with other bodies, such as the Office of the Independent Adjudicator (OIA), to share information rather than requiring providers to report information directly to the OfS.
106. Some respondents also suggested that there was overlap between our proposed approach to reportable events and other regulatory requirements of the OfS itself. Examples given included that our reporting requirements for degree awarding powers overlapped with those for quality and standards (the B conditions) (with some suggesting that it was unnecessary to refer to degree awarding powers in the definition of ‘reportable event’), and that our

¹² See www.officeforstudents.org.uk/data-and-analysis/data-collection/heses/

monitoring and reporting requirements in relation to the Prevent duty overlapped with our proposed reportable event for Prevent.

107. Some respondents invited the OfS to conduct a ‘lessons learned exercise’ in relation to our approach to reporting requirements during the pandemic, to consider whether reductions in reporting should be made on a more long-term basis to reduce regulatory burden.

Specific events in Table 1

108. Respondents expressed a range of views about the specific events listed in Table 1, and we have summarised these in more detail in Annex A of this document. The events that attracted most comments were:

- Matters relating to student and consumer protection, particularly the closure of a campus, department or subject area, and student complaints that are upheld and result in redress for the student or changes at the provider.
- Matters relating to management and governance, in particular suspected or actual fraud or financial irregularity, and legal or court action.
- Matters relating to the quality and standards of a provider’s courses, particularly investigations.

OfS response

109. We have carefully considered the comments that we received on our proposed illustrative list of reportable events. We have made some revisions to the list on which we consulted, in response to respondents’ comments, and these revisions are highlighted in the Table set out in Annex D to this document. The revisions are also reflected in Table 1 in Annex A of revised Regulatory advice 16.
110. Our revisions clarify some of the terminology used in the examples, and the scope of some of the examples. In particular, we have set out in more detail the specific matters that may fall within the scope of our reporting requirements in relation to fraud. Some of the terms within the examples are intentionally broad. In our view, further definition of those terms would introduce unhelpful complexity and may be overly prescriptive, resulting in an unintentional narrowing of the requirements.
111. The list of examples should, of course, be considered within the context of the revised definition of a reportable event, which relates to the regulatory areas of: (i) compliance with conditions of registration; (ii) eligibility for registration; and (iii) the requirements for degree-awarding powers and university title. In other words, the reporting requirements relate directly to the provider’s regulatory obligations to the OfS.
112. We have retained the thematic headings of the table although these are for guidance only and some of the events and matters are likely to be relevant to more than one area. We make this clear in Regulatory advice 16. We have revised the table to remove duplicate events and matters and to reorder some to appear under a different thematic heading. Many

of the events and matters may be relevant to more than one 'limb' of the revised definition of 'reportable event' and so, in our view, it would be unhelpful to structure the table by reference to those limbs since there would be significant cross-over.

113. We have added a further illustrative example to the list: reporting changes to governing documents.¹³ This is not 'always reportable'. We have made a related amendment to the regulatory framework to remove the first bullet point under paragraph 446 (the requirement for a provider to provide the OfS with the latest version of its governing documents when any changes are made). This change, although not proposed in the consultation document, flows from our decision on the policy proposals on which we consulted. We consider this approach to be proportionate and risk-based. It will reduce regulatory burden for providers since it removes the need for a provider to submit every change to its governing documents to the OfS.
114. The 'always reportable' events are matters that, in our judgement, a reasonable provider would always consider to be reportable. This is because we would expect these to be directly relevant to our assessment of a provider's eligibility for registration, or compliance with its conditions of registration, or its eligibility for degree awarding powers or university title, or compliance with the criteria for degree awarding powers. Identifying these matters as 'always reportable' removes any ambiguity about this. We note that many of these events, for example, those involving a change of ownership or other corporate event, or a provider ceasing to deliver higher education or to operate in England, may never arise for many registered providers. Their inclusion does not, therefore, create regulatory burden for those providers. However, where these and any of the other 'always reportable' events do occur, it is important that we are informed of them. We consider that our approach strikes an appropriate balance between the OfS having access to the information that we need to regulate providers in a risk-based way and minimising regulatory burden for those providers that present the least regulatory risk.
115. The OfS has information sharing arrangements with other regulatory and sector bodies, in accordance with section 63 of HERA. This includes with the Education and Skills Funding Agency, the Charity Commission, Ofsted and the Office of the Independent Adjudicator. Our reporting requirements for providers complement those arrangements and ensure that we receive information in a way that supports our risk-based approach to regulation. We are continuing to develop our arrangements with those other bodies and remain committed to minimising regulatory burden for providers where possible.
116. In that regard, we have carefully considered the proportionality of our proposed reporting requirements of financial matters, for further education and sixth form colleges, whose primary regulator is the Education and Skills Funding Agency. We do not require those providers to submit an Annual Financial Return to the OfS.¹⁴ We have decided that currently, and in the interests of minimising regulatory burden, it is proportionate for us not to require further education and sixth form colleges to report, to the OfS, certain matters relating to their financial viability and sustainability. These are identified in Table 1 in Annex A of revised

¹³ Also see paragraph 433 of the regulatory framework which gives non-exhaustive examples of behaviours that may indicate compliance with ongoing condition of registration E1 (management and governance).

¹⁴ We have published guidance about the information that a provider is required to submit as part of its financial monitoring return to the OfS, available at: www.officeforstudents.org.uk/publications/guidance-for-providers-for-financial-monitoring-returns/.

Regulatory advice 16. The Education and Skills Funding Agency provides the OfS with information about the financial viability and sustainability of the colleges it regulates and which are registered with the OfS. Our current view is that those arrangements provide us with sufficient information for us to monitor those providers in relation to ongoing condition of registration D (financial viability and sustainability), on a risk-based basis.

117. The approach that we are taking does not affect the generality of the overarching definition of a reportable event and its application to further education and sixth form colleges; it remains the case that those providers are required to comply with the requirements of condition D (financial viability and sustainability) to register, and remain registered, with the OfS. We will keep this matter under review and may change our reporting requirements for those colleges if we consider that to be necessary to support our risk-based approach to regulation.
118. From 1 January 2022, when our revised reporting arrangements take effect, providers that we monitor in relation to the Prevent duty will be required to report matters relating to their compliance with that duty, through our reportable events reporting requirements. This is an 'always reportable' matter in Table 1 of Annex A of Regulatory advice 16. This is because we consider that a reasonable provider would always consider such matters to be reportable because we would expect compliance with the Prevent duty to be directly relevant to compliance with the provider's conditions of registration, including those relating to management and governance (the E conditions).
119. This reporting requirement will be reflected in our Prevent monitoring guidance¹⁵ and will constitute the ongoing Prevent monitoring requirement for registered providers.¹⁶ Therefore, there will be no 'dual reporting' of Prevent-related matters for those registered providers.
120. Further education and sixth form colleges, that are registered with the OfS, are not required to report matters relating to their compliance with the Prevent duty to the OfS. This is because Ofsted, rather than the OfS, is responsible for monitoring those colleges in relation to the Prevent duty. We are able to obtain information from Ofsted about a college's compliance with the Prevent duty and are committed to minimising regulatory burden for registered providers where we are able to do so without undermining our risk-based approach to regulation.
121. In Table 1 of Annex A of revised Regulatory advice 16, we have also set out some examples of events that may, in principle, fall within the scope of our reporting requirements. Many respondents commented on these as if they were events that must be reported to the OfS. However, these are illustrative examples only. For some of these events we have set out factors that are likely to be relevant to a provider's decision about whether to report the event or matter. Again, these are illustrative factors – some may not be relevant in every case, and/or other factors may be relevant. The list of factors is not an exhaustive list in each case and is not intended to be. Our inclusion of these illustrative examples, and some illustrative factors underpinning them, does not detract from the need for providers to exercise

¹⁵ See www.officeforstudents.org.uk/publications/prevent-duty-framework-for-monitoring-in-higher-education-in-england-2018-19-onwards/.

¹⁶ Providers that we monitor in relation to Prevent are also required to submit an annual accountability and data return, under separate requirements. More information is available at: www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/how-we-monitor/.

judgement in relation to the events or matters that may be reportable on the basis of the definition of reportable events contained in paragraph 494 of the regulatory framework. In particular, the references to monetary amounts – in the examples relating to fraud and court action – should not be viewed as absolute thresholds which trigger reporting in all cases. We have made this clear in revised Regulatory advice 16.

122. In setting out some factors, to aid providers' decision-making, we are reducing regulatory burden for providers while still allowing them to take advantage of a principles-based system of regulation. The latter is an important point. We expect a provider to make good judgements about whether to report a particular matter which is not 'always reportable'; to reach a view on whether it is material in its own particular context. Our principles-based approach allows providers to do this. We have considered carefully whether to be more rules-based in our approach, for example to include additional 'always reportable' events in our list of examples, or additional factors for each of the illustrative examples that we indicate 'may' fall within our reporting requirements. However, we have decided not to take this approach because it would add complexity to our requirements and, in our view, would not be able properly to take account of the diversity of providers and the context in which they operate.
123. As we have noted elsewhere in this document, when we publish our final approach to the regulation of quality and standards, following our 'phase two' consultation, we may publish further changes to Table 1 in Annex A of revised Regulatory Advice 16 to reflect that final approach. We may also consider further amendments to Table 1 of Annex A of Regulatory advice 16 in the future, if we consider that to be helpful on the basis of our experience of the approach that providers have taken to our revised reporting requirements.
124. The F3 Notice, through which our revised reporting requirements are implemented, refers to the 'always reportable' events set out in Table 1 of Annex A of Regulatory advice 16, as may be revised from time to time. It follows that the F3 Notice would cover any amendments that we make to that list. As we note above, we will inform providers in writing where we do make any such changes, to ensure clarity and transparency of our reporting requirements.
125. During the exceptional circumstances of the pandemic, we reduced our reporting requirements to support providers as they focused on immediate concerns. As we noted in the consultation document, this has meant that we have collected a very limited range of reportable events and have focused on matters relating to a provider's short-term financial viability and its ability to continue to deliver its courses. Our view is that this is not a sustainable position, as we are not currently receiving reportable events that are relevant to compliance with a range of conditions of registration; this limits our ability to operate a risk-based monitoring approach and to protect the interests of students and taxpayers.
126. We are now moving into a more normal regulatory environment and consider now to be an appropriate time at which to publish our revised reporting requirements. They will not come into force until 1 January 2022, giving providers time to familiarise themselves with our revised guidance before it takes effect.

Impact of our proposals

We asked for comments about any unintended consequences of our proposals for particular types of provider, course or student, and about the potential impact of our proposals on individuals on the basis of their protected characteristics.

127. Many respondents considered that our proposals would not pose a risk of significant unintended consequences for particular types of providers or students. However, some points were made about this and the key themes are summarised below:

- There is an overlap of reporting requirements for providers that report to other regulators, such as the Education and Skills Funding Agency, with a disproportionate impact on smaller providers, particularly further education colleges, which generally have small numbers of higher education courses and students. It was suggested that the OfS undertake an 'SME assessment', to understand if the guidance might disproportionately affect these providers.
- Smaller providers have less resource available to interpret and apply the guidance and may need to divert funds away from student facing activity to ensure their reporting is accurate and comprehensive, potentially adversely affecting students.
- The framing of our illustrative list of examples may have a disproportionate impact on some providers, because some of those events and matters are more likely to occur in those providers. Examples given included subject area closures, interactions with regulatory bodies, financial viability and sustainability issues and reporting requirements relating to fraud and legal or court action. Respondents did not always agree about which type of provider would be most affected.

128. The majority of respondents did not identify any specific consequences that the proposals might have on individuals on the basis of their protected characteristics. However, a small number of respondents suggested that the proposals do not go far enough to consider students with protected characteristics. Some respondents cited issues such as breaches of the Equality Act 2010, mental health and well-being and sex-based violence, which they noted are not (but in the respondents' views, should be) expressly referred to in our list of illustrative examples. Conversely, some respondents suggested that the proposals might have a positive impact on students with protected characteristics because, for example, the revised definition includes a clearer link to negative impact on conditions of registration, which includes condition A1: Access and participation plan.

129. A few respondents made some general comments on the perceived increase in administrative burden for providers, in terms of staff needing time to familiarise themselves with new or revised regulatory requirements and how this could have an indirect impact on vulnerable staff and students. One respondent questioned whether the OfS had, or intended to, conduct and publish an Equality Impact Assessment in relation to these proposals.

OfS response

130. The OfS has legal duties under the Equality Act 2010 and the public sector equality duty, which require us to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity. We also have a general duty under section 2(e) of HERA to have regard to the need to 'promote equality and diversity in relation to student access and participation in higher education'.
131. Registration with the OfS attracts a number of benefits, not least access to public funding. Providers wishing to register, and remain registered, with the OfS must satisfy eligibility criteria and our conditions of registration. These requirements serve to protect the student interest. Our revised definition of a reportable event focuses the scope of reportable events more clearly on issues that we need to know about because they relate to a provider's regulatory obligations to the OfS. The revisions to our guidance provide greater clarity about our reporting requirements and support providers to make good decisions about what to report to the OfS. This helps us to maintain a reliable assessment of the regulatory risk posed by a provider, enabling us to intervene where necessary, to protect the interests of all students.
132. Overall, we expect that our revised approach will lead to improved reporting practices by providers and reduce instances of over-reporting and under-reporting. This will support the OfS's risk-based approach to monitoring and enable us to use our resources efficiently and effectively to target areas of increased regulatory risk. This is in the interest of all students.
133. Our revisions do not change the broad scope of the substantive matters that must be reported to us under the existing definition of reportable events. Therefore, we are not persuaded that it will be burdensome for providers and their staff to familiarise themselves with the revised reporting requirements. In any event, they have plenty of time within which to do so given that our revised requirements do not come into force until 1 January 2022. Any potential burden is therefore mitigated.
134. Some respondents suggested that our requirements do not go far enough to consider equalities issues. However, our reporting requirements reflect our regulatory remit, as the requirements of other organisations, such as the Charity Commission, reflect their remit. The Equality and Human Rights Commission is responsible for enforcing the Equality Act 2010. Some of the additional matters that respondents suggested should be expressly included as 'always reportable' events, for example in relation to student mental health and other safeguarding issues, are not directly linked to our conditions of registration. Our existing reporting requirements also reflect our regulatory remit and our proposals have not narrowed the scope of the substantive matters that must be reported to us.
135. Furthermore, the list of events and matters in Table 1 of Annex A of Regulatory advice 16 is a list of illustrative examples only. Other matters should be reported to the OfS if they fall within the revised definition of a reportable event because, for example, they may have a negative effect on the provider's ability to comply with our conditions of registration. Those conditions cover a wide range of issues, including management and governance of the provider, quality and standards and access and participation.

136. We remain committed to tackling the broader issues that some respondents raised. For example, we have recently published a statement of expectations to support higher education providers to prevent and respond to incidents of harassment and sexual misconduct. We propose to examine how providers have responded to our statement of expectations and expect to use our investigatory and enforcement powers to underpin our approach where this is necessary. We will re-examine the enforcement approaches that may be appropriate as we respond to individual cases. As we develop our regulatory requirements, we may consider further amendments to Table 1 of Annex A of Regulatory advice 16.
137. We recognise that our reporting requirements may have a differential impact on providers, in terms of the level of reporting required. Providers may react in different ways, for example some may divert resources away from other matters to deal with our reporting requirements. The student and staff groups affected may vary from provider to provider, depending on the provider's individual context, including its student and staff demographic and the nature of its provision. However, the level of reporting required reflects the level of regulatory risk that the provider poses; providers which experience a greater number of events that pose regulatory risk will face more reporting. We consider that to be entirely reasonable and this underpins our risk-based approach to regulation, which is in the interests of all students. Furthermore, and as we note above, our revisions seek to minimise any unnecessary regulatory burden for providers in complying with our requirements.
138. In our view, our revised reporting requirements are proportionate and risk-based, balancing regulatory oversight with regulatory burden. To that end, we have amended our requirements in response to comments received from respondents, for example to remove some requirements for further education and sixth form colleges, and those revisions are discussed above.
139. We have concluded that, overall, the revisions to our reporting requirements will have a neutral impact on individuals on the basis of their protected characteristics.

Interactions with other consultations

140. Some respondents referred to recent OfS consultations on other matters, suggesting that the OfS should consider any cross-cutting impacts of those different consultations. In particular, several respondents referred to the OfS's consultation on our approach to the regulation of quality and standards, launched at the end of 2020, noting that we had suggested additional reportable events in that consultation. Some suggested there were inconsistencies between that consultation and our consultation on reportable events.
141. Some respondents also complained about the regulatory burden associated with having to respond to a number of consultations in a short period of time.

OfS response

142. In recent months, we have consulted on different aspects of our regulatory approach, including our approach to the calculation of monetary penalties¹⁷ and our approach to the publication of regulatory information about providers.¹⁸ This consultation on reportable events was part of that suite of consultations. Our view is that it was necessary for us to consult on those matters, to provide more clarity about our approach, in preparation for a return to a more normal regulatory environment.
143. We phased the response dates for those consultations, recognising the pressures that providers and others continued to face as a result of the pandemic. We then extended those response dates, following requests for us to do so, and respondents who requested further extensions were granted them.
144. In July 2021, we published our 'phase two' consultation which proposed revisions to our B conditions (quality and standards).¹⁹ We also published our first analysis of responses to our phase one consultation on quality and standards.²⁰ In that document, we indicated that we intended to publish, alongside our analysis of responses to the phase two consultation and as part of our final approach to the regulation of quality and standards, an analysis of points made exclusively in relation to proposals 3 and 4 of the phase one consultation and which were not directly relevant to the development of our phase two proposals. Proposals 3 and 4 related to our approach to monitoring and intervention, including our approach to reportable events.
145. Therefore, when we publish the outcomes of our phase two consultation and any revised B conditions, we may also make changes to Table 1 of Annex A of Regulatory advice 16. Any changes will be communicated to providers at that time. In determining our approach, we will have regard to our general duties in section 2 of HERA, and to other relevant factors. We remain committed to keeping unnecessary regulatory burden to a minimum.
146. As we note above, the framing of the F3 Notice that we are issuing to implement our revised arrangements is such that it would cover future changes to Table 1 of Annex A of revised Regulatory advice 16, including any changes we make as part of the implementation of any new approach to the regulation of quality and standards. Any changes would be communicated to providers at that time.

¹⁷ 'Regulatory advice 19: The OfS's approach to determining the amount of a monetary penalty' is available at www.officeforstudents.org.uk/publications/regulatory-advice-19-the-ofs-s-approach-to-determining-the-amount-of-a-monetary-penalty/. For analysis of responses to the consultation, see www.officeforstudents.org.uk/publications/consultation-on-the-ofs-s-approach-to-monetary-penalties-analysis-of-responses/.

¹⁸ See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers/.

¹⁹ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

²⁰ See www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education-analysis-of-responses/.

Abbreviations

DAPs	degree awarding powers
HERA	Higher Education and Research Act 2017
HESES	Higher Education Students Early Statistics (survey)
OfS	Office for Students
OIA	Office of the Independent Adjudicator
PSRB	professional, statutory or regulatory body
SME	small to medium enterprises

Annex A: The consultation

Background

1. The consultation was held between 15 December 2020 and 26 February 2021. We extended the original closing date by one week, in response to requests from stakeholders.
2. The consultation was published on the OfS website and accountable officers of higher education providers registered with the OfS were notified of it by email. Stakeholders were invited to share their views on six consultation questions by using an online survey to submit written responses.
3. The OfS also held a roundtable event for sector representative bodies. Attendees were invited to submit formal responses to the consultation through the online survey.
4. The consultation closed on 26 February 2021. All responses were received via the online survey, no respondents requested an extension to the deadline. We considered all responses.

Characteristics of respondents

5. We received 98 responses to the consultation, the majority of which were from English higher education providers, including a small number of responses from employees at those providers who indicated that they were submitting an individual response (rather than a collective response on behalf of the provider).
6. We also received a response from a students' union and a handful of anonymous responses. We have grouped respondents into categories and Figure 1 below shows the number of responses we received from each category of respondent.

Figure 1: Responses by category

Category	Number of responses
Higher education providers	78*
Sector representative bodies and/or mission groups	8
Anonymous	8
Other	3
Students' unions/student representatives	1
Total	98

* Includes six individuals from higher education providers who indicated that they were submitting an individual (rather than a collective) response.

Annex B: Summary of comments about Table 1

1. In the sections below, we have summarised more detailed points made about the specific events or matters we included in Table 1 in the consultation. Our policy response set out in the main document address these points, and more detail is included here for completeness. Where comments about particular sections of the table have been reflected in other sections of this document, we have not repeated those here.
2. We received detailed comments on the different sections of Table 1 and have not summarised every individual comment below. However, in making our decision in relation to this consultation, we have had regard to all of the comments that we received.

A – Matters relating to a provider’s ownership, legal form or corporate structure

- Some respondents expressed support for our proposal that matters relating to mergers and acquisitions or concerning a provider’s ownership should be ‘always reportable’. However, some respondents suggested that these events should be reportable only once a provider’s governing body had resolved to proceed (rather than at an earlier stage, as set out in our draft guidance).
- Some respondents sought further clarification about the definitions underpinning these events and queried whether, for example, they would capture all relevant events.

C – Matters relating to the quality and standards of a provider’s courses

- Many respondents commented on this section of Table 1.
- Some respondents considered that reporting of ‘**investigations by awarding bodies or PSRBs**’ should be subject to a materiality test, rather than being ‘always reportable’, so that, for example, only ‘formal’ or ‘significant’ investigations, or those that resulted in the withdrawal of an award or accreditation, needed to be reported. Some also requested clarification of the scope of this matter, for example whether it was intended to include investigations by awarding partners of student complaints or academic appeals, and/or suggested that its scope should be limited to (particular elements) of a provider’s higher education provision.
- Some respondents suggested that making ‘**investigations by awarding bodies or PSRBs**’ an ‘always reportable’ event was inconsistent with the reference to ‘regulatory investigations’ (see Section F below) which was not expressed to be ‘always reportable’.
- Some respondents queried the scope of the ‘always reportable’ event relating to **notification to a provider that its awarding organisation or body is to withdraw from the partnership arrangement**, including clarification of what an ‘awarding body or awarding organisation’ is in that context.
- Some respondents sought clarification of what ‘**a new campus**’ is for reporting purposes, including whether the requirement also related to opening a campus for further education students only.

D – Matters relating to student and consumer protection

- Many respondents commented on this section of Table 1.
- Our proposal that a **'closure of a campus, department or subject area'** should be 'always reportable' attracted considerable comment. Some respondents sought further clarification of what these terms mean in this context, such as which 'subject classification level' would apply and whether significant changes to a subject area or mergers of departments would constitute 'closure'. Some queried whether the OfS was concerned only with campuses where higher education was being delivered. Some respondents considered that these matters should be 'always reportable'; others did not agree or thought they should be 'always reportable' in certain situations only, such as where students' continuation of study may be affected. Some respondents suggested that this reporting requirement is unnecessary because these matters are dealt with under providers' student protection plans in accordance with ongoing condition of registration C3.
- More specifically, some respondents suggested that **'subject closures'** should not be 'always reportable'. Reasons given included that they are frequent, often routine and may have minimal impact where a small number of students is affected and the subject is being 'taught out' under the provider's student protection plan.
- Many respondents commented on **'termination of a partnership agreement – resulting in contract change for students'**, including requests for clarification of what a 'contract change' means and whether partnership provision that had been fully taught out needed to be reported. Some suggested that this matter should not be 'always reportable', and reasons given included that it should already be covered under a provider's student protection plan. Some suggested that this reporting should be subject to a materiality test or qualified in some way to recognise that, for example, partnerships differ and ending some – such as those relating to research education – may have limited impact on students. Some respondents also noted the other partnership-related events currently set out in paragraph 494 of the regulatory framework and queried why these were no longer being expressly included in the guidance.
- Many respondents commented on our illustrative example relating to **student complaints**. A few supported our inclusion of this example, as not 'always reportable' (although some respondents requested further details on how to apply the materiality test to this example). However, some respondents suggested that including this example was disproportionate or unnecessary, in some cases suggesting that the OfS had no regulatory interest in resolved complaints where redress had been afforded to students. Some respondents suggested that providing complaints data to the OfS would give rise to data protection concerns. Some suggested that the OfS would be duplicating the role of the Office of the Independent Adjudicator for Higher Education (OIA), increasing regulatory burden on providers. On the latter point, some respondents suggested that the OfS should obtain information about complaints from the OIA, under data-sharing arrangements and/or make use of information published by the OIA.

E – Matters relating to a provider's financial viability or sustainability

- Some respondents queried why the event relating to **'a likely drop in the provider's liquidity to below 30 days' average expenditure'** did not refer to a time period, noting that the existing

comparable reportable event (imposed by the OfS during the coronavirus pandemic) refers to a rolling 12-month period.

- Some respondents suggested that **'A likely breach of any financial covenant attached to a loan'** should include a specific time period, for example within the next 12 months, because where a provider becomes aware of a likely breach in future years, it would have sufficient time to do something about it.
- Many respondents commented on the 'always reportable' event of **'a provider's external auditor is considering giving an opinion that the provider is not a going concern'**. Some suggested that it lacked clarity – because auditors must always consider whether or not a provider is a going concern – and so would generate a large amount of unnecessary reporting. Others suggested that this requirement may discourage frank and open discussion in providers' audit and governance meetings, or that providers may not know what opinion their auditor is considering giving until it is formally given. Some suggested alternative wording such as changing 'considering giving' to 'suggesting' or 'intends to give', or that the requirement should apply only where an auditor has actually given such an opinion. Some respondents also queried how 'considering giving' interacts with our guidance on timescales for reporting events including the requirement to report an event when it is 'first contemplated'.
- Some respondents suggested that **'Any matter or event that may result in the provider being unable to pay its creditors as debts fall due'** should not be 'always reportable' so that, for example, late payment of small amounts due to administrative error, would not necessarily have to be reported.
- Several respondents invited the OfS to update its terminology relating to **'Loss of Tier 4 sponsorship licence'** to reflect changes to the student visa requirements introduced in 2020.

F – Matters relating to management and governance

- Many respondents commented on this section of Table 1.
- Several respondents suggested that the inclusion of **'a matter relating to the provider's compliance with the Prevent duty as set out in the OfS's monitoring guidance'** was unnecessary and would increase regulatory burden, because it duplicated the reporting requirements under the OfS's Prevent monitoring regime.
- It was suggested that **'the initiation of a governance review, where this is not a routine part of a provider's planned arrangements'** should not be included as an example, with providers instead being required to report the outcomes of such a review.
- Several respondents commented on the inclusion of **'suspected or actual fraud or financial irregularity'** in Table 1, which we indicated was not 'always reportable'. Many of the comments related to the factors that we had proposed 'for or against' reporting, in particular the monetary scale threshold (the smaller of 2 per cent of total income or £25,000), which some considered to be too low and/or would disproportionately affect larger providers for which £25,000 may be immaterial, introducing unnecessary regulatory burden for them. It was also suggested that this example should not cover 'suspected' fraud or financial irregularity, to reduce regulatory burden and avoid unnecessary engagement with the OfS in relation to matters that are subsequently

not found to be proven. Conversely, some respondents suggested that all fraudulent activity should be reported and so considered that the reporting requirement did not go far enough.

- **‘Legal or court action’** also attracted a high level of comment from respondents. Some suggested that the ‘for or against’ factors (in particular, the monetary scale of commercial disputes – the smaller of £25,000 or 2 per cent of the provider’s total income – in the ‘against’ factors) would result in disproportionate reporting requirements and unnecessary regulatory burden, particularly for larger providers. By contrast, some respondents considered that the example should be drafted more widely and that over-reporting of legal or court action would be preferable to insufficient reporting which might lead to systemic weaknesses in providers being overlooked, for example in relation to reporting relating to student deaths. Some respondents commented that this section was clearer than previous OfS guidance on this point but others sought more clarity about its scope, including what would constitute ‘legal action’ (for example, whether this would include pre-action correspondence) and whether participation in an employment tribunal panel by senior staff would be reportable.
- A number of respondents commented on the inclusion of **‘Regulatory investigation and/or sanction by other regulators’** in our list of illustrative examples. Some noted that this was not ‘always reportable’ and queried the interaction with ‘investigations by awarding bodies or professional, statutory and regulatory bodies (PSRBs)’ which was expressed to be ‘always reportable’. Some respondents suggested that investigations should only be reportable if they had resulted in a sanction.

G – Matters relating to information provision

- Comments about our inclusion of **‘Inaccuracies or omissions in the information submitted by a provider to the OfS or the designated data body’** were mixed. One suggestion was that this example should be ‘always reportable’ because of the adverse impact that even minor inaccuracies could have on matters such as funding allocations. By contrast, other respondents suggested that the designated data body, rather than providers, should report issues with inaccurate data to the OfS. Some respondents referred to the routine validation processes between HESA and providers, before a submission is confirmed, and queried whether this example was intended to capture that process.

Annex C: Amendments to the regulatory framework taking effect from 1 January 2022

The text that follows will replace the equivalent paragraphs in the OfS's regulatory framework published in February 2018, **with effect from 1 January 2022**.²¹

Where text has been deleted from the regulatory framework, this is shown as follows: ~~deleted text~~. Where text has been added to the regulatory framework, this is shown as follows: **additional text**

No changes have been made to the text of condition F3 (provision of information to the OfS) itself – this is shown in the yellow box below.

Paragraph numbers are those from the regulatory framework.

Condition F3: Provision of information to the OfS

Condition F3: For the purpose of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:

- i. Provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.
- ii. Permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS of such information as the OfS specifies at the time and in the manner specified, and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified.
- iii. Take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it.

The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: Section 8 of HERA – mandatory.

Guidance

489. The information that a provider must supply to meet this condition will depend on its category of registration and the OfS's assessment of the risk for that provider.

²¹ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

490. This condition also applies to any information held by any subcontractors that may be providing services on the provider's behalf.

491. In judging whether the governing body of a provider has provided the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified, material that the OfS may consider includes:

- a. The quality, reliability and timeliness of information provided by the provider to the OfS, or to a person nominated by the OfS, in respect of any of the provider's conditions of registration or in respect of any of the OfS's functions.
- b. Whether the provider has properly reported 'reportable events' as defined below to the OfS **and done so on the basis of the time frame set out in the relevant F3 Notice.** ~~as soon as reasonably possible once such an event is contemplated or the provider becomes aware of it, or that it is likely to occur.~~
- c. Whether a provider in receipt of student support funding provides the information necessary for the Student Loans Company (SLC) to administer student support in line with regulations made under section 22 of the Teaching and Higher Education Act 1998. This information includes, but is not limited to:
 - i. Data related to eligible courses.
 - ii. Confirmation that the fee charged to a student correctly matches the student's course of study.
 - iii. Information about student registration and attendance.
 - iv. Information about any changes that may affect a student's eligibility for student support.
 - v. Timely information of a student's withdrawal from their course.
- d. ~~Whether the provider has reported to the OfS any information relating to the provider that a reasonable regulator in the OfS's position could regard as material to any of the matters that it regulates.~~
- d. Whether the provider has in place sufficient and appropriate resource and expertise to be able to provide reliable and timely information.

492. In judging whether the governing body of a provider has permitted the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified and has notified the OfS of the outcome of any independent verification at the time and in the manner and form specified, material that the OfS may consider includes:

- a. The substance of the actions taken by the provider to assist the OfS with the verification of information, or to provide information about the outcome of any independent verification.
- b. The findings of data audit activity carried out by, or on behalf of, the OfS or another body.

493. In judging whether the governing body of a provider has taken such steps as the OfS reasonably requests to cooperate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person

nominated by it or making available members of staff to meet with the OfS or a person nominated by it, material that the OfS may consider includes:

- a. The substance and promptness of the actions taken by the provider to cooperate with any monitoring or investigation by the OfS and to provide access to information, documents, systems and people as the OfS deems necessary.
- b. The credibility of any explanations given by the provider.
- c. The availability, completeness and reliability of documents provided to the OfS.
- d. The openness and honesty of members of staff with whom the OfS may ask to meet.

Reportable events

494. A reportable event is any event or matter that, in the reasonable judgement of the OfS, negatively affects or could negatively affect:

- a. The provider's eligibility for registration with the OfS.
- b. The provider's ability to comply with its conditions of registration.
- c. The provider's eligibility for degree awarding powers, or its ability to comply with the criteria for degree awarding powers, where the provider:
 - i. holds degree awarding powers; or
 - ii. has submitted an application for degree awarding powers to the OfS, and for which the OfS has yet to reach a final decision.
- d. The provider's eligibility for university title, where the provider:
 - i. holds university title; or
 - ii. has submitted an application for university title to the OfS, and for which the OfS has yet to reach a final decision.

In interpreting 'the reasonable judgement of the OfS', the OfS will, as a matter of policy, consider whether a reasonable provider intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own commercial, reputational or other interests), would consider the event or matter to be material.

The OfS will set out in separate guidance from time to time further information about how it will apply this definition of a reportable event, including illustrative factors to assist a provider in reaching decisions about reporting. The OfS may also provide further clarification about reportable events in the drafting of Notices issued to providers under condition of registration F3.

~~494. A reportable event is any event or circumstance that, in the judgement of the OfS, materially affects or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration. Reportable events must be reported to the OfS under condition F3(i) and include, but are not limited to:~~

- ~~a. A change in the provider's circumstances, including but not limited to:
 - a sale of either the provider itself, a part of it, or its parent~~

- a merger of the provider with another entity
- an acquisition by the provider of another entity
- a material change in the provider's business model, such as a move to focus on further instead of higher education
- a change in the provider's legal status
- other, similar structural changes, such as the establishment of joint ventures, or the separation of the provider into multiple entities
- other changes resulting in a change of ownership of the provider.

b. **A change of ownership.** The OfS is principally, but not exclusively, concerned with situations where 50 per cent or more in the shareholding of the registered provider (or the closest equivalent, where the provider is not limited by shares) are, or may be, in common ownership. Common ownership includes:

- ownership by the same person or entity
- ownership by multiple entities themselves under common ownership or control
- ownership by multiple individuals or entities who, by agreement or practice, exercise their ownership rights in a co-ordinated way (and without restricting the scope of our understanding of what constitutes common ownership, we will deem people who are 'connected' to be exercising their ownership rights in a co-ordinated way)
- ownership by multiple individuals or entities on behalf of, or acting under the direction or in the interests of, the same third party, including a case where ownerships are held on trust for a common beneficiary, and
- any similar structure.

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the first time, the transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end
- must inform the OfS of any change in ownership that affects 15 per cent by value or voting rights of the registered provider's shares, or closest equivalent. A provider must do so whether the change is brought about in one transaction or a series of connected transactions. A provider does not need inform the OfS of entirely unconnected transactions provided none of these transactions is individually above our notification threshold 130

- is not required to inform the OfS of changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and the changes only affect less than 15 per cent by value or voting rights of the minority ownership rights.

Some examples of changes that must be reported include:

- where all or any part of the majority ownership rights in the provider change:
 - Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One shareholder sells their shareholding to the others. This must be notified.
 - Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.
 - Example 3: There are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells their shareholding to a third party. This must be notified.
 - where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed
 - where a controlling proportion of a provider's shares is directly, or indirectly such as through those of its parent organisation(s), acquired by another individual(s), partnership(s) or organisation(s).
- c. **A change of control.** 'Control' has the meaning given by section 1124 of the Corporation Tax Act 2010, and 'change of control' means a change in control so defined. Where two or more entities or individuals, by agreement or practice, exercise their rights in a co-ordinated way, with the result that they together have control so defined, each will be treated as having control of the provider. A provider is required to notify the OfS of any change in the individual(s) or entity/ies who have control of the provider.
- d. The provider becoming aware of suspected or actual fraud or financial irregularity.
- e. The provider becoming aware of legal or court action.
- f. The provider resolving to cease to provide higher education.
- g. Regulatory investigation and/or sanction by other regulators, e.g. Charity Commission, Home Office.
- h. Loss of accreditation by a Professional, Statutory or Regulatory Body (PSRB).
- i. Any new partnerships, including validation or subcontractual arrangements.
- j. Opening a new campus.
- k. Intended campus, department, subject or provider closure.

~~I. Any other material events with possible financial viability or sustainability implications, including but not limited to:~~

- ~~• a material change in actual or forecast financial performance and/or position~~
- ~~• a material change in gearing~~
- ~~• a material change in student numbers that was not included in the provider's financial forecasts~~
- ~~• for a provider with a legally binding obligation of financial support underpinning its financial sustainability, a withdrawal of the obligation (including as a result of a change of control, even where the new owner will offer a similar obligation) or a material adverse change in the counterparty's financial position or other standing that could affect its suitability as counterparty~~
- ~~• the sale of significant assets~~
- ~~• significant redundancy programmes.~~

Assessment

495. The OfS will assess, as part of its routine monitoring activities, the quality, reliability and timeliness of information supplied by a provider including through scheduled or ad hoc data audit activity. If the OfS has reason to believe that information received is not reliable, it may choose to investigate the matter. This investigation may result in additional steps to ensure compliance with **condition F3**, whether through enhanced monitoring or the imposition of specific ongoing conditions. The OfS may, for example, require the provider's accountable officer to implement an agreed action plan to improve the provider's information systems and processes and the oversight arrangements for these.

Consequential amendments to other sections of the regulatory framework

446. Once registered, and in order to demonstrate compliance with the general ongoing condition, the OfS will require ~~these a~~ providers that it considers ~~to~~ poses no increased risk in this area to ~~submit or make available the minimum information required:~~

- ~~• provide to the OfS the latest version of the provider's governing documents when any changes are made~~

make publicly available the minutes of the meetings of its governing body and committees, except where such material is genuinely confidential.

Annex D: Revised Table 1 of revised Regulatory advice 16

The text that follows is reproduced from revised Regulatory advice 16: Reportable events which we are publishing alongside this document and which takes effect from 1 January 2022. We have highlighted the changes that we have made to the version of the table on which we consulted. Where we have deleted text from the table, this is shown as follows: ~~deleted text~~. Where we have added text to the table, this is shown as follows: **additional text**.

We may amend this guidance from time to time, including following the conclusion of current consultations on our approach to the regulation of quality and standards.

Table 1: Non-exhaustive illustrative list of reportable events, which includes some events that are always reportable

Type of event or matter	Is it always reportable?
a. Matters relating to a provider's ownership, legal form or corporate structure, including but not limited to:	
i. The legal entity that is registered ceasing to exist. This might be as a result of: <ul style="list-style-type: none"> • The acquisition by another legal entity of the business operated by a provider • A merger of the provider with another registered or unregistered higher education provider. 	Yes
ii. A merger of the provider with another registered or unregistered higher education provider.	Yes
iii. A change of ownership, including through a sale, of the provider (see Definitions below). ²²	Yes
iv. A change in the provider's legal form.	Yes
v. Amendments to the provider's governing documents²³ Factors in favour of reporting may include: <ul style="list-style-type: none"> • Amendments which affect the provider's ability to uphold and deliver in practice the public interest governance principles that apply to the provider • Amendments which relate to the treatment of the provider's charitable assets on dissolution of the provider. 	No

²² If, following the change of ownership, the provider will be owned by another OfS-registered provider, or by a provider that has submitted an application for registration and for which we have not yet made a final decision, the provider must make this clear in its report.

²³ With effect from 1 January 2022, paragraph 446 of the regulatory framework is amended to remove the requirement for a provider to provide the OfS with the latest version of its governing documents when any changes are made.

Type of event or matter	Is it always reportable?
<p>Factors against reporting may include:</p> <ul style="list-style-type: none"> Administrative amendments which do not affect the operative provisions of the governing document(s). 	
<p>vi. An acquisition by the provider of another entity.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> The entity (to be) acquired is registered with the OfS or has submitted an application for registration and for which the OfS has not yet made a final decision. 	No
vii. A sale of a part of the provider or its parent.	No
b. Matters related to the delivery of higher education in England, including but not limited to:	
i. The provider resolving to cease carrying on its business principally in England.	Yes
ii. The provider resolving to fully or substantially cease providing to provide higher education, whether or not this results in the closure of the provider.	Yes
iii. A change in the provider's business model, such as a move to focus on further instead of higher education.	No
iv. Loss, including suspension, of the provider's student sponsor licence.	Yes
c. Matters relating to the quality and standards of a provider's higher education courses,²⁴ including but not limited to:	
i. A notification to the provider of an investigation by an awarding organisation or awarding body or by a professional, regulatory or statutory body. ²⁵	Yes
ii. A notification to the provider that its awarding organisation or awarding body is to withdraw from the arrangement, where this is not a routine consequence of a planned contract review.	Yes
d. Matters relating to student and consumer protection, including but not limited to:	
i. A breach of The provider receiving a complaint that it has charged or advertised fees that exceed a statutory fee limit or a fee limit imposed as a result of an approved access and participation plan.	Yes
ii. A new campus, whether in the UK or internationally.	Yes

²⁴ ~~We are currently consulting on our approach to the regulation of quality and standards and may amend this section of the guidance following the conclusion of that consultation process.~~

²⁵ Professional, statutory and regulatory bodies (PSRBs) are a diverse group of organisations which accredit, recognise and approve courses which may lead to a professional or vocational qualification. They are to be distinguished from other regulatory bodies such as the Charity Commission.

Type of event or matter	Is it always reportable?
iii. Closure of a campus, department, or subject area, whether or not this is in the provider's approved student protection plan.	Yes
iv. Termination of a partnership arrangement, whether in the UK or internationally, where this results in a contract change for students.	Yes
v. Complaints from students that are upheld in full or in part by the provider, or by the OIA, and that result in redress for a student (including a full or partial fee refund) or changes within the provider.	No
<p>e. Matters relating to a provider's financial viability or sustainability, including but not limited to: (Further education and sixth form colleges, whose primary regulator is the Education and Skills Funding Agency, are not required to report the events and matters set out in this section (e), to the OfS.)</p>	
i. A likely drop in the provider's liquidity ²⁶ to below 30 days' average expenditure unless this is the provider's normal cash management policy or is mitigated through an agreed revolving credit facility, overdraft or other financing.	Yes
ii. A likely breach of any financial covenant attached to a loan, where that breach has not been waived by the lender.	Yes
iii. For a provider with a legally binding obligation of, or which otherwise receives , financial support underpinning its financial viability and sustainability, the withdrawal of the obligation or that financial support (including as a result of a change of ownership or control of the provider, even where the new owner will offer a similar obligation or financial support), or an adverse change in the counterparty's financial position or other standing that could affect its suitability as a counterparty.	Yes
iv. A provider's external auditor has notified the provider that it may conclude is considering giving an opinion that the provider is not a going concern, including where the provider is asked to submit additional information to the auditor in response to such a notification.	Yes
v. A provider's trustees or directors are considering making an assessment that the provider is not a going concern.	Yes
vi. Any matter or event that may result in the provider being unable to pay its creditors as debts fall due.	Yes
vii. Loss of Tier 4 sponsorship licence.	Yes

²⁶ Net liquidity days is calculated as: ((cash and cash equivalents + current asset investments - overdrafts - bank loans and external borrowing falling due within one year - loans from directors falling due within one year) / (total expenditure - depreciation and amortisation - changes to pension provisions and pension adjustments))*365. The requirement here reflects the terminology used for the OfS's annual financial return.

Type of event or matter	Is it always reportable?
viii. A change in the provider's actual or forecast financial performance or position.	No
ix. A change in financial commitments or borrowings.	No
x. A change in forecast or actual student numbers that was not included in the most recent financial forecasts submitted to the OfS.	No
xi. For a provider that is part of a larger corporate group, any adverse change in the group's financial position.	No
xii. The sale of assets.	No
xiii. A redundancy programme.	No
f. Matters relating to management and governance, including but not limited to:	
i. Changes to the identity of the individual a provider wishes to nominate to the OfS as its accountable officer	Yes
ii. Changes to the identity of the chair of a provider's governing body	Yes
iii. A change of control of the provider (see Definitions below). ²⁷	Yes
iv. A matter relating to the provider's compliance with the Prevent duty as set out in the OfS's monitoring guidance. ²⁸	Yes
A sale of part of the provider, or its parent.	No
v. The initiation of a governance review where this is not a routine part of a provider's planned arrangements. Factors in favour of reporting may include: <ul style="list-style-type: none"> • The review is initiated in response to whistleblowing, or other complaints • The review is initiated in response to welfare or safeguarding concerns about students or staff. 	No

²⁷ If, following the change of control, the provider will be under the control of another OfS-registered provider, or a provider that has submitted an application for registration and for which the OfS has not yet made a final decision, the provider must make this clear in its report.

²⁸ Further education and sixth form colleges that are monitored by Ofsted in relation to the Prevent duty are not required to report matters relating to their compliance with the Prevent duty to the OfS. Further information about the OfS's Prevent monitoring requirements is available at: www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/.

Type of event or matter	Is it always reportable?
<p>vi. The following events or matters relating to suspected or actual fraud or financial irregularity:</p> <p>(a) The provider receives a complaint or allegation that it may have committed fraud</p> <p>(b) The provider initiates an investigation into a possible fraud or financial irregularity involving the provider</p> <p>(c) The provider is notified that a third-party is investigating the provider in relation to a possible fraud or financial irregularity</p> <p>(d) A third-party makes a finding that the provider has committed fraud.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> • Involvement of any member of the governing body, the accountable officer, or any other senior officer • The fraud exposes a systemic weakness in the provider's internal control arrangements that suggest other, as yet unidentified, cases could be taking place • The fraud involves public funding • The fraud is one of a repeating pattern of even small-scale frauds. <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> • The monetary scale of the fraud is below £25,000 or 2 two per cent of the provider's total income (whichever is smaller). 	No
<p>vii. Legal or court action.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> • Involvement of any member of the governing body, the accountable officer or any other senior officer where this relates to their duties for the provider • An individual case, or a pattern of cases, exposes a systemic weakness in the provider's management and governance arrangements • Findings of a coroner where these relate to a student death and expose a systemic weakness in the provider's management and governance arrangements. <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> • Isolated employment tribunal cases • The issue is a commercial dispute relating to business activities where the monetary scale of any adverse outcome is likely to be below £25,000 or 2 two per cent of the provider's total income (whichever is smaller). 	No

Type of event or matter	Is it always reportable?
<p>viii. Regulatory investigation and/or sanction by other regulators or funding bodies, for example the Education and Skills Funding Agency, Ofsted, the Charity Commission,²⁹ or the Equality and Human Rights Commission or the Arts Council.</p> <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> The action is a routine inspection that is undertaken as part of a regulator’s planned oversight activities. 	No
g. Matters relating to information provision, including but not limited to:	
<p>i. Any matter which affects the accuracy of the information contained in the provider’s entry in the OfS Register.³⁰</p>	Yes
<p>ii. Inaccuracies or omissions in the information finally submitted by a provider to the OfS or the designated data body, including where this may have an impact on the OfS’s use of the data including in determining compliance with another condition of registration, the provider’s funding allocation, or statistics published by the designated data body.</p> <p>Factors in favour of reporting may include:</p> <ul style="list-style-type: none"> Inaccuracies or omissions mean that students or other activities are not included in returns when they should be or vice versa. <p>Factors against reporting may include:</p> <ul style="list-style-type: none"> Minor or administrative errors which have been resolved through a validation process following initial submission of the data Inaccuracies or omissions are restricted to a small number of students Inaccuracies or omissions have a small impact on the OfS’s decisions or publications or on the designated data body’s process or publications. 	No

Definitions

Change of ownership

²⁹ Some registered providers are charities registered with, and subject to direct regulation by, the Charity Commission. Those providers must also comply with the Charity Commission’s reporting requirements. Some registered providers are exempt charities; they are exempt from registration with, and direct regulation by, the Charity Commission. The OfS is the principal regulator of exempt charities and has published guidance for those exempt charities (Regulatory advice 5: Exempt charities). This is available at: www.officeforstudents.org.uk/publications/regulatory-advice-5-exempt-charities/.

³⁰ The OfS Register is available at: www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/.

The OfS is principally, but not exclusively, concerned with situations where 50 per cent or more in the shareholding of the registered provider (or the closest equivalent, where the provider is not limited by shares) are, or may be, in common ownership. Common ownership includes:

- Ownership by the same person or entity
- Ownership by multiple entities themselves under common ownership or control
- Ownership by multiple individuals or entities who, by agreement or practice, exercise their ownership rights in a co-ordinated way (and without restricting the scope of our understanding of what constitutes common ownership, we will deem people who are 'connected' to be exercising their ownership rights in a co-ordinated way)
- Ownership by multiple individuals or entities on behalf of, or acting under the direction or in the interests of, the same third party, including a case where ownerships are held on trust for a common beneficiary, ~~and~~
- Any similar structure.

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the first time, the transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end
- must inform the OfS of any change in ownership that affects 15 per cent by value or voting rights of the registered provider's shares, or closest equivalent. A provider must do so whether the change is brought about in one transaction or a series of connected transactions. A provider does not need to inform the OfS of entirely unconnected transactions provided none of those transactions is individually above our notification threshold
- is not required to inform the OfS of changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and the changes only affect less than 15 per cent by value or voting rights of the minority ownership rights.

Some examples of changes that must be reported include:

- Where all or any part of the majority ownership rights in the provider change:
 - i. Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One shareholder sells their shareholding to the others. This must be notified.
 - ii. Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.

- iii. Example 3: There are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells their shareholding to a third party. This must be notified.
- Where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed.
- Where a controlling proportion of a provider's shares is directly, or indirectly such as through those of its parent organisation(s), acquired by another individual(s), partnership(s) or organisation(s).

Change of control

'Control' has the meaning given by section 1124 of the Corporation Tax Act 2010, and 'change of control' means a change in control so defined. Where two or more entities or individuals, by agreement or practice, exercise their rights in a co-ordinated way, with the result that they together have control so defined, each will be treated as having control of the provider. A provider is required to notify the OfS of any change in the individual(s) or entity(ies) who have control of the provider.



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www.nationalarchives.gov.uk/doc/open-government-licence/version/3/