

Consultation

**Office for
Students**

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in white.

OfS

Consultation on a new approach to regulating student outcomes

**This consultation runs from 20 January 2022
to 17 March 2022.**

Reference OfS 2022.01

Enquiries to regulation@officeforstudents.org.uk

Publication date **20 January 2022**

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.

Contents

Introduction.....	6
Consultation proposals and questions	13
Proposal 1: Revising condition B3 and associated guidance in the regulatory framework..	14
Proposal 2: Constructing indicators to assess student outcomes	19
Proposal 3: Setting numerical thresholds for student outcome indicators.....	33
Proposal 4: Publishing information about the performance of providers in relation to the OfS's numerical thresholds.....	42
Proposal 5: Making judgments about compliance with condition B3, including consideration of context.....	47
Proposal 6: Addressing statistical uncertainty in the assessment of condition B3	61
Proposal 7: Taking regulatory action when a breach is identified	66
Proposal 8: Timing of implementation	73
Considering regulatory burden on registered providers	76
Annex A: List of consultation questions.....	78
Annex B: Consideration of our approach to student outcome measures	80
Annex C: Proposed condition B3 and revisions to the OfS's regulatory framework.....	85
Annex D: Proposed data reporting structure for condition B3.....	95
Annex E: Proposed approach to setting numerical thresholds for student outcomes	96
Annex F: Proposed approach to assessing compliance with condition B3	100
Annex G: Consideration of alternative proposals	106
Annex H: Matters to which we have had regard in reaching our proposals	109
Annex I: Section 2 of the Higher Education and Research Act 2017	115

About this consultation

The Office for Students is proposing a new approach to its regulation of student outcomes in English higher education providers. This consultation sets out the background to our proposals, the reasons we are proposing to make changes and what we expect those changes to achieve.

Timing

Start: **20 January 2022**

End: **17 March 2022**

Who should respond?

Anyone with an interest in the regulation of quality and standards in the higher education sector.

We are particularly (but not only) interested in hearing from **students, staff, academics and leaders at higher education providers** who will be engaging in the new arrangements resulting from the review. We welcome the views of all types and size of provider.

We are interested in the views of **employers, third sector organisations, policy bodies**, and others with an interest in quality of higher education in England.

How to respond

Please respond by **17 March 2022**.

Please use the online response form available at <https://survey.officeforstudents.org.uk/s/consultation-on-regulating-outcomes/>

How we will treat your response

We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details.

If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy). A privacy notice for this consultation is available to view on our website.

We may need to disclose or publish information that you provide in the performance of our functions, or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of

Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

Next steps

We will publish a summary of responses to this consultation in Summer 2022.

We will explain how and why we have arrived at our decisions, and how we have addressed any concerns raised by respondents. We will then set out next steps in the policy and implementation process.

If we adopt the proposals set out in this consultation, we expect to adopt the timeline for implementation set out in Proposal 8 of this document.

Enquiries

Email regulation@officeforstudents.org.uk

Alternatively, call our public enquiry line on 0117 931 7317.

We are holding an online consultation event on **10 February 2022**. See www.officeforstudents.org.uk/news-blog-and-events/events/consultation-on-a-new-approach-to-regulating-student-outcomes/.

We are also planning to run some interactive student workshops in the coming weeks. We will publish details on our event pages at www.officeforstudents.org.uk/news-blog-and-events/events/.

If you require this document in an **alternative format**, or you need assistance with the online form, contact regulation@officeforstudents.org.uk. (**Please note:** this email address should **not** be used for submitting your consultation response.)

Related consultations

This consultation is taking place alongside consultations on constructing student outcome and experience indicators for use in OfS regulation, and on the future of the TEF.

All consultations can be read at www.officeforstudents.org.uk/outcomes-and-excellence/.

You may also wish to read our recent consultation on the revised quality and standards higher education providers registered with the Office for Students must meet.

This is available at www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

For more information about our proposed changes to the regulation of quality and standards, please see www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/changes-to-our-approach/.

Our three consultations on regulating quality and standards are at www.officeforstudents.org.uk/outcomes-and-excellence/.

Introduction

Our regulatory approach

1. The Office for Students (OfS) seeks to ensure that English higher education is delivering positive outcomes for students – past, present and future. Our objectives as a regulator reflect the things that matter most to students: high quality courses, successful outcomes, and the ongoing value of their qualifications. We use the tools in the regulatory framework to mitigate the risk that these regulatory outcomes are not delivered in practice for students from all backgrounds.
2. The conditions of registration contained in the regulatory framework are designed to ensure a minimum level of protection for all students and the taxpayer. Beyond this minimum, we encourage choice for students and innovation by autonomous higher education providers free to pursue excellence as they see fit. We seek to incentivise providers to pursue excellence in their chosen way. We do this in a number of ways, including through the Teaching Excellence Framework (TEF), which is subject to a separate consultation. The proposals in this consultation are consistent with this established regulatory approach.
3. Protecting and promoting quality and equality of opportunity are at the heart of our work. When a student embarks on a higher education course, it has the potential to be a life-transforming event – an enriching academic experience that paves the way for a rewarding and a fulfilling life. Students pay a significant price for these opportunities, through their time and effort, as well as in financial terms. This is why the OfS is focused on ensuring through our regulation of quality that all students, whatever their background and characteristics, can have confidence that they will receive a high quality higher education and positive outcomes.
4. We work to secure equality of opportunity for all students in many different ways. Through this consultation we are setting out a way of regulating that would set minimum expectations for all students and would enable us to act where any group of students is being left behind. Our new approach to TEF would mean that providers will be incentivised to deliver excellent teaching and learning for all their groups of students and, if they don't, this will affect their ability to achieve the highest ratings. At the same time, we continue to take steps through our regulation of access and participation to reduce the gaps in equality of opportunity between students from underrepresented groups and other students, before, during and beyond their time in higher education.¹
5. Our approach is designed to ensure that our regulation of quality and standards, and of equality of opportunity, are mutually reinforcing for the benefit of students. We set out the general principles of our approach in a consultation launched in November 2020 (the 'phase one consultation').² We then set out more detail in relation to the qualitative quality and standards conditions, in our recent consultation 'Consultation on quality and standards

¹ We use the term 'students from underrepresented groups' throughout this consultation. It includes all groups of potential or current students for whom the OfS can identify gaps in equality of opportunity in different parts of the student lifecycle. For more on this definition, see paragraph 5 of Annex H.

² See 'Consultation on regulating quality and standards in higher education', available at www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

conditions' (the 'phase two consultation').³ Further information about our current approach to regulating student outcomes can be found in the phase one consultation.

Why are we consulting

6. The purpose of this consultation is to revise the OfS's current approach to regulating student outcomes, to better achieve our regulatory objectives. We are seeking to ensure that students from all backgrounds can achieve positive outcomes and are protected from performance that is below our minimum expectations, whatever, wherever and however they study. We see this as a consumer protection mechanism: students are likely to be paying substantial sums for their higher education and it is the role of the regulator to ensure that their interests are protected, and minimum requirements are in place. It is also in the interests of taxpayers that value for money is secured for the investment made in higher education, either through direct funding or via the student finance system
7. Our proposed amendments to the initial and ongoing condition B3, and our guidance on the implementation of this condition of registration, will provide us with the tools to deliver these policy objectives:
 - a. Protecting students from providers, and courses, where performance falls below our minimum requirements.
 - b. Protecting taxpayers' money by ensuring that student support funding and OfS public grant funding are not given to providers whose students are unlikely to complete their course or achieve positive outcomes, because such students will be less likely or unable to repay their loan.
 - c. Maintaining public confidence in the performance of individual providers and the higher education sector in England more generally.
8. The OfS regulatory framework currently sets out the broad approach we take to regulating student outcomes.⁴ This consultation is necessary to test the detail of our future approach.
9. This consultation is specifically focused on the outcomes delivered for students. We consider that providers are not able to meet our minimum requirements for quality and standards if they do not deliver positive outcomes for their students.

Summary of our proposed approach

10. We would set a minimum requirement that all providers are required to deliver positive outcomes for their students.⁵ We would test this by considering:
 - a. Whether, in our judgement, a provider's outcomes are at or above specific numerical thresholds.

³ OfS 2021.24, available at www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

⁴ See 'Securing student success: Regulatory framework for higher education in England' (OfS 2018.01), available at www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

⁵ For the full detail of our minimum requirements, see Proposal 1.

- b. If we judge a provider's outcomes to be below these numerical thresholds, then we may determine that a provider is nonetheless delivering positive outcomes if we otherwise judge that the provider's context justifies the outcomes. We will also take account of data issues, including where we do not hold sufficient data, or the data refers to fewer than the minimum number of students.
11. We would set a series of numerical thresholds calculated by reference to sector-wide performance. These will ensure a clear indication of the minimum level of performance that students from all backgrounds should generally expect each provider to deliver. We would use indicators constructed from individual student data that we hold to measure student outcomes. Whenever data is collected and performance measured, there is a possibility of and scope for statistical uncertainty, and we would take account of this in our decision making.
12. In addition, we recognise that using our indicators to measure the outcomes a provider delivers for its students cannot reflect all aspects of the provider's context (as some contextual factors are not always measurable through the data we hold). If a provider delivers outcomes for its students that are below a numerical threshold, we will make decisions about whether those outcomes are justified by looking at its context. This approach would result in a rounded judgement about a provider's performance. This being the case, a provider's position in relation to a numerical threshold would not, by itself, determine whether a provider was compliant with our condition.
13. Initial condition B3 would apply to any provider seeking registration that currently teaches higher education students or has done so in the previous five years. Ongoing condition B3 would apply to all registered providers.

Improving outcomes for all students

14. This consultation document sets out our proposals for how we will deliver our approach to regulating student outcomes. They are underpinned by our view that:
 - a. We expect higher education providers to improve access to higher education for the most underrepresented groups and to reduce the gaps between the outcomes achieved for these students and those achieved for other groups.
 - b. Improvements in access and participation can only be meaningful if they are built on a minimum level of quality and standards to ensure that all students from all backgrounds are able to succeed in and progress from higher education into employment, further study, and fulfilling lives.
 - c. We do not therefore accept that students from underrepresented groups should be expected to accept lower quality, including weaker outcomes, than other students.
15. For this reason, we suggested in our phase one consultation that, when assessing whether a provider had met our minimum requirements for student outcomes, we would focus on its performance in absolute terms rather than in comparison with other providers through benchmarking.⁶ We also suggested that we would take a provider's context into account in reaching our judgement, to ensure we had properly interpreted its absolute performance. In

⁶ Benchmarking is an approach that has been widely used in higher education to contextualise a provider's performance by comparing its performance with the performance of similar students and courses across the whole sector as a whole. You can find out more about benchmarking in our separate data indicators consultation.

responding to our phase one consultation, a range of respondents suggested that we had not provided sufficient detail about how we would do this in practice, and they wanted more information about how weight would be given to a provider's context. We have addressed this concern in this consultation by showing how we will take context into account, both when we set numerical thresholds and when we assess an individual provider's performance.

16. We nonetheless recognise that such an approach may present a challenge for some providers. This is because they must only recruit students where they have understood the commitment they are making to support their students to succeed, irrespective of their backgrounds. In other words, we expect a higher education provider to be able to support all of its students. This will include taking steps to meet the needs of students from underrepresented groups where those needs are different from other students' needs.
17. Most universities and colleges relish this challenge and already deliver on it. However, some do not. While some may offer opportunities for students to enter higher education, we also see low continuation and completion rates and disappointing levels of progression to relevant employment or further study. We can see these outcomes in the measures that we would use in relation to condition B3 and in our Proceed data (although we do not propose to use the latter for regulatory purposes at this time).⁷
18. We do not consider this acceptable, and this is where our regulatory attention will focus. This means that our regulation of student outcomes will deliver our objectives of protecting and promoting quality and securing equality of opportunity in higher education.

Risk-based approach

19. The English higher education sector is generally high-performing, and many providers support their students to achieve outcomes that are among the best in the world. The reputation and standing of all English higher education providers could be damaged if we fail to act when providers do not, for whatever reason, deliver positive outcomes for their students. Our proposals are designed to ensure that our approach to regulation maintains and strengthens the English higher education sector and its international reputation.
20. Because we would set minimum requirements for all providers to meet, we can adopt a risk-based approach to monitoring ongoing compliance. This approach enables us to identify those that may not be achieving positive outcomes for their students, and then intervene to secure improvement or take enforcement action. This means that providers that do deliver positive outcomes for their students, including students from underrepresented groups, will see less regulation in relation to our quality and standards requirements. Conversely, those that are not performing in line with our minimum requirements are likely to experience significant regulatory attention, including through the use of our enforcement powers.
21. This consultation relates to the OfS's functions to determine and publish initial and ongoing conditions of registration. It sets out a revised condition B3 (student outcomes) and our approach to implementation of that condition. In particular, now our regulatory regime is established, we would set challenging minimum requirements for student outcomes. It is important that students from the UK and beyond, as well as the wider public and the taxpayers who subsidise their education, can have confidence in the outcomes of the courses offered by English higher education providers and that they represent value for money.

⁷ See www.officeforstudents.org.uk/publications/proceed-updated-methodology-and-results/.

What this consultation covers

- Proposal 1: Revising condition B3 and associated guidance in the regulatory framework.
- Proposal 2: Constructing indicators to assess student outcomes.
- Proposal 3: Setting numerical thresholds for student outcome indicators
- Proposal 5: Making judgments about compliance with condition B3, including consideration of context
- Proposal 6: Addressing statistical uncertainty in the assessment of condition B3
- Proposal 7: Taking regulatory action when a breach is identified
- Proposal 8: Timing of implementation
- Considering regulatory burden on registered providers

22. The consultation questions are listed in full in Annex A.

23. We are making the proposals set out in this consultation on the basis of our functions set out in the Higher Education and Research Act 2017 (HERA):

- a. Section 5 requires us to determine and publish initial registration conditions and general ongoing registration conditions.
- b. Section 13(1)(a) allows us to set conditions relating to the quality of the higher education provided by registered providers. We consider the outcomes delivered for a provider's students to be an essential and integral part of the quality of a higher education course.
- c. Section 23 requires us to assess quality for the purpose of determining whether initial and ongoing conditions of registration are satisfied. In particular, our approach to regulating student outcomes is one aspect of quality which sits alongside the approach to wider quality regulation set out in our phase two consultation.⁸

24. These proposals constitute our consultation for the purposes of sections 5(5) and 75(8) of HERA. In formulating them consultation we have considered the responses made to our phase one consultation. To assist respondents in understanding how we have done this, we have indicated several places throughout this document where we have given specific consideration to points raised in response to the phase one consultation. We have also published an analysis of the responses to the phase one consultation and the actions we have taken.⁹

25. In making these proposals, we have in particular taken into account our general duties to have regard to:

⁸ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

⁹ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

- a. The need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers.
- b. The need to promote value for money in the provision of higher education by English higher education providers.
- c. The need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers.¹⁰

26. We have also had regard to:

- the public sector equality duty
- statutory guidance from the Secretary of State¹¹
- the Regulators' Code
- the Code of Practice for Statistics.

27. We have considered alternative approaches to those set out in this consultation. We have set out the alternatives that we have considered in Annex G.

¹⁰ Annex H contains further discussion of how we have had regard to these matters.

¹¹ The strategic guidance which the OfS has received from the Secretary of State is published on our website (www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/). We have set out in Annex H how we have had regard to the Secretary of State's guidance through our proposals.

Documents referred to in this consultation

In this consultation we refer to the following documents:

Securing student success: Regulatory framework for higher education in England. We refer to this as ‘the regulatory framework’ and it is available at www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/. This publication sets out the OfS’s approach to the regulation of English higher education providers.

Consultation on regulating quality and standards in higher education: We refer to this as the ‘phase one consultation’ and it is available at www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/. This consultation set out the broad principles of our approach to regulating quality and standards in English higher education.

Consultation on quality and standards conditions: We refer to this as the ‘phase two consultation’ and it is available at www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/. This consultation set out our detailed proposals for our approach to regulating the qualitative elements of quality and standards in English higher education.

Analysis of responses in relation to regulating student outcomes and setting numerical baselines: We refer to this as the ‘phase one analysis’ and it is available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/. This document sets out our analysis of the responses to the phase one consultation that relate to the proposals in this consultation.

Consultation on the Teaching Excellence Framework (TEF): We refer to this as the ‘TEF consultation’ and it is available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/the-tef/. This consultation, which is being conducted in parallel with this consultation, sets out our detailed proposals for our approach to the design and implementation of the TEF which incentivises excellence above the baseline requirements set out in this consultation and the phase two consultation.

Consultation on constructing student outcome and experience indicators: We refer to this as the ‘data indicators consultation’ and it is available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/. This consultation, which is being conducted in parallel with this consultation, sets out our detailed proposals for our approach to producing the data indicators which underpin our approach to regulating student outcomes and the TEF.

Exploring student outcomes: We refer to this as ‘exploring student outcomes’ and it is available at www.officeforstudents.org.uk/publications/exploring-student-outcomes/. This document introduces our interpretation and methodology behind the analysis.

Consultation proposals and questions

28. This section sets out our proposals and the questions we are asking respondents. You can find specific questions in yellow boxes at the end of each section. A full list of consultation questions can be found in Annex A.
29. We are interested in the views of respondents on the following general questions that cover all our proposals.

General questions regarding this consultation

Question 1: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

Question 2: In your view, are there ways in which the objectives of this consultation (as set out in paragraph 7) could be delivered more efficiently or effectively than proposed here?

Proposal 1: Revising condition B3 and associated guidance in the regulatory framework

What are we proposing?

30. We propose to amend condition B3 to reflect the approach we propose to take to regulating student outcomes, and to ensure that the requirements we place on providers are clearly expressed in a legally binding condition of registration. The proposed revised condition is set out in Annex C.
31. The proposed condition would require a provider to deliver positive outcomes for students on its higher education courses.
32. The proposed condition reflects our proposal that a provider will be judged to have achieved positive outcomes for its students if, in the OfS's judgment, the provider's outcome data for each of the indicators and split indicators are at or above the relevant numerical thresholds set by the OfS. In making this assessment, the OfS will consider whether there is sufficient statistical evidence to support a view that the provider's performance is at or above a relevant numerical threshold.
33. If a provider's outcome data is not at or above the numerical thresholds, the OfS will make a judgement about whether the provider has nevertheless achieved positive outcomes. To the extent that the provider does not have outcome data at or above the relevant numerical thresholds, this judgement will test whether:
 - a. the provider's context justifies the outcome data; and/or
 - b. this is because the OfS does not hold any data showing the provider's numerical performance against the indicator or split indicator; and/or
 - c. this is because the OfS does hold this data but the data refers to fewer than the minimum number of students.
34. We are also proposing to amend the guidance that accompanies the condition, to set out our approach to setting numerical thresholds and assessing whether the condition is satisfied by an individual provider at initial registration and on an ongoing basis. This guidance would be part of the regulatory framework and is set out in Annex E and Annex F.
35. The guidance sets out the approach we propose to take to assessing a provider's compliance with the requirements of the condition. We will also publish more detailed information about the assessment process, to help providers and other stakeholders understand how we will reach judgements and when and how we would be likely to intervene in individual cases (see Proposals 5 and 7).

Why we are making this proposal

Reasoning for the proposed revisions to condition B3 and associated guidance

36. We are proposing changes to condition B3 and associated guidance that are necessary to advance and implement our policy objective of ensuring students from all backgrounds receive positive outcomes and are protected from unacceptably weak outcomes by setting numerical thresholds in order to assess all providers.

37. The current wording of condition B3 states that a provider must ensure that it delivers successful outcomes for all students. This drafting was intended to mean that the OfS requires a provider to ensure that it delivers successful outcomes for the groups of students it recruits, rather than for each individual student. This meant that we expect successful outcomes for students in general whatever, wherever and however they study, including those from groups underrepresented in higher education and with protected characteristics. We think it would be helpful to clarify this in the wording of the condition.
38. We are making these proposals because we consider that they balance the need to establish minimum requirements for all providers with explicit consideration of an individual provider's context and statistical uncertainty when making regulatory judgements about that provider. We take this view for the following reasons:
- a. Measurement of student outcomes in higher education is complex because we are using lagged data about a non-standardised educational experience.¹² As the student outcome measures we propose will apply to all providers, some of our proposed definitions, when necessary and appropriate, offer benefit of the doubt when considering what should count as 'positive' outcomes. Where it is not clear whether a particular outcome should be viewed as positive (either because interpretation of the outcome is debatable, or because existing data does not provide sufficient granularity of information), we propose to interpret it as either positive or neutral for the purposes of constructing student outcome measures, rather than treating it negatively. This means that some aspects of the proposed definitions of positive outcomes (through our consultation on constructing student outcome and experience indicators for use in OfS regulation) allow for the benefit of doubt about what constitutes a positive outcome at the point of constructing numerical measures of student outcomes. You can find out more about this proposed approach and the scope of its application in Proposal 2, and in proposals 5, 6 and 7 of our consultation on constructing student outcome and experience indicators for use in OfS regulation.¹³
 - b. Our evidence shows that, even when accounting for the impact of individual providers, there are factors that may have resulted in sector-wide variation in the outcomes that have been achieved in the past for different types of students and courses.¹⁴ We need to understand this context when making a judgment about whether an individual provider's performance is acceptable.

¹² Lagged data: The data about individual students used to create our proposed indicators is generally submitted at the end of each academic year rather than in 'real time'. We have set out proposals for alternative approaches to data collection that may provide data more regularly in our data futures and data collection consultation at www.officeforstudents.org.uk/publications/consultation-on-data-futures-and-data-collection/. Non-standardised: There is no standardised curriculum in English higher education. Higher education providers determine their own curricula and deliver whatever academic experience they wish, provided this satisfies the minimum requirements set by the OfS.

¹³ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

¹⁴ More information on our analysis of these issues can be found at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

- c. Our measurement of outcomes uses point estimate data indicators to represent the most likely value of underlying provider performance.¹⁵ This being the case, these measurements are subject to statistical uncertainty that must be properly reflected in our judgements about a provider's performance (see Proposal 6 for more about our approach to statistical uncertainty).
 - d. We propose to take account of all relevant information when assessing a provider's compliance with condition B3. This will include taking account of factors relevant to a provider's performance, and may include the context in which it operates. We propose to do this to ensure we have regard to relevant information, including context as appropriate, because we consider this to be a fair, reasonable and proportionate manner in which to operate and assess compliance with condition B3.
 - e. As a regulator we appreciate the importance of transparency and regulatory certainty. We therefore intend to give clarity to those we regulate about when and how we are likely to intervene.
 - f. The English higher education sector generally performs highly, and we intend to focus on those areas where performance in absolute terms is below our minimum requirements, with the most intrusive regulatory intervention targeted at unacceptably weak performance where there is therefore most risk to students and taxpayers.
 - g. Many students at many higher education providers in England do achieve positive outcomes. We therefore anticipate that our regulatory interventions will be focused on a minority of providers or pockets of provision where positive outcomes are not being delivered.
 - h. We accept that it may not be possible for a provider to deliver positive outcomes for 100 per cent of its students because of the particular circumstances of some students. We also consider that a provider has a considerable influence over the outcomes students achieve, and that factors beyond its control are not so extensive as to make it impossible to establish a minimum expected level of performance.
39. We are also setting out proposals for how we will assess individual providers in relation to both initial and ongoing condition B3 (see Annex F). We think it will be helpful for registered providers and those seeking registration to understand how the OfS would engage with them in considering whether the outcomes their students achieve are positive. We are proposing to use this approach for registration and monitoring in relation to condition B3 for at least the next four years. We will review the approach at the same time as we review the numerical thresholds.
40. In making these proposals, we have placed weight on specific duties and guidance as follows:
- a. In establishing an approach that requires a provider to deliver positive outcomes for its students, we have placed weight on the general duties set out in HERA Section 2 (and reproduced in Annex I), that require us to have regard to the following: the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers (Section 2.1.b), the need to promote value for money in the provision of higher education by English higher education providers (Section 2.1.d), and the need to promote equality of opportunity in connection

¹⁵ We explain our approach to the use of point estimates and statistical uncertainty more generally in Proposal 6.

with access to and participation in higher education provided by English higher education providers (Section 2.1.e).

- b. In setting out our approach to risk-based regulation of student outcomes, we have placed weight on our general duty to have regard, so far as relevant, to 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 (Section 2.1.g).
- c. In proposing that we use numerical thresholds and the context in which a provider is operating to determine whether it has delivered positive outcomes for students, we have had regard to guidance from the Secretary of State to 'ensure that decisions on regulatory intervention and registration can be made in relation to minimum absolute standards of quality which apply across the whole of higher education provision' and that 'providers delivering high quality provision and strong outcomes for students should not be adversely affected by additional unnecessary bureaucracy'.¹⁶

41. We are seeking views on whether our proposed condition would allow the OfS to meet our policy objectives as set out in paragraph 7.
42. We have set out alternative approaches that we have considered in Annex G. The alternative that was most relevant to our proposal to revise condition B3 was to continue to operate the current version of condition B3 without amendment. We consider that this would be inappropriate because:
 - a. We would not be able to set out our numerical thresholds in relation to condition B3.
 - b. We would not be able to set out how we have determined those numerical thresholds.
 - c. We would not be able to give clarity to providers about how we would take account of context when making decisions about compliance with the condition.
 - d. Without the proposed clarifications there would be ongoing ambiguity about the scope of the condition.

What would the effect of this proposal be?

43. The proposal would amend the regulatory framework. This would mean a change in the requirements placed on all registered providers and any higher education provider applying for registration. The paragraph references in this section are in relation to the proposed condition set out in Annex C.
44. The proposed scope of the condition (paragraph B3.1) would mean that it would apply to any higher education a provider offers. This is defined in the condition in accordance with the definitions in HERA and is therefore subject to any changes to those definitions made by Parliament. It includes:
 - a course of study
 - a programme of research

¹⁶ See 'Guidance to the OfS: Secretary of State's strategic priorities (February 2021)', available at www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/.

- any further education course that forms an integrated part of a higher education course
- any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.

45. The proposed application of the condition (paragraph B3.2) would mean that the general ongoing condition would apply to all registered providers. The initial condition would apply to any provider for which we are able to produce indicators for at least one of the previous five years. Annex F sets out our proposals for assessing whether a provider satisfies the initial condition.
46. The proposed condition creates a requirement that every provider must deliver positive outcomes for students on its higher education courses (paragraph B3.3). This is in line with the policy objectives set out in this consultation. ‘Positive outcomes’ may be understood differently by different providers. We are therefore proposing to define this for the purpose of the condition and to create student outcome measures that show the proportion of students achieving a positive outcome (more detail on this approach is set out in Proposal 2). Proposing a particular definition for use in setting our regulatory requirements in this condition does not mean that the OfS considers that other positive outcomes for individuals or cohorts of students are without merit. Our rationale for using the particular measures we are proposing is set out in Proposal 2.
47. Paragraph B3.4 of the condition sets out how the OfS would judge whether a provider is delivering positive outcomes. This paragraph contains our proposed approach of testing performance against a numerical threshold and the context in which a provider is operating. In practice, this means that the OfS must always consider a provider’s context when making judgements about its performance in relation to the numerical thresholds.
48. Paragraph B3.4 of the condition allows us to make a judgement about whether a provider has achieved positive outcomes for its students, in relation to both indicators and split indicators.¹⁷ In practice, this means that we would be able to test compliance for different types of courses and student groups for each provider. This enables us to deliver our policy objective of protecting all students. In making these judgements the OfS will consider the statistical confidence we have in each indicator.

How would we implement this proposal?

49. We anticipate that the proposed changes to condition B3 would come into force no earlier than September 2022. Further information about our proposals for implementation are set out in Proposal 8.

Questions relating to Proposal 1

Question 3: Do you agree or disagree that the proposed wording of condition B3 will enable the OfS to meet its policy objectives? If you disagree, what changes do you think are necessary to do so?

¹⁷ Our definitions of indicators and split indicators are set out in paragraph 193.

Proposal 2: Constructing indicators to assess student outcomes

What are we proposing?

50. In our phase one consultation, we proposed that condition B3 would continue to focus on a provider's absolute performance over time in relation to a range of student outcome indicators for continuation, completion and progression to managerial and professional employment or higher-level study. We also proposed to discontinue the use of the indicator showing gaps in degree classifications awarded to students with different characteristics for the majority of providers, as this would more appropriately be considered through their access and participation plans (APPs). We proposed to continue to consider this indicator as part of condition B3 for those providers without an approved APP.
51. We have set out the main responses to the phase one consultation and our consideration of these in our analysis document. Paragraphs 52 to 115 of this document set out our proposals to continue to use student outcome measures relating to continuation, completion and progression, constructed on the basis set out in our data indicators consultation. We are no longer proposing to consider gaps between degree classifications for the purpose of condition B3 and will continue to consider these measures through our regulation of access and participation plans.

Our proposed approach to the construction of student outcome measures

52. We have considered the responses to our initial proposals (set out in the phase one consultation analysis) for the nature and construction of indicators for our student outcomes measures relating to continuation, completion and progression, and set out further proposals and the rationale for these in this document.
53. When we refer to a 'measure' this means the particular student outcome we are seeking to calculate. We propose using the following student outcome measures:
- the proportion of students continuing on a higher education course
 - the proportion of students completing a higher education qualification
 - the proportion of students progressing to managerial or professional employment, or further study.
54. We have set out why we have proposed to use these student outcome measures in Annex B.
55. When we refer to an 'indicator' we are referring to the combination of:
- the particular student outcome we are seeking to measure
 - the mode of study
 - the level of study.
56. We also propose to create split indicators. This means that we will break down each indicator to create 'split indicators', which show performance for various categories of a provider's

students and courses, including: subject studied, personal characteristics, year of entry or qualification (as appropriate to the student outcome in question), specific course types and partnership arrangements.

57. We have set out considerations relevant to our proposals to use these student outcome measures in Annex B.

Mode and level of study

58. We propose that we will construct separate indicators for full-time, part-time and apprenticeships, and for the following levels of study (these are explained further in Proposal 2 of the data consultation)¹⁸:

- full-time and part-time modes:
 - other undergraduate
 - first degree
 - undergraduate with postgraduate elements
 - PGCE
 - postgraduate taught masters
 - other postgraduate
 - postgraduate research
- apprenticeships:
 - undergraduate
 - postgraduate.

59. We consider that this use of different modes and levels of study is appropriate, as it broadly reflects the range of different course structures and approaches to learning that might have an effect on the outcomes, without creating unnecessarily large numbers of numerical thresholds, which would be complex for stakeholders to understand and unnecessarily burdensome to use in effective regulation.

60. If we decide to use three student outcome measures (continuation, completion and progression), this would result in a provider having up to 48 indicators depending on the range of modes and levels of the courses it offers. Each of these indicators would also be shown in different views and as split indicators (see Annex B for our proposed data structure).

61. There was broad agreement with these proposed levels for the construction of indicators in responses to the phase one consultation. Respondents agreed that these levels are well established and already routinely engaged with by providers. Respondents agreed it was appropriate to set different numerical thresholds for different levels of study.

¹⁸ See Proposal 2 in www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

62. Most respondents thought we should construct a separate indicator for apprenticeships because these courses have distinctive characteristics and, as study is delivered in partnership with an employer, there are factors that may affect outcomes that are not relevant for other types of courses.
63. We agree that apprenticeships are sufficiently different to be considered separately and we propose that they should be considered as a separate 'mode' of study. We take the view that the design and delivery of apprenticeships includes distinctive characteristics (apprentices have employment contracts, and 80 per cent of their training is delivered on the job by their employer) and they are structurally different from other types of courses and from both full- and part-time modes of study.

Split indicators and different views of a provider's student population

64. We propose that the indicators that result from a student outcome measure being reported according to students' mode and level of study, are then broken down further, to generate a series of split indicators. These split indicators will relate to various categories of a provider's students and provision including subject studied, student characteristics, year of entry or qualification (as appropriate to the student outcome in question), specific course types, and provider partnership arrangements. These categories of split indicators were proposed (and supported) for use in regulation of quality and standards in the phase one consultation. The split indicators will be reported separately for each category of student or provision and, where relevant, for different 'views' of a provider's student population based on its partnership arrangements.
65. We have set out in our proposed approach to assessment the role that context will play when we make a judgement about whether an individual provider has delivered positive outcomes for its students. The split indicators and views are proposed to enable us to identify pockets of provision where a provider is delivering outcomes below our numerical thresholds even though its overall performance is above our numerical thresholds. We consider that the reporting of split indicators supports our policy intent to secure equality of opportunity between students from underrepresented groups and other students, before, during and beyond their time in higher education. This is because it will enable us to focus our attention on groups of students within providers that risk being left behind, even when the provider itself is generally delivering positive outcomes. The information will also be used to support our understanding of the context in which a provider is operating, including in conjunction with our approach to the use of individual providers' benchmarks.

Courses delivered in partnership arrangements

66. We consider that each registered provider holds responsibility for the quality and standards of all of its higher education courses, irrespective of the organisation that delivers them. This includes:
 - the students it teaches
 - the students it registers
 - the students for whom it is the awarding body.
67. In addition to showing each indicator separately for each mode and level of study, we propose to show all of these indicators separately for courses delivered through partnership

arrangements. This would mean that we produce indicators for a provider based on the following student populations:

- a. The taught population, which includes all students taught by the provider. We also propose to construct split indicators to show:
 - i. Taught and registered – those students both registered and taught by the provider.
 - ii. Taught only – those students taught by the provider, on behalf of another provider that registers those students (subcontracted in).
- b. The taught or registered population, which includes students registered or taught by the provider. This is the student population we propose to use to set numerical thresholds (see Proposal 3). We also propose to construct split indicators to show:
 - i. Taught and registered – those students both registered and taught by the provider.
 - ii. Taught only – those students taught by the provider, on behalf of another provider that registers those students (subcontracted in).
 - iii. Registered only – those students registered by the provider, but taught elsewhere by another provider (subcontracted out).
- c. The partnership population, which includes sub-contracted out students and those for whom the provider is acting in a validation-only capacity. We propose to construct further split indicators to show:
 - i. Registered only – those students registered by the provider, taught elsewhere by another provider (subcontracted out).
 - ii. Validation only – those students neither taught nor registered by the provider, but studying for an award of that provider.

68. This means that we would show three sets of indicators relating to the different views of student populations described in paragraphs 67, for each mode and level of study described in paragraph 58. For the 'taught' and 'taught or registered' population we propose to show the same split indicators set out at paragraphs 64 and 65. For the partnership population we will show indicators split by year of entry or qualification, subject studied and teaching arrangement.

69. We are proposing this approach because it is important that we can identify a provider's performance in different aspects of its provision to meet our policy objectives of protecting the interests of all students. In addition, we think that there will be value for providers in having data available that allows them to see how the OfS is looking at outcomes for all of their students.

70. Some respondents to our phase one consultation took the view that including partnership arrangements in our approach to regulating student outcomes would create additional burden and complexity.

71. We accept that, to produce comprehensive information on student outcomes for validation-only arrangements for unregistered providers, we will need to introduce additional data collection. We consider this additional collection necessary to ensure that our regulation can protect all relevant students and we will set out proposals for how we will collect this data in a future consultation.

72. Respondents thought degree awarding bodies might be disincentivised from continuing or entering partnership arrangements if they were accountable for the student outcomes delivered by their partners. Some respondents were of the view that a validating body's role is limited to oversight of the operation of a partnership arrangement and it should not therefore have any accountability for the quality and outcomes delivered by its partners.
73. We accept that including courses delivered through partnership arrangements in our approach to regulating student outcomes will increase scrutiny of the outcomes achieved for students in these arrangements. Our proposals may result in accountability for the same students sitting with two different registered providers. It is possible that this approach may disincentivise future partnership arrangements, although this was an issue raised by providers that are validated and their representative groups, and we did not see similar points made by providers that are awarding bodies.
74. We do not wish to unnecessarily curtail competition between providers, impose unnecessary regulatory burden or limit choice for students, but we consider that these factors should not take precedence over ensuring students are protected from unacceptably weak outcomes and that a minimum level of performance should be delivered wherever a student studies. Our view is that regulating such that courses with poor performance were no longer available would not be a meaningful limitation on student choice. As our proposed approach would focus regulatory attention where it is needed most, we consider that providers engaged in high-performing partnership arrangements should not face disincentives or additional regulatory burden.
75. We take the view that it is not appropriate for a lead provider to seek to generate income, or gain other benefits, through partnership arrangements while abrogating responsibility for the quality of those courses, including the outcomes they deliver. As with any regulatory intervention, we are required to act proportionately, and so would take into account the context of a particular partnership arrangement in our regulatory decisions.
76. We recognise that some providers may choose to withdraw from partnership arrangements rather than focusing on improving outcomes for the students involved. If partnership arrangements that do not deliver positive outcomes for students are terminated, we do not consider that to be adversely limiting student choice. It is, however, also possible that some providers may withdraw or decide not to enter new partnerships because of increased regulatory scrutiny, regardless of the quality of the courses delivered and the outcomes achieved.
77. We have set out in our proposals that we do not expect a provider to 'churn' courses or partnerships to avoid regulatory attention. If there is evidence that a provider is withdrawing from partnerships to do this, we may undertake further investigation to confirm that its management and governance arrangements for its partnerships are robust and effective and that decisions to work with other organisations are the result of a strategic approach rather than opportunism. The outcomes of such an investigation could raise concerns about a provider's suitability to continue to hold degree awarding powers that can be used in partnership arrangements.
78. We are also proposing that we would not prioritise assessment of a lead provider's indicators related to the outcomes delivered through its partnership arrangements within the first year of implementation of the proposals set out in this consultation. This would mean that we would publish data to show the performance in partnership arrangements and allow lead providers time to improve outcomes that appear to be below the numerical thresholds we set. We would

also be able to monitor providers' behaviour during this period and identify any patterns of concern. This proposal does not affect delivery partners. This means that our proposed prioritisation approach may result in our assessing a delivery provider's indicators relating to the outcomes delivered through its partnership arrangements at any point.

Time series

79. We are proposing that each indicator will be split to show a provider's performance in aggregate and over a time series of four years.
80. We consider it necessary to consider aggregate performance because this addresses some of the points made by respondents to the phase one consultation about the reliability of data relating to small student populations.
81. We consider that a four-year time series allows us to see trends in performance without including in our assessment performance that could be considered too far removed from current performance to be valid. The proposal for a four-year time series is also intended to align with the proposed cycle of TEF assessments as set out in Proposal 1 of the TEF consultation.¹⁹

Student characteristics

82. We propose that the student characteristics selected for use as split indicators should be aligned with current access and participation priority groups,²⁰ and, as far as data is available, with the OfS's obligations in respect of the public sector equality duty.
83. For each level of study described in paragraph 58 – for example 'other undergraduate' – we propose to show a 'split indicator' in aggregate (i.e. in total over the four years of data) for each of the following distinct student demographic characteristics within that level of study:
 - age on entry to higher education course
 - disability
 - ethnicity
 - sex
 - domicile
 - eligibility for free school meals at Key Stage 4 (for young undergraduate students)
 - English Index of Multiple Deprivation (IMD) quintile²¹

¹⁹ See Proposal 1 in www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/the-tef/.

²⁰ See www.officeforstudents.org.uk/publications/regulatory-notice-1-access-and-participation-plan-guidance/.

²¹ The IMD is the official measure of relative deprivation in England for small areas (Lower Super Output Areas) produced by the Government. It is based on seven different facets of deprivation including: income deprivation, employment deprivation, education, skills and training deprivation, health deprivation and disability, crime, barriers to housing and services, and living environment deprivation.

- associations between characteristics of students (ABCS) quintile.²²

84. These characteristics received broad support in responses to the phase one consultation. A large number of respondents to that consultation suggested free school meal eligibility as appropriate split indicator. We had previously been concerned about the coverage of this data, as it applies only to younger students who attended state schools for whom we can find a record in the National Pupil Database. There were also potential issues of transparency, as until recently providers have not been able to access this data. However, we agree that it is a relevant and useful measure of disadvantage when used alongside other measures such as IMD, and are therefore proposing to include it as a split indicator.
85. Our proposed split indicators cover some protected characteristics under the Equality Act 2010. Respondents to the phase one consultation suggested that splits should be included for all protected characteristics. Other student characteristics that are not protected by the Equality Act 2010, such as gender, were also suggested. Data is not available for some student characteristics, including some protected characteristics, and this shapes our proposed approach. This is explained further in Proposal 9 of the indicators consultation.²³
86. Some respondents suggested that age, ethnicity and disability characteristics should be broken down into smaller groups than those we are proposing, for example to show the performance of students in different age ranges, or with different disabilities. We are proposing to disaggregate both age and ethnicity, but not disability because split indicators at this level would typically be too sparsely populated to allow consistent assessment. A full explanation is provided in our data consultation in Proposal 9.²⁴
87. We are also proposing to use the ABCS classifications of access and continuation quintiles as a split indicator for continuation, completion and progression outcomes when they refer to undergraduate populations. ABCS is an intersectional measure of underrepresentation.²⁵ It is subject to consultation as part of our separate data indicators consultation and currently includes the following characteristics:
- age on entry to higher education
 - disability
 - ethnicity
 - sex
 - care experience

²² ABCS is a set of analyses that seeks to better understand how higher education outcomes vary for groups of students holding different sets of characteristics. You can find more detail on our methodology in Annex F of our data indicators consultation.

²³ See Proposal 9 in www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

²⁴ See Proposal 9 in www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

²⁵ See www.officeforstudents.org.uk/data-and-analysis/associations-between-characteristics-of-students/.

- free school meal eligibility
- parental higher education
- Income Deprivation Affecting Children Index' quintile
- socioeconomic background
- English IMD quintile
- tracking underrepresentation by area (TUNDRA), an area-based measure of participation
- local or distance learning.

88. Many respondents to the phase one consultation suggested we should use measures of intersectional disadvantage for the purposes of condition B3. We consider that the inclusion of ABCS as a split indicator would allow us to understand student outcomes in a way that is sensitive to the multi-faceted nature of the historical gaps in equality of opportunity.

89. We propose to incorporate ABCS in split indicators for completion and progression outcomes when that becomes possible later in 2022. Further information about the use of ABCS is set out in our indicator consultation in Proposal 9.²⁶

90. We have also recently developed a geography of employment and earnings indicator, which we consider can help contextualise graduate outcomes by capturing some of the labour market differences experienced by graduates living in different parts of the UK.²⁷ This quintile-based approach classifies travel to work areas based on the proportion of employed graduates living in that area who are in professional or managerial occupations.²⁸ We propose that split indicators constructed for progression outcomes include the quintiles generated by this classification.

91. Further information about the selection and construction of split indicators is set out in Proposal 9 of the indicator consultation.

Type of course

92. We propose to construct split indicators for types of courses that have some differences in their design or delivery compared with the aggregate group. This will enable us to see whether there is any variation when compared with other courses with the same qualification aim. We are proposing to show performance separately in the following ways:

- a. We will construct split indicators that enable us to look at full-time first degrees with an integrated foundation year separately from other full-time first degrees.

²⁶ See Proposal 9 in www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

²⁷ See the methodology for the Graduate Outcomes quintiles described in the November 2021 publication at www.officeforstudents.org.uk/publications/a-geography-of-employment-and-earnings/.

²⁸ See www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/travelto-workareaanalysinggreatbritain/2016.

- b. We will construct split indicators that enable us to look at Higher Technical Qualifications (HTQs) separately from other full-time first degrees.²⁹ We may extend this approach to look at other HTQs in relation to other types of courses in future, as these courses may be approved at different levels.
 - c. We will construct split indicators that enable us to look at Level 4 and Level 5 courses separately, within our 'other undergraduate' grouping.
93. In the phase one consultation we asked for views about whether there were courses with distinctive characteristics that should be separated in the data. Respondents supported the separation of all of the courses we included in our phase one proposals.
94. We recognise that historically the continuation and completion outcomes for first degree courses with an integrated foundation year have been worse than those for first degree courses without such a year. Respondents to the phase one consultation suggested that this was largely because of the characteristics of students studying on these courses, including the fact that many are mature, from underrepresented groups and without formal entry qualifications.
95. We proposed in our phase one consultation that we would not set different numerical thresholds for students from different backgrounds to account for the known historical variation in performance, because accepting weaker outcomes for some students would not be consistent with delivering our regulatory objectives. There was strong agreement in responses to the phase one consultation with the principle that we should not set separate numerical thresholds for different student characteristics.
96. We propose that first degree courses with an integrated foundation year should be separated in the data as a different course type, but should not be treated as a separate level of study because the learning aim of the course on which the student registers is the same as for a first degree without an integrated foundation year. This means that we are not proposing to set a separate numerical threshold for such courses.
97. Separating out the data as a course type will allow us to see any differences in a provider's performance for different course types, which will provide helpful contextual information about a provider's performance without providing an incentive for providers to seek to justify weaker performance. We are also proposing to use a benchmark value as a cross-check of a provider's performance. This means that we will be able to compare the performance of an individual provider for its foundation year students with the performance that would be expected across the sector for similar students.
98. The first HTQs will be delivered from September 2022. We consider it important to be able to identify differences in student outcomes for these newly developed courses, to ensure that approved HTQs are of high quality. We intend to introduce a split indicator for HTQ courses at an appropriate point in the future once delivery of these courses have commenced and their students are reported in student data returns.
99. Respondents to the phase one consultation suggested that there would be merit in separating the 'other undergraduate' level of study between Levels 4 and 5 because of the range of

²⁹ Higher Technical Qualifications are either new or existing Level 4 and 5 qualifications (such as HNDs, foundation degrees or higher education diplomas) that have been approved by the Institute for Apprenticeships and Technical Education as meeting occupational standards for the relevant sector. More information is available at <https://www.gov.uk/guidance/htqs>.

different courses, and because progression outcomes from Level 4 courses might be significantly different from those at Level 5. We agree that there may be value in such disaggregation, but this would result in large numbers of sparsely populated indicators and split indicators, which would be prone to high levels of non-reportability and statistical uncertainty. This would prevent our undertaking a meaningful assessment of performance. Instead, we propose to differentiate 'other undergraduate' courses at Level 4 and 'other undergraduate' courses at Level 5 as split indicators. We take the view that this is a proportionate approach, which recognises differences in course lengths, study intentions and progression routes within the 'other undergraduate' category, but achieves an appropriate balance of the granularity and utility of the resulting data.

100. We are proposing that these types of courses would be subject to the same numerical threshold that we set for the overall level of study.

Subject-level performance

101. We propose to create split indicators to show performance at subject level.

102. This means that for each level of study – for example 'other undergraduate' – we would show performance in aggregate (i.e. in total over the four years of data) for a distinct subject area within that level, for example business and management, computing, engineering, or health and social care.

103. The grouping of subjects is complex but our starting point for subject groups is that we should use level 2 of the Common Aggregation Hierarchy.³⁰ The indicators consultation includes further information about this in Proposal 9.

104. We propose to include subject-level splits because our previous approach to regulating student outcomes focused on the proportion of students who did not receive positive outcomes across a whole provider or level of study. We consider it unsatisfactory to continue this approach because it allows for the possibility that some providers may have pockets of poor performance hidden within acceptable aggregate performance. In some providers these 'pockets of performance' could include more students than are in the whole population for another provider.

105. Respondents to the phase one consultation in general agreed that it was important to tackle such pockets, although they recognised this would add further complexity to the data. Many suggested that if subject-level indicators were constructed, these should be assessed in relation to subject-level numerical thresholds. They were also concerned about the impact on small providers because they were likely to have smaller student populations.

106. We consider that our proposed approach to statistical confidence set out in in Proposal 6 will address points about small population sizes. We are not proposing to set separate numerical thresholds for subjects, because we agree with respondents to the phase one consultation about the need to balance our ability to intervene to improve pockets of poor performance with the potential complexity for providers of engaging with a significantly higher number of numerical thresholds.

107. We recognise that there may be differences in performance between subjects, particularly for progression, but we consider that setting a single numerical threshold would take account of the performance across all subjects. We would not be performing a comparative assessment

³⁰ See www.hesa.ac.uk/innovation/hecos.

between subjects, but would be considering each against a numerical threshold set at a level we would expect providers delivering all subjects to be able to achieve.

Indicators for transnational education courses

108. We do not propose to set numerical thresholds in relation to transnational education (TNE) courses at this time.³¹ However, we are making proposals to further develop our approach to understanding and assessing student outcomes for these courses.
109. In our phase one consultation we proposed to construct indicators for TNE courses to show outcomes for continuation and completion (but not progression) at an aggregate level for the purposes of condition B3. Respondents to the phase one consultation generally welcomed the use of indicators for TNE courses and there was broad recognition that some form of TNE outcome indicator would be required. However, there was a significant number of comments about difficulties with data collection and verification and whether data would be sufficiently reliable. Several respondents also commented that the context in which TNE courses are delivered should be accounted for when considering these indicators.
110. We maintain that constructing indicators in relation to TNE courses is necessary to allow us to regulate quality for students on these courses, and to ensure that positive outcomes are delivered for these students taking account the context in which they are studying. However, we accept that there are a number of unresolved issues with data collection, which means that we are not able to set numerical thresholds on the same timescales as for courses delivered to students in England. Once data is sufficiently reliable we would seek to construct indicators and set numerical thresholds and would consult separately about this. We recognise that delivering this improvement in data quality will require us to collect individualised data for TNE students. This would be an increase in burden on providers and we propose consulting specifically on the detail of those requirements in future.
111. We propose that we will publish sector level analysis of outcomes for TNE courses based on 2019-20 and 2020-21 data from the aggregate offshore record in spring 2022. We will use this analysis as regulatory intelligence to inform our regulation of our quality and standards conditions and to inform our understanding of student outcomes in TNE courses. We will consult further on how any data should be published at a provider level.

Higher education courses that are not eligible for OfS funding (also known as non-prescribed courses)

112. As set out in our phase one consultation, we wish to integrate higher education courses that are not eligible for funding by the OfS into the coverage of our student outcomes indicators.³² Such higher education falls within the scope of our regulatory functions, and this integration would mean that our approach to the regulation of student outcomes would apply on the same basis to those courses if they are courses of a registered provider.
113. The data relating to these types of courses is now a mandatory part of both Higher Education Statistics Agency (HESA) and Education and Skills Funding Agency (ESFA) data returns and we therefore propose to include students studying on these courses in the indicators proposed in this consultation. Our data indicators consultation sets out how we will integrate data on

³¹ When we refer TNE, we mean higher education that is delivered by English providers in a country other than the UK.

³² These courses are often referred to as 'non-recognised higher education'.

these courses into our outcome measures. We propose to include these courses in our continuation and completion measures.. However, students on these courses are not currently included in the Graduate Outcomes survey. This means that we are not able to construct a progression outcome measure for these courses.

Data sources for the indicators

114. In our phase one consultation, we proposed to construct indicators from individualised student data returned by a provider to HESA or ESFA on an annual basis, and through the Graduate Outcomes survey. Respondents to the phase one consultation welcomed the proposal to use existing data returns and we still think that this approach is appropriate. We have set out in detail the proposed method for constructing each of the indicators we propose to use in relation to condition B3 in our data consultation.

115. We also still propose to use student data that providers return to HESA and ESFA this means that in future we will transition to using data collected via the Data Futures model for HESA student data returns.³³ In doing so we would seek to map indicators as closely as possible to the definitions established through this consultation, and would invite views on any significant departures from these definitions through further consultation if we judge that necessary.

Why are we making these proposals?

116. We consider that our proposals for constructing indicators provide a robust basis on which to regulate student outcomes. As set out in our phase one consultation, we consider that continuation rates provide a strong indication of whether a student has been appropriately recruited onto a suitable course that matches their abilities and aspirations, and whether they then receive the support they need to continue on that course. Continuation rates identify at an early stage whether a student's investment of money and time have, for whatever reason, not led to a positive outcome.

117. There was broad support for the use of continuation as a measure in responses to the phase one consultation. Respondents agreed that it is a legitimate and reasonable measure of quality and has been used in the sector as a measure for many years. They suggested that it can be measured reasonably and effectively, can be substantially influenced by a provider and is sufficiently within its control.

118. We consider that completion is one of the most relevant measures of student outcomes available and tells us whether a provider is recruiting students who are able to succeed through to the end of their courses. Respondents to the phase one consultation broadly recognised that completion was a legitimate indicator of student success and, as with the continuation indicator, is a measure that has been in use within providers for a long time and an outcome over which they have some control. Respondents took the view that acceptable rates of completion are unlikely to be achieved without good quality resources and academic support, and this is likely to mean the provider is also delivering high quality courses.

119. We also consider that a measure of progression is appropriate to use for regulatory purposes, because this will tell us whether a provider's students have positive outcomes beyond graduation.

³³ See www.hesa.ac.uk/innovation/data-futures. Although we are currently consulting on the frequency of data collection, we expect the data model to remain stable.

120. Only a small number of respondents to the phase one consultation agreed that progression to higher-level study or professional and managerial employment, when assessed in absolute terms, was an appropriate measure of student success or quality. A larger number commented that it was not an appropriate measure because the purpose of higher education is broader than ensuring students' progress to higher study or managerial or professional employment. Some respondents suggested that using progression as a measure would fail to recognise the responsibility of students themselves for achieving positive outcomes. Respondents also argued that progression outcomes are beyond the control of a provider and are influenced by student choice and other social and labour market factors. Other respondents suggested that progression was a suitable measure of value for money in terms of the return to the Treasury from graduate income, but this was not the same as an indicator of quality. Our full consideration of these points is set out in our phase one analysis.
121. We recognise that individual students will define their success beyond graduation in relation to their own goals and motivations and this may extend beyond definitions of higher-level study or managerial or professional employment. Some students may study for personal interest and we recognise that there are wider benefits of higher education than the direct employment outcomes they might achieve. However, we are of the view that most people who enter higher education do so to improve their life chances, including their employment prospects. We therefore consider that it is important to ensure that graduates are achieving outcomes consistent with the higher education qualification they have completed. Low rates of progression into managerial or professional employment and higher-level study destinations commensurate with the qualification they have completed may suggest that a course has not equipped students with knowledge and skills appropriate to their intended learning aims, or that students were not effectively supported to transition into the workplace.
122. We agree with respondents who suggested that progression is a measure of value for money. It is our view that all of the measures are relevant to a consideration of value for money for both students and taxpayers, and they serve multiple purposes as indicators of quality, as a mechanism for consumer protection, and in protecting taxpayers' interests.
123. Many respondents were interested in the detailed construction of the indicators and asked for clear definitions of them. This section sets out our policy proposals for constructing indicators and our reasoning. The technical detail of how each indicator would be constructed is set out in our separate indicator consultation.
124. We have decided that we will not create an indicator for degree classifications for any provider for the purposes of condition B3. Our proposal was intended to remove duplication of regulation for providers that have an APP, but to retain the requirement for providers without an APP. However, we have concluded that this indicator is not necessary as it does not involve a threshold for absolute performance and instead looks at gaps in performance between different student groups. As the indicator relates only to degree outcomes, and a large proportion of providers without an APP do not deliver courses above Level 5, we have decided it would not be proportionate to use this indicator or an efficient or effective use of our resources. We also note the comments in response to the phase one consultation regarding the potential complexity created through the number of indicators that would be generated for condition B3 purposes and consider that not including degree outcomes in the assessment provides some mitigation for this.
125. We propose that we will construct indicators from data that is readily available and allows us to identify pockets of poor performance while relying on measures and levels that are well

established and understood in the sector. The indicators we are proposing recognise that there are likely to be differences in performance between different modes and levels of study that warrant separate consideration of the data. In making these proposals we have balanced the potential complexity and burden that a larger number of indicators would create with the policy aim to protect students from weak outcomes.

126. Our detailed approach to definitions of indicators is set out in our separate consultation.³⁴ This includes specific questions about the construction of the indicators and the way in which we propose to structure the data. You can find this in Proposals 5, 6 and 7 of that consultation. We are therefore asking a general question in this consultation to capture views and will consider responses to the data indicators consultation as we make decisions about any future approach.

Questions relating to Proposal 2

Question 4: Do you agree or disagree with the proposals for how we will construct student outcome measures? Do you have any alternative suggestions?

³⁴ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

Proposal 3: Setting numerical thresholds for student outcome indicators

What are we proposing?

127. Our proposed condition B3 (see Proposal 1: Revising condition B3 and associated guidance in the regulatory framework) requires the OfS to set numerical thresholds for student outcome indicators. This section sets out our proposals for:

- which numerical thresholds we will set and why
- how we propose to set these numerical thresholds.

Proposals for which numerical thresholds to set

128. We propose to set numerical thresholds for indicators in each of the following outcomes:

- continuation
- completion
- progression.

129. We propose to set numerical thresholds in relation to the following indicators:

- full-time students studying at the following levels:
 - other undergraduate
 - first degree
 - undergraduate with postgraduate elements
 - PGCE
 - postgraduate taught masters
 - other postgraduate
 - postgraduate research
- part-time students studying at the following levels:
 - other undergraduate
 - first degree
 - undergraduate with postgraduate elements
 - PGCE
 - postgraduate taught masters
 - other postgraduate

- postgraduate research
- students on apprenticeships at the following levels:
 - undergraduate
 - postgraduate.

130. We propose to set numerical thresholds for these indicators because we consider there is sufficient difference in the nature of the provision in different modes and levels to justify a separate numerical threshold. We consider that these proposals take sufficient account of the differences between the structural features of different modes and levels of higher education courses. In reaching this view, we noted that many of the proposed groupings are widely used by the OfS and other higher education bodies. We also considered alternative approaches. For example, we could have used:

- a. More aggregated groups, for example only using ‘undergraduate’ and ‘postgraduate’. We consider that would have limited our ability to set numerical thresholds that reflected sufficiently different types of course structure and this would limit our ability to accurately target the weakest performance in the sector.
- b. More disaggregated groups; for example we could have used separate categories for Level 4 and 5 courses rather than aggregating them into a single category (‘other undergraduate’). We considered that this was likely to create too many numerical thresholds and indicators, which would result in sparsely populated indicators and thus reduce our ability to test an individual provider’s performance with sufficient statistical evidence.
- c. Respondents to the phase one consultation made other suggestions for different course types that might be considered separately, including degrees with integrated foundation years, distance learning courses, sandwich courses and accelerated degrees. We have described our reasoning for not taking this approach in our phase one analysis.

131. We recognise that for some indicators there will be a limited number of providers for which we are able to construct indicators. For example, only a small number of providers offer part-time undergraduate courses with postgraduate elements. We propose that in setting numerical thresholds for such courses we would consider both the available data and our approach to other similar course types when making a judgement about the level of a numerical threshold. We would also consider how the performance of a single provider has affected the sector averages when deciding the level of a numerical threshold, to mitigate the risk of a single provider distorting that numerical threshold.

132. We do not propose to set separate numerical thresholds for courses for which we do not have appropriate data. In particular, we do not propose to set numerical thresholds for the following types of courses:

- HTQs.
- modular provision that might be funded in future by the Lifelong Learning Entitlement
- TNE courses.

133. This is because we think that there is not sufficient data (in the case of HTQs) or that we do not yet have appropriate indicator definitions (in the case of modular provision and

transnational education) to set numerical thresholds. We consider that there would be value in setting separate numerical thresholds for these courses in the future, as more data becomes available or as we develop new indicators that measure positive outcomes for students studying on these courses. The introduction of such numerical thresholds would be subject to a separate consultation.

Proposals for how to set numerical thresholds

134. We propose to use our regulatory judgement to set numerical thresholds that represent the point at which the OfS would consider intervening to ensure providers are delivering positive outcomes for each indicator. We propose to:
- a. Use anonymised data on performance across the sector to determine a ‘starting value’ for each numerical threshold. This ‘starting value’ represents the absolute level at which we do not think it would be necessary to intervene to protect students.
 - b. Use our Exploring Student Outcomes analysis (which shows the impact on historical performance of different student and course characteristics) to adjust the starting value if necessary.
 - c. Consider the proportionality of setting a numerical threshold at that level, including testing the proposed numerical threshold against individual provider benchmarks.
135. We have considered which of the populations we should use as the basis for setting our proposed numerical thresholds. We have decided to propose that we should use the ‘taught or registered’ population because we consider that this view best reflects the outcomes which individual providers deliver for their students. This is in line with our approach set out in paragraph 73 that our proposals may result in accountability for the same students sitting with more than one registered provider.
136. The proposed approach means that a relatively small number of students will count towards the indicators for more than one provider. We anticipate that this will affect no more than 5 per cent of students for most indicators. The effect of this is that an individual provider’s point estimates may be different from their value if we had chosen to use a different population. As a result, the median values that we use to inform where we set our numerical thresholds would change. However, given the size of this student population we expect such difference to be marginal in almost all cases.
137. The alternatives we could have used include the ‘taught only’, ‘registered’ or ‘taught and registered’ populations. We considered whether it would be better to use these populations as the basis for setting our numerical thresholds. We consider that these would be less appropriate as they would represent only a partial view of the outcomes each provider is delivering for its students. This is because these views would, in different ways, exclude students that were subcontracted in to or out from a provider. This effect could be significant for some smaller providers where excluding ‘taught only’ or ‘registered only’ would result in them having a much smaller student population.
138. We propose that the level at which numerical thresholds are set would also be informed by the following discretionary factors:
- a. Our policy ambition to ensure a minimum requirement for outcomes for students from all backgrounds regardless of what or where they study.

- b. Value for money considerations. This relates to our regulatory judgement about whether a numerical threshold would be sufficient to protect the interests of students and taxpayers. We anticipate that we may consider this factor relevant in cases where a numerical threshold would otherwise result in students and taxpayers funding higher education courses where the majority of students are unlikely to receive a positive economic benefit from their experience of higher education.
- c. We will operate from a starting point that the English higher education sector is in general high-performing. It would therefore not normally be reasonable to set numerical thresholds any higher than the average performance of the providers registered with the OfS.
- d. Guidance from the Secretary of State. In a recent statutory guidance letter the Secretary of State asked the OfS to establish universal minimum requirements, and the content and process by which such standards can be established and, if necessary, adapted in the future in a clear and robust way.
- e. The Public Sector Equality Duty.
- f. The OfS's general duties in section 2 of HERA.

139. These factors are not individually determinative of where a numerical threshold should be set. We will use our regulatory judgement to balance these factors when setting numerical thresholds. For example, if we were setting a numerical threshold in relation to a particular indicator where the English higher education sector was not particularly high-performing (noting that we do not consider this to be the norm), this might result in a low numerical threshold that would not ensure a minimum requirement for outcomes for students from all backgrounds regardless of where they study, or adequately protect the interests of students or taxpayers. In such circumstances, we may consider it reasonable and proportionate to set the numerical threshold higher than the sector average to protect student and taxpayer interest, even if that results in the performance of many providers being below the numerical threshold.

140. We do not expect to set numerical thresholds that would automatically rise over time. Instead, we propose to review them every four years to correspond with the assessment cycle for TEF. We consider that this will result in lower regulatory burden, while still ensuring that numerical thresholds are updated at appropriate intervals, to ensure minimum requirements for student outcomes remain reasonable and proportionate and appropriate to protect the interests of students and taxpayers.

141. The detailed description of our proposed approach to setting numerical thresholds is set out in Annex E. A summary of our proposals is set out below.

Identifying a starting point value

We propose to set a 'starting point value' representing the level of performance at which we consider we would not need to intervene to protect students. We will use anonymised data on the sector's historical performance, including sector distributions and averages (weighted and unweighted), to identify this point. We would not generally expect this point to be higher than the sector average performance.

Consideration of contextual factors

The purpose of this step is to account for the impact that different relevant contextual factors may have had on student outcomes in the past four years of data that contribute to the indicators.

After identifying a starting point value, we would consider data that shows the historical variation in performance for students with different characteristics, including combinations of characteristics. We propose making a downward adjustment if this data shows a marked difference in the outcomes of different groups of students. This will allow us to identify the point at which we would not need to intervene, having taken into account the impact of contextual factors we can observe in sector-level data.

We will use information from our Exploring Student Outcomes analysis to understand the general impact that different student and course characteristics currently tend to have for all providers in England. This analysis uses statistical modelling to identify the extent to which gaps between the outcomes of different student groups can be explained by other factors.³⁵ We will use this analysis to inform our view of whether a downward adjustment from the starting point value is necessary for each indicator.

We will also test our proposed numerical thresholds against individual provider benchmarks. We may make further downward adjustments if a significant number of providers have performance below the proposed numerical threshold, but above their benchmark. We may do this because if there were a large number of providers in this position it would indicate that the contextual analysis at a sector level had not sufficiently accounted for variation in context at an individual provider level.

Final numerical threshold

Having made the adjustments set out above we will consider the discretionary factors and make a final judgement about the appropriate level for the final numerical threshold.

Proposals for the levels for each numerical threshold

142. Table 1 sets out the numerical thresholds that we propose to set if we use the process set out in Annex E. We have set out how we have reached our judgement on each of these numerical thresholds in a separate document.³⁶

143. We consider that our proposed process would result in numerical thresholds that set a high bar, which takes account of context and will maintain public confidence in the performance of individual providers and the higher education sector in England more generally. We propose that the numerical thresholds will be set at a level which high quality providers recruiting any types of students to any subject should meet.

³⁵ The Exploring Students Outcomes analysis can be found in the supporting documents published alongside this consultation at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

³⁶ See 'Setting numerical thresholds for condition B3', available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

Table 1: Summary of proposed numerical threshold levels

Level and mode of study	Continuation	Completion (cohort tracking)	Completion (composite indicator)	Progression
FT Other UG	75%	65%	65%	45%
FT First Degree	80%	75%	75%	60%
FT UG / PG border	85%	85%	80%	80%
FT PGCE	85%	85%	85%	85%
FT PG Taught Masters	80%	80%	80%	70%
FT PG Other	80%	80%	80%	85%
FT PG Research (PhD)	90%	75%	75%	85%
PT Other UG	55%	55%	55%	65%
PT First Degree	60%	55%	55%	75%
PT UG / PG border	60%	60%	60%	80%
PT PGCE	75%	75%	75%	85%
PT PG Taught Masters	65%	65%	65%	85%
PT PG Other	65%	60%	65%	85%
PT PG Research (PhD)	70%	60%	60%	85%
Apprenticeship – UG	70%	55%	55%	75%
Apprenticeship – PG	80%	80%	80%	80%

Note: 'FT' = 'full-time'; 'PT' = 'part-time'; 'UG' = 'undergraduate'; 'PG' = 'postgraduate'.

Why we are making this proposal

Reasoning for which numerical thresholds to set

144. The regulatory framework sets out that the OfS will set and enforce minimum requirements for student outcomes based on numerical indicators. Setting numerical thresholds for student outcomes is necessary to provide clarity for providers, students, and other stakeholders about the OfS's minimum requirements. Our proposals also ensure that there is transparency about how we would determine the level at which we should set the numerical thresholds.

145. Respondents to the phase one consultation were generally in favour of setting thresholds for the proposed indicators because they are well established and already routinely used by providers.³⁷ The majority of respondents agreed that it is appropriate to set different numerical thresholds for different levels of study. There was also a significant number of comments about the potential regulatory burden associated with the number of indicators.

146. We take the view that setting numerical thresholds for the indicators proposed in paragraph 129 will strike a balance between the total number of numerical thresholds we set and the structural differences in types of courses that result in variation in performance. This will

³⁷ Measures similar to those set out in these proposals have been used by HESA and for other sector-wide purposes for many years. The exact definitions proposed in this consultation are different from previous outcome measures, for example those used by HESA in its performance indicators, but we are satisfied that the approach to measuring these outcomes is broadly in line with previous approaches.

provide clarity for providers and students without creating an overwhelming number of numerical thresholds.

147. In reaching this view we have considered the responses to the phase one consultation. For example, some respondents suggested that it might not be appropriate to set different numerical thresholds for part-time students because this would not be in line with setting minimum requirements for outcomes for all students. We take the view that there are structural differences for part-time courses, in particular the length of the course when compared with the length of an equivalent full-time course, which mean it would not be appropriate to set the same numerical thresholds as for full-time courses. We have clarified in the proposed drafting of condition B3 that we are concerned with the outcomes for cohorts of students.

Reasoning for approach to setting numerical thresholds

148. Respondents to the phase one consultation broadly agreed that sector performance should be taken into account when setting numerical thresholds but argued that context, and in particular student characteristics, should also be taken into account. They suggested that numerical thresholds should not be set at a level that might disincentivise providers from recruiting students from underrepresented groups, and that we should consider analysis that shows the historical impact of combinations of characteristics on performance.

149. Our view is that higher education should deliver comparable outcomes for students from all backgrounds and we should not accept that it is inevitable that students from some groups will have worse outcomes. Some providers have persistently poor outcomes over time, and this suggests that regulatory intervention to require improvement is needed. Our experience is that some providers may unreasonably seek to justify poor performance on the basis that student demographics mean that performance cannot be improved. We do not consider this acceptable for students or taxpayers. It also risks damaging the reputation of the English higher education sector, as the majority of providers support students from these groups to achieve positive outcomes.

150. We acknowledge that there have historically been differences between outcomes for groups of students with certain shared characteristics. We have therefore amended our proposals from the phase one consultation to include the use of analysis that shows us the likely impact of student characteristics on historical performance. We propose to use this analysis to inform the level of numerical thresholds to ensure that appropriate consideration is given to student characteristics. This is in addition to the consideration that we propose to give to relevant information about the context in which an individual provider is operating when we assess its compliance with condition B3.

151. We consider it important to set numerical thresholds that account for sector performance but are also adjusted for known variations in current performance for different student groups. Such an approach sets an expectation for the minimum level of performance for all providers regardless of the type of students they recruit. We see setting numerical thresholds as an integral part of our approach to ensuring a high quality sector, as a consumer protection mechanism, and a safeguard of taxpayers' interests.

152. Our proposals involve regulatory judgement to determine individual numerical thresholds. We could have proposed an approach that was more formulaic, for example targeting the bottom 10 per cent of providers in the sector or setting numerical thresholds a fixed distance from the overall sector rate. We consider that such a formulaic approach would not enable us to

achieve our policy aims and might have resulted in perverse outcomes. For example, it might have resulted in numerical thresholds that were very high because performance for the sector as a whole in a particular indicator is very good; for example, continuation rates for taught postgraduate courses are consistently high and a formulaic approach might have resulted in a numerical threshold that required almost all students to achieve positive outcomes. The proposed approach will instead allow us to balance the factors set out in paragraph 138 and ensure we have had regard to the Secretary of State's guidance that 'providers delivering high quality provision and strong outcomes for students should not be adversely affected by additional unnecessary bureaucracy or reporting in relation to quality.'

153. We propose to use the same numerical thresholds for a four-year period. We could have set thresholds at a lower level and increased them over time to the levels we are proposing to give providers an opportunity to adapt to the new thresholds. We have not proposed this, because we do not consider it appropriate to expose students to lower levels of performance in the period before our minimum requirements are in place. We also think that there is greater clarity in proposing fixed numerical thresholds for a fixed period of time.
154. We could have proposed an approach that continuously 'ratcheted up' numerical thresholds over time. We are not proposing to do this because we are not seeking to drive continuous improvement through this element of our regulation. We propose that we use other regulatory activity to promote improvement and the pursuit of excellence beyond the minimum requirements that relate to quality. This means that we will rely on the TEF as well as other mechanisms (including information, advice and guidance, funding, and data transparency) to encourage providers to improve beyond our minimum requirements.

Reasoning for the level for each numerical threshold

155. We have set out in a separate document our reasoning for the levels for each of our proposed numerical thresholds.³⁸

What would the effect of this proposal be?

156. Adopting the approach set out in paragraphs 134 to 141 and Annex E would result in published numerical thresholds against which we would test whether a provider was achieving positive outcomes for its students once the context of its performance is taken into account. The numerical thresholds would apply to all providers as set out in the proposed condition B3.
157. This means that these numerical thresholds would be the starting point for an assessment of whether a provider satisfied initial condition B3 (i.e. whether the OfS would register that provider) or of whether a registered provider continued to comply with ongoing condition B3. As set out in the proposed condition, performance below these numerical thresholds would not automatically mean that the provider would not satisfy initial condition B3 or be in breach of ongoing condition B3.
158. The use of numerical thresholds would also have the effect of identifying providers and areas of their provision where we may consider that performance does not meet our minimum requirements and so would wish to intervene. We do not propose to reach a judgement for each indicator where performance is below a numerical threshold in the first instance, and propose adopting the prioritisation approach set out below. We propose to rely on publication

³⁸ 'Setting numerical thresholds for Condition B3', available to download alongside this document at www.officeforstudents.org.uk/publications/consultation-on-a-new-approach-to-regulating-student-outcomes.

of information about providers' performance to incentivise all providers to meet our minimum requirements.

159. The proposals would result in numerical thresholds that would apply to all providers regardless of the students they recruit, set in such a way as to take account of the historical performance of the English higher education sector. They would have a positive effect on equality of opportunity because providers would be incentivised to support all students, regardless of their background, to achieve positive outcomes.

How would we implement these proposals?

160. These proposals have been reached using indicators derived using the definitions set out in our data indicators consultation. We are seeking views on the proposed individual numerical thresholds in Table 1 through this consultation, and we are separately seeking views on the definitions set out in the indicator consultation.

161. We plan to review the proposed approach to setting numerical thresholds, and the thresholds themselves, in light of responses to this consultation. We will also consider the impact of any changes made to the indicators as a result of the indicators consultation.

162. If we adopt the proposals set out in this consultation, we anticipate publishing final numerical thresholds at the same time as we publish data about the performance of individual providers and the English higher education sector as a whole (see 'Proposal 8: timing of implementation' for more details).

Questions relating to Proposal 3

Question 5: Do you agree or disagree with our proposed approach to setting numerical thresholds set out in Annex E? If you disagree, please provide reasons and any alternative suggestions.

Question 6: Do you agree or disagree with the proposed numerical thresholds set out in summary in Table 1 and shown in full in See 'Setting numerical thresholds for condition B3' (available at <https://www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/>)?

Proposal 4: Publishing information about the performance of providers in relation to the OfS's numerical thresholds

What are we proposing?

163. We set out proposals for a general policy for publishing regulatory information about providers in a separate consultation.³⁹ This section therefore sets out proposals for publication of data and information that relate specifically to our regulation of student outcomes. Any approach that we take in future in relation to this proposal will take account of the outcomes of our consultation on our general approach to the publication of information about providers.

164. We propose to publish the following information for each registered provider as part of our regulation of student outcomes:

- its student outcomes as shown by indicators and split indicators for each of our student outcome measures
- its performance in relation to our numerical thresholds
- information about the statistical confidence we have in the performance shown in those indicators
- the provider's individual benchmarks.

165. We propose to publish this information via a dashboard on our website. We will explore the possibility of linking this information directly to an individual provider's entry on our Register. We will also publish sector-wide data analysis on our website.

166. We will consider how to link to this information from Discover Uni to provide a route for interested students to understand the performance of individual providers in more depth.⁴⁰ However, we anticipate that Discover Uni itself will remain an important source of information for students about individual courses.

167. We expect the dashboard to be the primary route for stakeholders to engage with data about student outcomes. However, we recognise that there is value in also making the data available in a spreadsheet and in XML, CSV or similar formats. We therefore propose to publish individual provider workbooks. We propose that this should form part of a set of information for providers that includes their annual TEF indicators. We expect this will reduce the complexity and burden of releasing to providers multiple data releases based largely on the same underlying data. These proposals are in line with our wider commitment to open and transparent use of data as set out in our data strategy.

³⁹ 'Consultation on publication of information about higher education providers' (OfS 2020.64), available at www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers/.

⁴⁰ Discover Uni is an official source of information about higher education. It is owned and operated by the UK higher education funding and regulatory bodies. It includes official statistics about higher education courses taken from national surveys and data collected from universities and colleges about all their students. It can be found at <https://discoveruni.gov.uk/>.

168. We take the view that it is important to publish information that accurately represents a provider's performance and our view about its compliance with its conditions of registration in a way that is not open to misinterpretation. We therefore propose to publish information about any action the OfS has taken to address a provider's performance – this is consistent with the position we set out in our earlier consultation on the publication of regulatory information. As set out above, this is intended to create incentives for all providers to comply with our regulatory requirements.
169. We have considered whether we could publish information about individual provider's outcomes and the level of the numerical thresholds separately – in other words choosing not to show the numerical thresholds on data dashboards or provider workbooks. This may limit the risk of misinterpretation of an individual provider's performance based on information published by the OfS. However, we consider that it is likely that third parties could create their own datasets that compare an individual provider's performance with the numerical thresholds. If this were the case, we would lose the opportunity to provide accurate information about the OfS's view of that provider's compliance. We consider this to be less transparent and potentially be more harmful for individual providers than publishing the information ourselves.

Why are we making this proposal?

170. The OfS has set out its view (in the consultation on the publication of information about providers) that it is a matter of strong public interest for the outcomes of and reasons for the OfS's regulatory decisions to be visible. This provides confidence in the regulatory system and is in the interests of the public, any potential students, and other providers that have satisfied the OfS's regulatory requirements. Publication can help to inform students' decisions about what and where to study.
171. Publication of our regulatory decisions is also an important regulatory tool. It allows us to draw attention to providers' performance and incentivise compliance across the sector by raising awareness of the issues identified. This can also mean that we do not have to take other more direct and intrusive regulatory action to achieve compliance. Withholding publication of information and regulatory decisions, and the reasons these have been taken, would affect the right of members of the public, including potential future students, to receive information that the OfS wishes to communicate to them in the exercise of its statutory functions.
172. We wish to ensure that information about student outcomes and the performance of individual providers in relation to the OfS's numerical thresholds is publicly available, in addition to our regulatory judgements about a provider's compliance, because:
- a. Students and other interested parties will be able to identify and understand the performance of an individual registered provider in comparison with other providers and the OfS's numerical thresholds.
 - b. It will protect the reputation of the higher education sector in general by demonstrating that there is widespread performance above the OfS's numerical thresholds.
 - c. We anticipate that it will encourage and incentivise providers to identify and take action to address areas of performance below the OfS's numerical thresholds without the need for more intrusive regulatory action. We expect this to encourage providers to take timely action to improve performance.

- d. All registered providers, regardless of size or data capability, will have access to a standard dataset about the performance of their students. We think this will give all providers a standard tool to assist them in complying with regulatory requirements.
- e. Only publishing information about providers where we had made decisions about compliance would result in only a partial picture being available publicly, because we are proposing to adopt a prioritisation approach to assessment.
- f. We have had regard to the Code of Practice for Statistics (see Annex H for more information) and are committed to openness in our publication of data.

173. Our view is that publication of providers' student outcomes is a mechanism that will incentivise compliance with our regulatory requirements for all providers. Our expectation is that the publication of data will allow a range of stakeholders to easily access information about individual providers' performance. The publication of performance relative to numerical thresholds will help stakeholders (including students) to understand where we may seek to focus our regulatory attention and assess compliance in the future.

174. We anticipate that this information will be used by many providers to supplement the information they use as part of their academic governance arrangements to understand their performance, address areas for improvement, and develop or sustain excellence in teaching. The workbooks may also provide governing bodies with information to understand and mitigate any risk to compliance with condition B3.

175. Several respondents to our initial consultation pointed to the value of providers' existing mechanisms for tackling underperforming pockets of provision. We agree that there are strong benefits to providers improving student outcomes without any further regulatory action. We anticipate that the publication of this data will act as an impetus for these actions.

176. In the phase one consultation, some respondents stated that the publication of data on student outcomes on an annual basis could create additional burden for providers. We also noted other responses to the phase one consultation that indicated the value of the OfS's providing this data for smaller providers that may have more limited data analysis capacity. We are proposing to publish data in all cases because we consider that there will be benefits for all providers to engaging with this data. However, we are not proposing to impose any specific requirements for actions that providers must take in response to the publication of this information. This is because we do not want to generate additional regulatory burden.

177. We consider that the publication of information about student outcomes in relation to our numerical thresholds will also provide a useful tool for students more generally to engage with their provider about its performance.

What would be the effect of this proposal?

178. This proposal would increase the transparency for students and other stakeholders of the performance of individual providers and the whole sector in relation to our numerical thresholds.

179. It would allow users to identify where an individual provider has performance below an OfS numerical threshold, the statistical confidence the OfS has in the evidence underpinning the measurement of that performance and, where we have made an assessment, our decision about whether the provider has met our minimum requirements. As set out elsewhere, we are not proposing that performance below a numerical threshold automatically equates to a breach of condition B3. Under the proposals set out in this consultation, the OfS will not reach

a view on any particular provider's compliance with condition B3 in any given case until it has assessed the provider's performance, having regard to all the circumstances and relevant information that we propose to take into account under the proposals set out in this consultation.

180. We will not take regulatory action in relation to every provider with an indicator below one or more numerical thresholds each year. We may also determine that it is not necessary to take regulatory action in relation to an individual provider's performance below a numerical threshold, where we judge there to be context such that the condition has not been breached.
181. This approach will mean that there may be indicators where a provider's performance is below a numerical threshold and one of the following will be true. We may:
- a. Not have made an assessment of the provider's compliance with ongoing condition B3. In these cases, we intend to provide information alongside the publication to be clear that no assumptions should be made about the provider's compliance with the ongoing condition.
 - b. Have made an assessment of the provider's compliance with ongoing condition B3 and found that there has not been a breach. In these cases, we intend to clearly publish this information and the reasoning for our decision.
 - c. Have made an assessment of the provider's compliance with ongoing condition B3 and found that there has been a breach or that there is an increased risk of a future breach. In these cases, we anticipate that we would publish information about our regulatory decision as in our proposed approach to the publication of information about providers. We would wish to publish clear information about our decision and the reasoning for it. As set out in existing guidance, where we find a breach of a condition, we generally expect to escalate our interventions in a way that is proportionate to the provider's circumstances and the risks to students.⁴¹ We would normally expect to link to this published information from the dataset to allow users to know what action we have taken.
182. In publishing information about individual providers, the OfS has a responsibility to ensure that this information is accurate and not misleading. We are therefore proposing to publish additional information alongside the data, to help users understand the regulatory action, if any, we have taken. The proposal is intended to avoid unintended consequences of students or other parties misinterpreting the data we publish.

How would we implement this proposal?

183. We anticipate that we would first publish data showing the performance of individual providers in September 2022. We consulted in December 2020 on our approach to publishing information about higher education providers. That consultation set out our expectation that we would normally publish information about a provider's compliance with its conditions of registration and any action the OfS has taken in response to non-compliance. We have not made a final decision about that consultation and its outcome will influence how we publish information about an individual provider's compliance with condition B3. We set out our general approach to the publication of statistics in our data strategy. Subject to the outcome of

⁴¹ See 'Regulatory advice 15: Monitoring and intervention – Guidance for providers registered with the Office for Students' (OfS 2020.60), available at www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

the consultation on publication, we anticipate that we would first publish data relating to individual providers in September 2022. We would then publish this information annually.

184. We have provided each individual registered provider with a workbook that shows its performance based on the data definitions proposed as part of this consultation. We anticipate that this will enable providers to identify potential errors in the data that they have previously submitted to HESA or ESFA. We will provide an opportunity through our normal data amendment process for a provider to request changes where this is the case.⁴²
185. If we implement the proposals set out in this consultation, we will provide information about individual providers' compliance alongside the published data on student outcomes. This information will show whether we have assessed that indicator and, if so, whether we found that the provider is delivering positive outcomes for its students. Where this is not the case, we will also provide information about the regulatory action we have taken.

Questions relating to Proposal 4

Question 7: Do you agree or disagree with our proposal to publish information about individual providers' student outcomes and performance in relation to our numerical thresholds, as well as sector-wide data, on our website?

⁴² Details of our data amendment process can be found at www.officeforstudents.org.uk/data-and-analysis/amendments-to-data/data-amendments-process/.

Proposal 5: Making judgments about compliance with condition B3, including consideration of context

What are we proposing?

186. Our phase one consultation set out that we would consult further on how compliance with condition B3 would be assessed in practice. This section sets out our proposed approach and proposals for how a provider's performance in relation to numerical thresholds, along with its context, will be considered in our assessment process.
187. There was considerable support in responses to the phase one consultation for the use of context in any assessment and we have carefully considered these responses as we have developed our proposal. The proposed wording for condition B3 requires a provider to deliver positive outcomes for students on its higher education courses. This represents the minimum requirement that each provider must meet to comply with condition B3. When making judgements about whether an individual provider has met this condition, we propose that we will make a judgement about:
- a. Whether a provider's outcome data for each of the indicators and split indicators are at or above the relevant numerical thresholds set by the OfS.
 - b. To the extent that the provider does not have outcome data for each of the indicators and split indicators that are at or above the relevant numerical thresholds, the OfS otherwise judges that:
 - i. the provider's context justifies the outcome data; and/or
 - ii. this is because the OfS does not hold any data showing the provider's numerical performance against the indicator or split indicator; and/or
 - iii. this is because the OfS does hold this data but the data refers to fewer than the minimum number of students.
188. We propose to assess whether a provider satisfies this condition when it applies for registration if it has returned data to HESA or ESFA.
189. We propose to adopt an annual cycle to consider ongoing compliance for registered providers. We propose that this exercise would not be conducted automatically for all providers, but instead we would select a group of providers each year through a prioritisation exercise (see paragraphs 198 to 203).
190. This section sets out the general approach we propose to take and how this would work in practice for providers seeking registration and on an ongoing basis for registered providers.

Proposed approach to assessing initial condition B3

191. When assessing whether a provider satisfies initial condition B3 (i.e. when a provider first applies for registration, or subsequently asks to change its registration category), we propose to take the following approach:
- a. The OfS will itself assess the provider's compliance with this initial condition and will not commission the designated quality body to undertake assessment activity. Further details are set out in Annex F.

- b. The OfS will consider whether it is satisfied that the initial condition is applicable to the provider.
- c. The OfS will consider whether it is satisfied that it has sufficient statistical evidence that an indicator or split indicator for the provider is below a relevant numerical threshold.
- d. If so, the OfS will consider whether it has evidence that the provider's context means that performance below a numerical threshold nevertheless represents positive outcomes.
- e. If the OfS is not satisfied that it holds such information, it will seek further information about contextual factors from the provider.
- f. If, as a result of the steps above, the OfS is not satisfied that context means the provider's performance represents positive outcomes, it will make a provisional decision that initial condition B3 is not satisfied. The OfS will then consider representations from the provider before reaching a final decision.

Proposed approach to assessing ongoing condition B3 for registered providers

192. We propose to adopt a risk-based approach to regulating registered providers in relation to ongoing condition B3 (see paragraph 20). This is consistent with our normal approach to monitoring and intervention set out in the regulatory framework and in 'Regulatory advice 15: Monitoring and intervention – Guidance for providers registered with the Office for Students'. This section sets out the elements of our approach that are specific to condition B3.

193. The proposed drafting in condition B3 would allow the OfS to make a judgement of compliance for each 'indicator' or 'split indicator'. These terms are defined in the condition and in the box below.

What are indicators and split indicators?

The OfS proposes to set numerical thresholds in relation to three student outcome measures: continuation, completion, and progression.

In the future the OfS may consult on including further outcomes where it determines that there are reasonable statistical measures of the outcomes of cohorts of students on higher education courses.

The OfS produces 'indicators' for each provider that represent the performance of cohorts of students for a particular mode and level for a given student outcome. For example, we produce an 'indicator' for continuation for full-time, first-degree students.

The OfS also produces 'split indicators', in which it disaggregates performance in relation to a specific indicator by time series, subject, student characteristics, course type (for example whether the course has a foundation year) and teaching arrangements.

Annex D contains a visualisation of the data structure we use in our assessment of condition B3.

194. We would consider whether a provider has complied with condition B3 in relation to each separate indicator or split indicator. This enables us to identify 'pockets of provision' where

performance in a specific subject, for students with specific characteristics, or in relation to partnership arrangements, falls below a numerical threshold.

195. We propose to prioritise a group of individual providers for detailed assessment. This is likely to be an annual exercise in the first instance but may occur more frequently as and when the Data Futures project allows us to produce student outcome measures more than once a year. Our proposed approach to prioritisation is set out in below (see paragraphs 198 to 203).
196. Where a provider is not prioritised for assessment, we will not normally expect to undertake any further regulatory activity in relation to that provider's compliance with ongoing condition B3 in that year. This does not, however, mean that a provider's performance would be judged to satisfy the condition if it were to be assessed. It also means that, if we do not assess that performance in any particular year, we could decide that the condition was not satisfied in relation to that performance in a subsequent year.
197. Annex F sets out in detail our proposed approach to the assessment of condition B3. We anticipate that this document will be published as guidance and any material amendments to the approach in future will be subject to further consultation.

Proposed approach to prioritisation

198. Our proposed approach to condition B3 would generate a very large number of indicators and split indicators across registered providers. We anticipate that even an individual provider that is generally performing above our numerical thresholds may have small pockets of provision that are below a threshold. Our risk-based approach to monitoring and intervention, and the resources available to the OfS, mean that we do not propose to assess every possible instance of non-compliance with condition B3. We do not consider that this would be practical, or an efficient, effective or economic use of our resources.
199. We therefore propose to adopt a prioritisation approach to identifying the providers for which we will assess compliance with condition B3 each year.
200. We propose publishing our numerical thresholds and data about individual providers' performance in relation to these thresholds. We expect that this will create incentives for providers to take steps to improve their performance. We anticipate that this will work in tandem with our proposed prioritisation approach to secure compliance by all providers.
201. There are different approaches we could take to identification of the providers we assess each year. We have set out below the approaches to prioritisation we consider would be reasonable, and we propose to use one or more of these each year, separately or in combination. We propose publishing the general approach we are taking to prioritisation in guidance. We may also choose to publish information about our specific approach in a given year (for example, where we choose to focus our regulatory attention on courses or subjects about which we have particular concerns).
202. We are seeking views on these approaches and any alternative approaches that we should consider. We consider the following approaches to be possible, either individually or in combination:
- a. We could take a thematic approach, for example identifying areas of provision where we have a particular concern about outcomes across the sector. This might include, for example, part-time students on other undergraduate courses, or courses of all types in a particular subject, or outcomes for disabled students. We would then prioritise for assessment individual providers with performance below the relevant numerical

thresholds. This approach would allow us to target and focus our regulatory attention on provision, subject areas or student groups where it is needed most.

- b. We could prioritise providers where performance in relation to numerical thresholds suggests that there may be the most severe breaches. We could do this according to either:
 - i. The number, proportion or both of a provider's students covered by indicators below numerical thresholds. This would allow us to tackle potential non-compliance where the impact of a breach is likely to be severe because it affects a large number of students.
 - ii. The distance between the indicator value and the relevant numerical threshold. This would allow us to tackle potential non-compliance where the impact of a breach is likely to be severe because the outcomes achieved by the provider could be significantly below our numerical thresholds.
- c. We could prioritise providers where performance in relation to numerical thresholds suggests that there may be breaches relating to particular groups of students. This approach could allow us to promote equality of opportunity through focusing our regulatory attention on improving outcomes for groups of students within a provider who were achieving outcomes below our numerical thresholds.
- d. We could prioritise those providers for which we have the strongest statistical confidence that performance is below a numerical threshold. This would mean that we would prioritise our regulatory action in line with our general principle (set out in Proposal 6) that, the closer we are to having 100 per cent statistical confidence, the more likely we are to take regulatory action if a provider's performance falls below a numerical threshold.
- e. We could randomly select providers with indicators below a relevant numerical threshold. This approach might act as a compliance incentive, as providers will be aware that there is a possibility that they will be selected for further regulatory attention. We could adopt this approach by:
 - i. Randomly selecting any provider that has at least one indicator below a numerical threshold. This approach would mean that all providers with at least one indicator below a numerical threshold would have an equal chance of selection for assessment.
 - ii. Randomly selecting indicators that are below a numerical threshold. This approach would mean that a provider's chance of selection for assessment would be dependent on the number of its indicators below a numerical threshold.
 - iii. Creating a sampling approach such that the providers selected for assessment were broadly representative of the sector in terms of size or legal form. A truly random approach to selecting providers could result in the OfS only assessing small providers or providers from a particular part of the country.

203. Our prioritisation approach would also take into account our available resources in a given year. When making decisions in line with our prioritisation approach, the OfS will have regard to our general duties under section 2 of HERA, in particular our section 2(1)(f) duty to have regard to the need to use the OfS's resources in an efficient, effective and economic way. We do not expect to undertake the same number of assessments each year, in particular because

the resources available to undertake assessments may also be affected by the volume of ongoing regulatory action from previous years.

Proposed approach to assessment for ongoing condition B3

204. This section sets out proposals for how we would act when we have identified an individual provider for detailed assessment.
205. Responses to our phase one consultation asked for further information about our approach to considering an individual provider's context before deciding on its compliance with condition B3. Our proposed wording for condition B3 means we need to determine whether a provider has delivered positive outcomes. To do this we propose to make a judgment about whether outcome data showing a provider's performance against indicators and split indicators is below a numerical threshold (taking account of the statistical confidence in that performance). If the outcome data of the provider's performance is below the numerical threshold, the OfS will make a judgment on whether the provider's context justifies the provider's outcome data.
206. Our proposed approach would take considerable account of the impact that student characteristics had had on historical performance when setting our proposed numerical thresholds (see Annex E for details). In addition, the numerical thresholds are set using student outcome measures that have been produced in a way that offers benefit of the doubt when considering what should count as a 'positive' outcome (see Annex B, paragraph 2-3).

Proposed scope of assessment

207. We think that we could take two possible approaches to the scope of our assessment once we have decided to assess a provider. These are set out below. Our preference is for Option B, but we are seeking views on the best approach to take, and whether there are alternative approaches that would achieve our policy objectives.

Option A: Assessing only the indicator selected through prioritisation

We could consider only the specific indicator or split indicator that was identified through our prioritisation process.

This approach would be most likely to result in shorter assessments focused narrowly on one area of a provider's provision. For example, if the prioritisation process had selected a provider's 'continuation for full-time first-degree students' indicator, we would only assess that indicator and not any others (even if these were below our numerical thresholds).

We consider that this may have benefits in terms of the speed of assessments and the short-term burden on an individual provider. However, it is possible that this approach would mean that a provider could be subject to multiple assessments in a relatively short period of time because it had multiple indicators selected through the prioritisation process or had a single indicator selected in every prioritisation exercise over several years.

This approach would also mean that the OfS would only form a view of a provider's compliance with condition B3 for the data indicator under assessment, rather than for all the data indicators that were below our numerical thresholds. This could result in multiple other data indicators, which might be affected by the same contextual factors, for which the OfS did not form a view about the provider's compliance. This would mean that we would not be

able to publish information, for example, about our view that a provider was compliant with condition B3 in relation to all the relevant data indicators, even where the same factors applied to each indicator.

Option B: Assessing all the indicators for a provider selected through prioritisation

Once we have identified an indicator for an individual provider through our prioritisation process, we could go on to assess all of the indicators for that provider that are below a numerical baseline.

This approach would likely result in more complex assessments and require greater input from the provider at that time. We consider this approach may have benefits in allowing a provider to have a single, more focused engagement with the OfS. This is because the alternative (Option A) would look at a provider's performance in relation to various indicators at different times and under Option B we would look at all relevant indicators at the same time.

It would also result in us forming a view about any and all performance for that provider that is below a numerical threshold. We would reach a decision about every indicator or split indicator below a numerical threshold and whether that means the provider is compliant with condition B3. This would mean that, for a provider selected through the prioritisation process, we would publish information about our view of compliance in relation to all indicators below a numerical threshold.

This approach would give us a better view of the impact of any potential non-compliance on students, because it would enable us to identify the scale of breaches. This would allow us to make judgements about appropriate interventions to protect student and taxpayer interest across all the provider's higher education courses.

The disadvantage of this approach is that it would result in the OfS and providers spending time and resource on performance that would otherwise not have been identified through our prioritisation process.

Summary of proposed assessment process

208. We propose to follow the steps set out in paragraphs 209 to 217 when conducting our assessments of compliance with ongoing condition B3, regardless of which approach we take to the scope of assessment. The full details of our proposed assessment process for condition B3, including the differences between assessment of the initial condition and the ongoing condition, are set out in Annex F.

Considering whether the OfS is satisfied it has sufficient statistical evidence that a provider is below the relevant numerical threshold

209. Our first step will be to make a judgement about whether we are sufficiently confident that performance is below the relevant numerical threshold.

210. We will operate this test in line with the approach to statistical uncertainty set out in Proposal 6.

Information already known to the OfS

211. Where we are satisfied that a provider's performance is below a numerical threshold, we will then consider whether there is evidence which demonstrates that performance nevertheless represents positive outcomes. We propose to consider the information already held by the OfS, including a provider's individual benchmark.
212. We will seek to understand how the factors included in the benchmark may have contributed to the provider's historical performance, and whether this has already been accounted for in our approach to setting the numerical threshold.
213. We may also rely on other contextual information held by the OfS, particularly where we have made previous assessments of condition B3. This is intended to avoid a provider having to tell us the same information repeatedly.

Engagement with a provider

214. We may contact a provider if we do not identify evidence that leads us to conclude that the provider is compliant with condition B3. This would likely offer the opportunity for the provider to supply additional information about its context that may be relevant to our decision about whether the provider complies with condition B3. We have set out in paragraph 224 the factors that we would expect to consider in relation to a provider's context.

Decision making

215. If we are satisfied that there is no context that means that the outcomes are justified, we will inform the provider of our provisional decision that there has been a breach of ongoing condition B3. We would set out our reasoning and may also include information about any regulatory action we may take, should a final decision be made that there is a breach. The provider would then have a minimum of 28 days to make representations regarding our provisional decision. Representations may include further information about the context in which the provider is operating, or other relevant factors or information the provider considers should be taken into account before the OfS reaches a final decision.
216. We will consider the representations submitted by the provider and will reach a final decision. If we decide that there has been a breach of condition B3, we will set out the reasons for our final decision, and determine whether any further regulatory action is necessary.

Why are we making this proposal?

217. As set out in Proposal 1, we recognise the need to give specific consideration to the context in which a provider operates when making decisions about its compliance with condition B3. We have set out in paragraphs 221 to 224 a range of matters we would consider when assessing a provider's context. This includes a test of the provider's performance against its benchmark, because this provides one consistent way for us to consider factors included in our benchmarking approach. The full proposals for our approach to benchmarking are set out in our data indicators consultation.⁴³
218. There was significant support in responses to the phase one consultation for the inclusion of contextual factors when assessing the performance shown in data, and respondents stated

⁴³ See Proposal 10 in 'Consultation on constructing student outcome and experience indicators', available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data.

this was necessary to ensure its correct assessment and interpretation. Respondents suggested that the OfS should contextualise data when it generates it, rather than seeking additional contextual information from individual providers where courses fall below numerical thresholds, because additional information submitted by providers may not be available to the public.

219. A large number of respondents suggested the use of benchmarking as the most effective and transparent way of taking context into account in any assessment. Respondents said that they did not understand how context could be taken into account fairly and consistently without the use of benchmarking.
220. The most common contextual factor that respondents thought the OfS should consider was student characteristics and their impact on performance, including between different levels of study (because some levels attract larger numbers of students from underrepresented groups).

Our proposed approach to considering a provider's context

221. We propose that we should give appropriate consideration to contextual factors for an individual provider to ensure we have properly interpreted its absolute performance. We will do this as we make judgements about whether the provider's context means that performance below a numerical threshold nevertheless represents positive outcomes. Contextual factors will also be relevant to the regulatory interventions or sanctions that we may decide to impose if we find that the condition has been, or is at increased risk of being, breached.
222. We have taken the view that it would be helpful to expand on the contextual factors that we propose to consider, to provide greater clarity to providers. We have also increased the number of factors we are proposing to take into account in our assessment of an individual provider's compliance with condition B3. This approach is a change from our original proposals, as it specifically adds consideration of a provider's performance against a benchmark value to the information we would consider when seeking to understand a provider's performance. We have decided to do this because we think that it offers a well established approach to understanding an individual provider's performance relative to those of other providers. We do not consider this approach appropriate for setting numerical thresholds (see Annex G for more details of our consideration of alternative approaches). However, given our proposal to explicitly consider the context in which a provider is operating, it is reasonable to use benchmarking as one mechanism to understand the effect that a provider's context may have had on its student outcomes.
223. We propose two broad groups of factors that we would consider in relation to a provider's context:
- a. Factors that may help us to understand the reasons for a provider's historical performance.
 - b. Actions a provider has taken, or will take, to improve its performance, and the extent to which those actions appear credible and sustainable and capable of improving the provider's performance.
224. We have set out below a non-exhaustive list of examples which we may consider in each of these categories. In presenting evidence of context, we expect a provider to demonstrate and explain how that context has affected, or will affect, its performance. These factors would also be likely to be relevant to any decisions about whether to take enforcement action if we found

that there had been a breach. This is because many of the matters set out below would be relevant to our intervention factors. The use of intervention factors in our decision making process is set out in more detail in Regulatory Advice 15: monitoring and intervention.⁴⁴

Factors that are relevant to understanding the reasons for a provider's historical performance

When considering a provider's context we will give consideration to factors where a provider can evidence the reasons for its historical performance. For example, we might consider:

- Evidence of the provider's performance in relation to benchmark values (where these are available). This evidence will be used to understand how an individual provider's outcomes compare with outcomes for similar student groups on similar types of courses, across the sector.
- Any external factors the OfS considers to be outside a provider's control that might reasonably be judged to have affected its past performance. When considering a provider's context, we will give consideration to factors where a provider can evidence the impact of external factors on its outcomes data. For example, this might include:
 - The evidenced impact of the coronavirus pandemic on a provider's performance and whether such impact is broadly consistent with that for other providers.
 - Regional or localised issues that provide evidence of performance different from established patterns. For example, an evidenced rapid change in employment trends in a local area may be relevant to our decision about whether to take regulatory action where a locally recruiting provider was not able to continue its previously positive progression rates.
- Evidence of particular course or profession attributes that are features for that provider, or a small group of similar providers, and result in outcomes consistently below a numerical threshold, which may otherwise be considered positive outcomes. For example:
 - A provider may have courses designed to provide access to a particular profession, but this is not classified as managerial or professional in the way the indicator has been constructed. We may consider this positively where graduates report through the Graduate Outcomes survey that they are using the skills developed on their course, or where graduates are demonstrating above average earnings in Longitudinal Education Outcomes data.

Actions a provider has taken, or will take, to improve its performance and the extent to which those actions appear credible and sustainable

When considering a provider's context we will give consideration to factors where a provider can evidence the impact of actions it has taken or is planning to take to improve its student outcomes. For example, we might consider:

⁴⁴ Available at www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

- Evidence that a provider no longer delivers, or no longer plans to deliver, courses that are included in the indicators, and the reasons for ceasing the delivery of such courses. For example, we propose that we would consider whether a provider had identified poor performance on its courses and taken a strategic decision to cease delivery of those courses. In assessing compliance with the condition in these circumstances, the OfS would interrogate the timing and the provider's rationale for taking that action and would expect to see that a provider had:
 - Taken action to improve its performance before the OfS's interest.
 - Supported its students.
 - Drawn lessons from its underperformance and applied, or intended to apply, these to its other courses.
 - Not sought to evade regulatory action by closing courses with weak performance and launching new courses in their place.
- Evidence of any actions a provider has already taken to improve its performance in relation to numerical thresholds, and the effectiveness and sustainability of these actions. This would include instances where a provider could demonstrate that its aggregate performance for a particular indicator for the past four years was below the relevant numerical threshold because of performance in an earlier year, and that performance showed significant and sustained improvement in the most recent years.
- Evidence of a provider's plans to improve its performance in relation to numerical thresholds, and the credibility and sustainability of those plans. We would consider taking less intrusive regulatory action if a provider was able to demonstrate that it had credible and sustainable plans that were likely to improve performance in a timescale that we agreed was appropriate. In determining credibility and sustainability, we propose considering the following factors:
 - The provider's track record of improving outcomes for its students, and satisfying our quality and standards requirements more generally.
 - The nature of the provider's plans, including whether they are likely to generate improvement in the outcomes identified as of concern.
 - Whether the provider has demonstrated that it will invest sufficient resources to deliver a significant change in outcomes, and its ability to sustain that investment over a relevant period. In making this judgement we may seek additional information about the cost of proposals and consider our own assessments of a provider's financial viability and sustainability.
 - A provider's track record of compliance with other conditions of registration. For example, we may place less reliance on a provider's plans where we have identified concerns about its management and governance arrangements that would be relevant to its ability to effectively deliver those plans.

Why are we making this proposal?

225. We have set out these proposals to ensure our regulatory activities in relation to condition B3 are transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed. We propose to take account of all relevant information when assessing condition B3. This will include taking account of factors that are relevant to a provider's performance and may include the context in which it operates. We consider this to be a fair, reasonable and proportionate manner in which to operate and assess condition B3.
226. Our proposals will provide an opportunity for dialogue with a provider in relation to our assessment of compliance with condition B3 to ensure that we are acting proportionately. There will be occasions where we expect to need less engagement with a provider because we already hold information about its circumstances in relation to similar courses.
227. We noted significant disagreement with our proposals to regulate providers' absolute performance in responses made to the phase one consultation. We have made some changes to our proposed approach and provided more information about implementation to respond to points raised in the consultation.
228. Respondents to the phase one consultation requested further information about the exact weight the OfS would place on different contextual factors. It is not possible for us to set this out formulaically, because each case and circumstance will be different, and this is a matter of regulatory judgement based on the facts of an individual case. However, we are less likely to give weight to factors that we have already taken into account in setting numerical thresholds or when considering a benchmark value. We are likely to put more weight on reliable evidence of a particular circumstance that has affected a provider's past performance that is not reflected in the available data, and where credible and sustainable actions have been identified or taken by a provider which will improve performance in the future. These considerations may affect our view of whether or not there has been a breach of condition B3, and may also be relevant to the nature of any intervention as a result of a finding of a breach, or increased risk of a future breach.
229. We have considered the responses to the phase one consultation as we have set out these factors. Respondents to that consultation listed a number of factors that they asserted were outside of a provider's control. These primarily included:
- a. International, national, regional and local economic and political events.
 - b. Changes in government education, research and funding policies.
 - c. Structural and social inequalities, notably in the labour market.
 - d. Students' personal circumstances, including life events that may occur while they are studying or shortly after achieving their qualifications, which have an impact on their ability to complete their studies and to seek employment or progress to further study.
230. We consider that the list set out in the blue box above will allow us to take these factors into account where there is clear evidence that they have had a material effect on an individual provider that is distinct from wider patterns across the sector. For the factors in paragraph 224 we propose to consider historical differences in performance for students with different characteristics. We also propose to consider an individual provider's benchmark. Regarding the factors in paragraph 224, we agree that students' personal circumstances are relevant and we have taken these into account by setting numerical thresholds in a way that recognises that not all students will achieve positive outcomes.

231. In general, we expect a provider to submit information that is relevant to its particular context. The list set out above in the blue box does not prevent a provider from providing other information. Respondents to the phase one consultation suggested a range of possible contextual factors that we could consider if there was evidence that these were particularly relevant for a provider:

- a. The views of a provider's students and graduates through the National Student Survey and through the graduate voice data from Graduate Outcomes. However, respondents also suggested that the OfS should canvass student opinion more widely to obtain qualitative input. We anticipate that there may be circumstances in which we use evidence from National Student Survey or Graduate Outcomes to understand students' perspectives on outcomes.
- b. Action taken by a provider to improve performance in relation to our numerical thresholds. We have proposed in paragraphs 224 that we will take account of the actions taken by providers in this way.
- c. Trends and previous performance of a provider. We have set out in paragraphs 224 that we would consider trends in a provider's data.

232. There were several contextual factors included in responses to the phase one consultation on which we do not generally expect to place particular weight in our decision making:

- a. A provider's mission and strategy, which would include its approach to access and participation, the role it plays in its locality, other higher education provision in the area and its history and tradition. We do not consider that a provider's mission or strategy is relevant to our consideration of whether it is delivering positive outcomes for students. We do not consider that it is acceptable for students to be exposed to performance below our minimum requirements regardless of the history, tradition or mission of a provider. We take this view because we do not consider that the objectives of a higher education provider should require students to expect to receive less than a minimum level of quality or student outcomes.
- b. A provider's funding, including the amount of public funding it receives, and the length of time the provider has been eligible for the funding. We do not consider that the level of funding a provider receives is relevant to whether it should meet the minimum requirements set by the OfS. Providers are aware of the funding available to them in advance and should be able to plan their courses so that our minimum requirements are satisfied.
- c. The entry tariff for a provider's courses, as this was stated to be an important factor in delivering good student outcomes. We do not agree that lower entry tariffs should be a reason for performance below our minimum requirements. A provider's entry tariff is directly in its control. We expect all providers to meet our minimum requirements and we do not expect providers to recruit students if they are not able to support them to meet these requirements, including in relation to the outcomes those students achieve.
- d. Whether a provider is operating on the basis of New Degree Awarding Powers (DAPs). We have set out separately our approach to monitoring a provider operating with New DAPs. We do not consider that a provider with New DAPs should be exempt from satisfying minimum regulatory requirements.

- e. The sustainability of a provider's performance, specifically in relation to providers that may lack resource or capability to sustain performance even if they are able to demonstrate acceptable performance at the point of assessment. We do not consider that a provider's resources are relevant to whether it should be expected to meet the OfS's minimum requirements. Providers are aware of the OfS's requirements and should not plan to deliver courses if they do not have sufficient resources to meet these requirements.
- f. A provider's reputation among its peers and its comparative performance. We do not consider that a provider's reputation is relevant to our consideration of whether it is achieving positive outcomes for students.

233. We considered the following alternative approaches to considering context and concluded that these would not be appropriate to regulating a minimum regulatory requirement in the English higher education sector. For example:

- a. We considered placing greater weight on a provider's performance in relation to a benchmark value, rather than its absolute performance. This could have resulted in individual numerical thresholds for each provider set in relation to its benchmark. This would have resulted in providers being considered as not meeting our minimum requirements despite performance above the absolute numerical thresholds we are proposing to set. We take the view that this approach would result in disproportionate regulatory action in relation to providers that are generally performing well.
- b. We considered using only benchmarks when considering a provider's context. We took the view that this would be too restrictive because our proposed benchmarking approach can only account for contextual factors that are observable in data. If we relied only on data to understand a provider's context, we would exclude a number of factors that we would otherwise consider relevant, for example actions the provider has taken to improve performance.
- c. We considered using a more determinative test (i.e. treating a provider as compliant with the condition if we had strong statistical evidence that performance was below the numerical threshold but above the provider's benchmark). However, we have concluded that this would not be appropriate because it would be too blunt. For example, there are cases where our proposed approach to benchmarking may result in an individual provider having a significant influence on its own benchmark. This could result in a provider being found to satisfy condition B3 because its own poor performance was reducing its benchmark below our numerical threshold. We take the view that this would be unacceptable, would not adequately protect students from weak outcomes, and would therefore be contrary to the policy intent of these proposals.

What would be the effect of this proposal?

234. The effect of this proposal is to prevent the OfS's numerical thresholds from operating as an automatic mechanism for determining compliance with condition B3. The proposal ensures the OfS considers the context of an individual provider as part of any decision about compliance. The proposal includes the opportunity for a provider to explain its performance and the actions it intends to take to improve, and to seek to demonstrate that it is achieving positive outcomes for students.

Questions relating to Proposal 5

Question 8: Do you agree or disagree with the proposed approach to assessment set out in Annex F? Is there anything we could do to improve the clarity of this information for providers?

Question 9: Do you agree or disagree with our proposed general approach to prioritisation? If you disagree, do you have any alternative suggestions for how we should approach prioritisation?

Question 10: Do you think that the OfS should adopt Option 1 or Option 2 (see paragraphs 207) when defining the scope of each assessment for ongoing condition B3?

Question 11: Do you agree or disagree with our proposals for considering the context of an individual provider when assessing compliance with condition B3?

Proposal 6: Addressing statistical uncertainty in the assessment of condition B3

What are we proposing?

235. We proposed in our phase one consultation that we would construct indicators on the basis of any size of student population and would give consideration to the statistical uncertainty in the data.

Statistical uncertainty and why is it relevant to these proposals

The indicators we propose to use to assess condition B3 are point estimates, meaning that they provide a factual representation of the actual population of students present at a particular provider at a particular time.

If our interest were solely the observation of past events, then it would be appropriate to rely solely on these values. However, we are seeking to use the indicator values as representations of the most likely underlying performance in respect of student outcomes. As the actual students in a provider's observed population are just one possible realisation of many other populations of students who could have attended that provider, or may do so in the future, statistical uncertainty exists because of the potential for random variation in student behaviours and outcomes.

This means that the indicator values may not always be accurate or precise measures of the underlying performance that they aim to represent. Our proposals take account of this uncertainty by using a statistical approach that identifies the range within which each provider's underlying performance measure could confidently be said to lie. The full details of this approach are set out in our statistical methods document.⁴⁵

236. We propose to use indicators for each provider as the first part of our assessment of compliance with initial and ongoing condition B3. As described, for each of these indicators there is a range in which each provider's underlying performance could be said to lie. Our general policy is that we will place more weight on an indicator the more assured we are that the provider's underlying performance is below our numerical threshold. We will have more confidence the closer we are to 100 per cent statistical confidence that this is the case.

237. To explain how we would apply this general policy in practice, we propose to use four different indicative categories that describe the strength of statistical evidence which we would use to guide judgements. These categories are deliberately not discrete, as they describe the strength of statistical evidence, which is on a continuous scale, and are designed to avoid arbitrary divisions; and because the OfS proposes to determine the strength of statistical evidence on a case-by-case basis. The four categories are as follows:

- a. Around 99 per cent statistical confidence would provide compelling statistical evidence on which to make regulatory judgements.

⁴⁵ See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

- b. Around 95 per cent or higher statistical confidence would provide very strong statistical evidence on which to make regulatory judgements.
- c. Around 90 per cent or higher statistical confidence would provide strong statistical evidence on which to make regulatory judgements.
- d. Around 80 per cent or higher statistical confidence would provide probable statistical evidence on which to make regulatory judgements.

238. We propose to use these levels of statistical confidence during our assessment of condition B3. In general, we propose that we would:

- a. Begin an assessment of compliance with condition B3 where we have a minimum of strong statistical evidence (i.e. around 90 per cent or higher statistical confidence).
- b. Take more intrusive regulatory action where we have at least very strong statistical evidence (i.e. around 95 per cent or higher statistical confidence) of student outcomes being below a numerical threshold.

239. We have described elsewhere in our proposals that these different levels of statistical confidence will inform our judgements about whether to undertake an assessment of compliance with initial and ongoing condition B3, whether we would be likely to find a breach of the condition, and what kind of intervention or sanction we might apply where this is the case. We propose applying regulatory judgment in each case, rather than using the categories as a determinative way of deciding whether and how we act.

240. For example, in our proposed assessment process we have said that we would generally expect to undertake an assessment where we have strong statistical evidence that an indicator is below a numerical threshold. This would normally mean that we expect to have around 90 per cent statistical confidence that a provider's underlying performance for that indicator is below the numerical threshold. However, we may judge that it is appropriate to undertake an assessment if we have, for example, 88 per cent statistical confidence. In making this judgement we propose that the following factors may be relevant:

- a. We would be more likely to rely on evidence in which we may have lower statistical confidence, the further a provider's performance is from a numerical threshold.
- b. Where a provider's performance in a range of indicators is below relevant numerical thresholds, these may collectively be of concern such that the statistical confidence we require for each individual indicator will be lower.
- c. We will have regard to our public sector equality duty. This may mean that we choose to rely on evidence in which we may have lower statistical confidence where a provider's performance in relation to students who share protected characteristics is below a numerical baseline.

Why are we making this proposal?

241. We recognise that our use of student outcomes indicators means that we need to identify and address statistical uncertainty in our decision making. In addressing this we have balanced competing factors, as follows:

- a. The potentially negative impact of publishing data that implies that a provider's performance is below a numerical threshold when its underlying performance may not be.

- b. The risk to students if regulatory action is not taken because of higher levels of statistical uncertainty in cases where it may be necessary.
- c. The importance of transparency and for providers to be clear when the OfS is likely to take action.

242. The challenges relate to both data protection issues and statistical uncertainty. We have set out in our separate consultation proposals in relation to the minimum population size we would use for assessment of indicators.⁴⁶

243. We are making these proposals because it is important to present data for students and other stakeholders in a way that properly conveys uncertainty. In setting out our approach to displaying statistical uncertainty we have had regard to the general advice received from the Metrics Peer Review Group and the relevant parts of the Office of National Statistics (ONS) report on statistical elements of the TEF.⁴⁷

244. We have considered alternatives to the proposed approach of using regulatory judgement when determining the weight of statistical evidence necessary to make decisions for individual providers. We consider the following to represent possible alternatives, but we do not consider them appropriate to achieve our policy goals.

245. We could have proposed an approach that would favour regulatory action based on a lower level of statistical confidence. This would have had the following effects:

- a. This could result in more providers being subject to regulatory action as result of performance close to numerical thresholds. This would have increased the impact of our approach on registered providers (see section on regulatory burden).
- b. This could increase the likelihood of 'false negatives' where we act and a provider has underlying performance that is not below a numerical threshold. This would be particularly likely for small providers with wider bands of statistical confidence.

246. We could have proposed an approach that required an even higher level of statistical evidence before we took any regulatory action. This would have had the following effects:

- a. This could result in far fewer providers being subject to regulatory action as a result of performance close to numerical thresholds. This would have reduced the impact of our approach on registered providers (see section on regulatory burden).
- b. This could result in more students studying for longer at providers with performance that is poor relative to our numerical thresholds.

247. We could have adopted an approach that did not include publishing the broad categories we would use when interpreting statistical confidence. This would have resulted in a situation where we would publish an intention to act where we had 'sufficient' statistical confidence without defining this further and making a case-by-case judgement. We considered that this

⁴⁶ See Proposal 11 in www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

⁴⁷ The Metrics Peer Review Group has provided expert peer review of the OfS's proposed statistical methods for future TEF metrics. More details, including membership, can be found at www.officeforstudents.org.uk/advice-and-guidance/teaching/future-of-the-tef/tef-metrics-peer-review-group/. The ONS report is James, Gareth, Daniel Ayoubkhani, Jeff Ralph and Gentiana D Roarson 'Evaluation of the statistical elements of the Teaching Excellence and Student Outcomes Framework: A report by the Methodology Advisory Service of the Office for National Statistics', July 2019.

would have the disadvantage of not allowing providers to understand when and how we may act.

248. We could have adopted a more determinative approach, which reduced the scope of the judgment that we would apply. For example, we could have proposed to avoid regulatory action unless we had 95 per cent statistical confidence that a provider's indicator was below a numerical baseline. This would have had the following effects:

- a. This would have resulted in arbitrary 'cliff edges' where two providers with very similar performance could be subject to different regulatory action. For example, this approach would lead to two providers with the same continuation rates being subject to different regulatory action if we had 94 per cent statistical confidence for one provider and 96 per cent statistical confidence for another.
- b. This could have resulted in an unreasonable narrowing of the circumstances in which we could take action for a breach of condition B3 and we consider there is value to greater discretion in this area.
- c. The approach would have been contrary to the advice received from the Metrics Peer Review Group and the relevant parts of the ONS report on statistical elements of the TEF.

249. We could have placed less weight on statistical uncertainty in our assessments and introduced a minimum cohort size greater than the data protection thresholds we are proposing. Some responses to the phase one consultation suggested this approach but, importantly, did not suggest what should be considered 'too small'. We accept that a smaller population brings greater statistical uncertainty about a provider's underlying performance, but our proposed approach takes this into account, both when we make a decision to assess a provider's compliance with condition B3 and when considering the intrusiveness of any regulatory action we then decide to take. If we excluded cohorts of, say, 100 students, we would not be able to take regulatory action in any such case where a provider was not delivering positive outcomes for its students. We take the view that this would not be fair for all providers and would be likely to reduce confidence in the quality of providers that recruited small cohorts of students.

250. In making this proposal, we have placed weight on the following:

- a. Our general duties that relate to quality, greater choice and opportunities for students, and value for money, because our approach allows us to take action where we have concerns about quality and value for money where there are differing levels of statistical confidence in a provider's underlying performance.
- b. Guidance from the Secretary of State to drive up quality and standards in higher education.
- c. Advice from ONS in relation to the presentation of information regarding higher education statistics.

251. We are seeking views on our proposed approach and on any other steps the OfS could take to provide greater clarity about the impact that statistical confidence may have for individual providers.

What would be the effect of this proposal?

252. The effect of the proposal would be that we would be able to reflect the most likely underlying performance of a provider when publishing data. It will also enable us to make regulatory decisions with sufficient confidence about an individual provider's performance in relation to a numerical threshold, regardless of the size of its student population.
253. In general, the effect of the proposal would be that we would be likely to take the most intrusive regulatory action in relation to condition B3 where we had at least very strong statistical evidence that a provider's underlying performance was below a numerical threshold. We would make an individual judgement about the level of statistical evidence that we required to take a decision in each case. When making this judgement we would consider:
- a. The distance a provider's indicator is from the numerical threshold. We may choose to act with less statistical evidence the further a provider's indicator is from a numerical threshold.
 - b. The intrusiveness of the regulatory intervention that we would wish to make. We would be likely to seek stronger statistical evidence if we intended to deregister or suspend aspects of a provider's registration as a result of a breach of condition B3.
254. This use of judgement will allow us to take a balanced view of a provider's likely performance and act proportionately. Importantly, we think that this approach will allow us to take account of the impact that small cohort sizes may have on statistical measures of student outcomes. This is because smaller cohort sizes are likely to result in estimates of underlying performance that have greater uncertainty.
255. It also means that we would be likely to reach decisions about non-compliance with condition B3 based on differing levels of statistical confidence, depending on the severity of the breach and the intrusiveness of the proposed regulatory intervention. This means that we could act when we had lower levels of statistical confidence in cases where we wished to protect students and taxpayers from serious breaches, and that we could rely on greater statistical confidence where we were proposing our most intrusive sanctions.
256. Our proposed use of statistical confidence would mean that some providers may have indicators below a numerical threshold, but the OfS did not have sufficiently strong statistical evidence that their underlying performance was below that threshold. This means that there will be cases where students may experience outcomes that are below our expectations, but we would not find a breach of condition B3. We nonetheless may consider such providers to be at increased risk of a future breach, and may impose less intrusive regulatory measures until additional years of data result in stronger statistical evidence.

Questions relating to Proposal 6

Question 12: Do you agree or disagree with the proposed approach to using statistical measures when considering a provider's performance in relation to numerical thresholds?

Question 13: Do you have any suggestions for additional steps the OfS could take to provide greater clarity about the impact that the proposed approach to statistical confidence may have for individual providers?

Proposal 7: Taking regulatory action when a breach is identified

What are we proposing?

257. The OfS's established approach to monitoring and intervention is set out in the regulatory framework and in 'Regulatory advice 15: Monitoring and intervention – Guidance for providers registered with the Office for Students' ('Regulatory advice 15').

258. HERA gives the OfS enforcement powers to use if it appears to us that there is or has been a breach of one or more conditions of registration. We have the power to:

- a. Impose one or more specific ongoing condition of registration.
- b. Impose a monetary penalty.
- c. Suspend aspects of a provider's registration, to include suspending access to student support funding or OfS public grant funding.
- d. Vary or revoke a provider's authorisation for degree awarding powers, or revoke a provider's authorisation to use 'university' in its title.
- e. Deregister a provider.

259. The regulatory framework sets out our general approach to the use of these enforcement powers and sets out the processes that we follow if we are minded to impose one or more of these sanctions on a provider.

260. The primary purpose of our enforcement powers is to ensure that a provider takes necessary actions to comply with its conditions of registration. This is particularly important because a breach of one or more conditions means that there is likely to be a material impact on a provider's students and our view is that a breach must be remedied as quickly as possible. Where a breach is not remedied in a reasonable timescale, the OfS would expect to escalate its interventions in a way that is proportionate to the provider's circumstances and the risks to students. Further details of our approach to enforcement, including our approach to escalation, are set out in paragraphs 69 to 92 of Regulatory advice 15.

261. We are not consulting on our approach to monitoring and intervention or the use of our enforcement powers. We are, however, making a specific proposal about how we use our power to impose specific ongoing conditions of registration when we find a breach, or increased risk of a future breach, of condition B3. We have set this out in paragraphs 262 to 263 and are seeking views on this approach. We are also setting our proposals in relation to the other actions we may take where we make a formal finding of a breach of condition B3.

Proposal about using specific ongoing conditions of registration

262. We propose that our general position will be that, wherever we identify a breach of ongoing condition B3, we would normally expect to impose a specific ongoing condition of registration unless it would be reasonable and proportionate to take more intrusive regulatory action, for example to protect the interests of students or taxpayers. We may also impose a specific condition of registration in response to an increased risk of a future breach of the condition. We would normally expect specific ongoing conditions in these circumstances to act as an 'improvement notice'. We propose that this would:

- a. Specify the indicators for which the OfS requires improvement because performance is below a numerical threshold and this is not justified by the provider's context.
- b. Require a provider to improve performance to meet the relevant numerical threshold in a time determined by the OfS, or to take action such that the OfS considers the provider to no longer be in breach of the condition. The period for improvement is likely to vary depending on the area of concern; for example, we may expect improvements in continuation rates to be achieved more quickly than improvements in completion or progression rates.
- c. Require a provider to demonstrate sustained improvement in the relevant indicator, such that the OfS can have confidence that the provider will meet the numerical threshold in future.

263. Nothing in this proposal limits our discretion to take any enforcement action on the basis set out in HERA and described in the regulatory framework and in Regulatory advice 15: monitoring and intervention. Nor does it prevent us from imposing other requirements on a provider through additional specific conditions.

Why are we making this proposal?

264. We are proposing to use specific ongoing conditions to impose 'improvement notices' to provide additional clarity about our approach to condition B3. This is consistent with our approach to monitoring and intervention as set out in the in the regulatory framework and Regulatory advice 15. We may also decide to use any of regulatory tools as set out in HERA and the regulatory framework, including specific conditions of registration that impose other requirements.

What would be the effect of this proposal?

265. This proposal would mean that wherever a provider was found to be in breach of condition B3 we would require it to improve performance within a specified timescale.

266. This proposal would set the general approach that would underpin our enforcement activity when we identify breaches of condition B3. However, there is not a predetermined action that would be taken in all cases. This is because we would take individual decisions about each case and, as a result of considering our general duties and other relevant factors, such as the intervention factors set out in our regulatory framework, we may take different action for providers with otherwise broadly similar performance.

267. We expect that, where we consider it necessary, we may take action that leads to a provider suffering loss of current or future income or damage to its reputation. We take the view that this would be proportionate given the risks to students and taxpayers that arise when a provider delivers weak outcomes for students. Publication of our numerical thresholds and approach to implementation will give providers the opportunity to take pre-emptive action to improve performance such that they will not need to take enforcement action. We also intend, where we consider it appropriate, to provide the opportunity through an improvement notice for a provider to improve without suffering the loss to current or future income that would be caused by the use of our suspension or deregistration powers.

Other actions the OfS may take where we make a formal finding of a breach of condition B3

The TEF

268. We have set out in our separate consultation on the TEF proposals for the way in which a provider's current and previous compliance with the B conditions, including condition B3, would be taken into account in determining eligibility to apply for and retain a TEF award.

⁴⁸The reason for this is that we may not consider it appropriate for a provider to obtain a TEF award that signals 'teaching excellence' if there is or has been a breach of our minimum requirements for student outcomes. We consider that granting such an award in those circumstances could have the potential to mislead students and others about the OfS's view of the quality of a provider's courses and its compliance history.

Degree awarding powers

269. Where the OfS makes a final decision that there is, or has been, a breach of condition B3, we will take that into account in the following ways:

- a. We will consider using our power to suspend the aspects of the provider's registration that relate to the authorisation of DAPs. We would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.⁴⁹ In any decision to impose a suspension we would explain the steps the provider is required to take in order for the suspension to be lifted.
- b. Where the conduct that led to the finding of a breach is ongoing, we would be likely to decide that the provider is not suitable to be authorised for new or extended DAPs.
- c. Where the conduct that led to the finding of a breach is not ongoing, we would be likely to decide to investigate further to determine whether that conduct has recurred such that we would consider there to be a new breach or an increased risk of a future breach.
- d. Where we have previously identified an increased risk of a future breach, we would be likely to decide to investigate further to determine whether our concerns have been resolved or whether there is a new breach.

270. We would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject. We would have regard to the intervention factors set out in paragraph 167 of the regulatory framework and consider, in particular, the proportionality of taking this approach.

271. Where we consider, exceptionally, that it is in the interests of students for a new or extended authorisation to be made (for example because a provider's existing time-limited authorisation is due to expire), we would consider authorising a limited extension of the provider's existing powers to allow it time to take the steps necessary for the suspension to be lifted, or to resolve the issues that resulted in the finding of the breach.

⁴⁸ See Proposal 5 in www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/the-tef/.

⁴⁹ In this context 'new' means powers that the provider has not previously held, whether or not it seeks to hold those powers on a probationary basis.

272. The reason for this approach is that a provider that has breached our minimum requirements for student outcomes would, in our view, be unlikely to be able to exercise its own degree awarding powers securely. If we were to authorise DAPs in these circumstances we would be exposing students to the risk that the provider would not be able to retain those powers, and so would not be able to award the qualifications for which students had registered. That situation would also damage the reputation of the English higher education sector.
273. Where a provider needs to make a fresh application for registration, for example because it wishes to change registration category, or where a merger or acquisition takes place, we will take the following approach:
- a. Where the provider seeking registration is either the same entity, or is a new entity operating the same higher education business as the previous entity, we will take into account the compliance history of the previously registered provider.
 - b. Where the provider seeking registration is a new entity that is not operating the same higher education business as the previous entity, we will treat that provider as a new provider for DAPs purposes. This will mean that the previous provider's track record cannot be transferred to the new entity.⁵⁰
274. This approach is designed to ensure that a provider cannot take advantage of a previous entity's track record for DAPs purposes without also being responsible for that previous entity's compliance history.
275. Similarly, where a provider with DAPs merges with one or more other providers, we will take into account the compliance history of each provider as we determine whether the new entity should be authorised for DAPs.
276. This proposal in relation to degree awarding powers does not affect our ability to take enforcement action, for example to vary a provider's authorisation to restrict its ability to award degrees, or to revoke a provider's existing authorisation. Nothing in this proposal limits our discretion to take such enforcement action on the basis set out in HERA. A provider's compliance history in relation to condition B3 is likely to be relevant evidence in decisions about any such enforcement action.
277. Subject to the outcome of this consultation, we envisage amending the sections of the regulatory framework that relate to DAPs, and other guidance documents, to reflect final decisions on this proposal to take account of a provider's compliance history in relation to condition B3.⁵¹

University title

278. Where the OfS makes a final decision that there is, or has been, a breach of condition B3, we will take that into account in the following ways:

⁵⁰ A provider that has been delivering higher education for less than three years does not have a sufficient track record to apply for full DAPs authorisation. It may instead apply for authorisation on a probationary basis.

⁵¹ We anticipate making changes to 'Regulatory advice 12: How to apply for degree awarding powers' (OfS 2018.46) and 'Regulatory advice 17: Variation and revocation of degree awarding powers' (OfS 2019.48), available at www.officeforstudents.org.uk/publications/regulatory-advice-12-how-to-apply-for-degree-awarding-powers/ and www.officeforstudents.org.uk/publications/regulatory-advice-17-variation-and-revocation-of-daps/ respectively.

- a. We will consider using our power to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title. We would be likely to suspend the provider's eligibility to be authorised for university or university college title. In any decision to impose a suspension we would explain the steps the provider is required to take for the suspension to be lifted.
- b. Where the conduct that led to the finding of a breach is ongoing, we would be likely to decide that the provider is not suitable to be authorised for university or university college title.
- c. Where the conduct that led to the finding of a breach is not ongoing, we would be likely to decide to investigate further to determine whether that conduct has recurred such that we would consider there to be a new breach or an increased risk of a future breach.
- d. Where we have previously identified an increased risk of a future breach, we would be likely to decide to investigate further to determine whether our concerns have been resolved or whether there is a new breach.

279. We would have regard to the intervention factors set out in paragraph 167 of the regulatory framework and consider, in particular, the proportionality of taking this approach.

280. The reason for this approach is that a provider that is not satisfying our minimum regulatory requirements for student outcomes would, in our view, be unlikely to be able to exercise its own degree awarding powers securely. The secure exercise of DAPs is central to the award of university title and therefore in such cases we would not wish to authorise the use of university or university college title. That situation would also damage the reputation of the English higher education sector.

281. Where a provider needs to make a fresh application for registration, for example because it wishes to change registration category, or where a merger or acquisition takes place, we will take the following approach:

- a. Where the provider seeking registration is either the same entity, or is a new entity operating the same higher education business as the previous entity, we will take into account the compliance history of the previously registered provider.
- b. Where the provider seeking registration is a new entity that is not operating the same higher education business as the previous entity, we will treat that provider as a new provider for university, or university college, title purposes. This will mean that the previous provider's track record cannot be transferred to the new entity.

282. This approach is designed to ensure that a provider cannot take advantage of a previous entity's track record for university or university college, title purposes without also being responsible for that previous entity's compliance history.

283. Similarly, where a provider with university or university college title merges with one or more other providers, we will take into account the compliance history of each provider as we determine whether the new entity should be authorised for university, or university college title.

284. This proposal in relation to university and university college title does not affect our ability to take enforcement action, for example to revoke a provider's existing authorisation for university title. Nothing in this proposal limits our discretion to take such enforcement action on the basis set out in HERA. A provider's compliance history in relation to condition B3 is likely to be relevant evidence in decisions about any such enforcement action. To be eligible to apply for university or university college title, a provider must have authorisation to grant

taught awards (other than foundation degree only DAPs) or research awards on an indefinite basis.

285. Subject to the outcome of this consultation, we envisage amending the sections of the regulatory framework that relate to university title, and other guidance documents, to reflect final decisions on this proposal to take account of a provider's compliance history in relation to the conditions for quality and standards.⁵²

OfS public grant funding

286. As set out in the OfS's terms and conditions of funding regulatory action taken in the event of a breach of a condition of registration could result in changes to grant allocations and payments.⁵³

287. Further, the OfS may in the future consult on proposals to take account of a provider's current and previous non-compliance with condition B3 in determining future eligibility and allocations of some types of OfS public grant funding. The reason for this is that we may not consider it appropriate for a provider to receive public funding if it has breached, or is at increased risk of breaching, our minimum requirements for student outcomes. Allocating funding in those circumstances would mean that taxpayers' money was being allocated to providers that were not providing high quality higher education courses.

288. We are noting that regulatory action taken in the event of a breach of a condition of registration could result in changes to grant allocations and payment, and signalling these possible future consultation proposals, in the current consultation, because we consider it important that respondents understand the possible consequences of non-compliance with proposed condition B3 in relation to funding allocations, including eligibility for, and allocation of, funding.

How would we implement this proposal?

289. In line with our proposals on publication of information about providers,⁵⁴ we expect that 'improvement notices' would be published on our website.

290. The imposition of an improvement notice for a provider would be subject to the requirements of section 6 of HERA, which sets out a statutory consultation process for registered providers.

291. In making decisions about whether to impose an improvement notice the OfS will follow the guidance set out in the regulatory framework and Regulatory advice 15.

⁵² We anticipate making changes to 'Regulatory advice 13: How to apply for university college and university title' (OfS 2019.08), available at www.officeforstudents.org.uk/publications/regulatory-advice-13-how-to-apply-for-university-college-and-university-title/.

⁵³ You can find the OfS's terms and conditions of funding at www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-2021-22/.

⁵⁴ See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers/.

Questions relating to Proposal 7

Question 14: Do you agree or disagree with our proposals to impose an 'improvement notice' where we find a breach of condition B3?

Question 15: Do you agree or disagree with our proposals to take account of a provider's compliance history in relation to condition B3 for the purpose of determining eligibility for other benefits of OfS registration?

Proposal 8: Timing of implementation

What are we proposing?

292. We intend to adopt the following broad timetable in considering whether to adopt the proposals set out in this consultation:

- a. The consultation closes on **Thursday 17 March 2022**.
- b. We are aiming to make a decision about whether to adopt these proposals, with or without amendment, around **June 2022**.

293. If we decide to adopt the proposals in this consultation (with or without amendments), we anticipate taking the steps set out below. We have included dates to assist respondents in understanding the possible timing of implementation of the proposed approach. However, these indicative timescales are subject to change and subject to the outcome of this consultation. Therefore, we plan to publish an updated timetable of relevant dates when setting out our response to this consultation. We propose that:

- a. Revised condition B3 and associated guidance comes into effect around July 2022.
- b. Publication of data for all indicators, including final numerical thresholds based on updated data, occurs by around September 2022.
- c. The OfS identifies providers initially selected for assessment in the first year of operation of our new approach through the proposed prioritisation process by around October 2022, although we will continue to monitor compliance with condition B3 on an ongoing basis and further providers may be selected for assessment throughout the year if necessary.
- d. For cases initially selected for assessment in the first year of operation of our new approach in or around October 2022, OfS requests for information from providers would generally take place in or around October and November 2022.
- e. For cases initially selected for assessment in or around October 2022, for which we make a provisional decision that there has been a breach of condition B3, we would generally expect to issue these provisional decisions in or around December 2022, with any final decisions expected to be reached in or around early 2023.

294. In the first year of operation (i.e. following the publication of data proposed in September 2022) of our new approach we anticipate that we would be more likely to use improvement notices to address identified breaches of condition B3.

295. After the first year of operation, we anticipate that we would operate an annual cycle which would consist of the following broad steps:

- receipt of data from HESA and ESFA
- creation and publication of B3 data
- identification of priority cases
- assessment and requests for information from providers
- publication of decisions in relation to compliance with condition B3.

296. We anticipate that the introduction of Data Futures may provide the opportunity for more frequent in-year assessments.⁵⁵

297. The new initial condition of registration would come into effect for any provider submitting an application for registration on or after the date of publication of any final decision. We envisage amending the published guidance for providers seeking registration so that it refers to the new initial condition and sets out our evidence requirements and assessment approach.

Why are we making this proposal?

298. We recognise that the proposed timetable would give providers limited time to respond to the final data we have sent to them after any final decision on our approach. We think that it is nonetheless appropriate to act in 2022 because it is in the interests of students, taxpayers, and the sector in general that we implement our approach to regulating student outcomes. We also consider that our proposal to generally rely on improvement notices to address any identified breaches in the first year of implementation means that this approach is likely to be less intrusive for affected providers.

299. In making these proposals, we have considered factors that support taking early action, including:

- a. Our general duty under section 2 of HERA to have regard to the need to promote quality, and greater choice and opportunities for students.
- b. Guidance from the Secretary of State that he 'would like the OfS to progress rapidly to ensure that a robust enhanced regulatory regime can be operational as soon as possible'.

300. We have also considered our general duty to have regard to the principles of best regulatory practice. We consider that publication of our approach to prioritisation, and focusing on a limited number of providers in the first instance, mitigates the possible concern providers might have about the time they will have to respond to any requests for information we make during the assessment process. All registered providers are currently subject to condition B3, and we expect that this means that they will be aware of their general performance in relation to the outcome measures we are proposing and will also be focused on improving any areas of weaker performance. We think the proposals set out are reasonable given the mitigations we have proposed.

What would be the effect of this proposal?

301. The proposed timings would enable the OfS to take regulatory action to protect the interests of students and taxpayers as soon as possible.

302. The proposals would mean that each provider would have access to its data as soon as possible and a small number would be subject to assessment in 2022. Those providers would need to understand their data and be prepared to engage with us within a relatively short period of time (four weeks).

⁵⁵ You can find more details of our proposals and the consultation at www.officeforstudents.org.uk/publications/consultation-on-data-futures-and-data-collection/.

How would we implement this proposal?

303. We have set out a timetable that is intended to enable registered providers to access the information they need to be able to demonstrate their compliance. In addition:

- a. Each provider will have a reasonable idea of the areas of its courses that may be subject to regulatory intervention, because we are providing data to each provider about its performance in relation to our proposed numerical thresholds as part of this consultation.
- b. We would expect to publish information about our general approach to prioritisation in summer 2022. This would allow providers to understand whether any of their courses could be subject to assessment in the first year.
- c. Where we provisionally conclude that a provider has breached condition B3, the provider would have an opportunity to make representations as part of the decision-making process.

Questions relating to Proposal 8

Question 16: Do you agree or disagree with the proposals for the implementation of the proposed approach to regulating student outcomes? If you disagree, do you have suggestions for an alternative timeline?

Considering regulatory burden on registered providers

Steps the OfS is taking to manage the impact of the proposals in this consultation

304. Throughout this consultation we have made clear that our proposed regulatory approach is risk-based. We consider that this approach will have a meaningful effect in reducing regulatory burden for providers in comparison with our previous approach to condition B3 because it contains a clear method for our prioritisation of cases. We have considered alternative approaches (see Annex G) and do not consider that these would be likely to further reduce regulatory burden.
305. We have considered the impact of these proposals on the administrative burden faced by individual providers. We have designed our proposals to balance the need to protect students and taxpayers and enforce breaches of conditions B3 with reducing the overall impact of these proposals on registered providers.
306. Our proposals will limit the regulatory burden placed on providers because:
- a. The indicators that we propose to use for the purposes of condition B3 will be generated from existing individualised student data.
 - b. We will create indicators for each provider that will allow it to consider its own performance in relation to our numerical thresholds. We expect that providers will incorporate these indicators into their existing monitoring mechanisms. However, we are deliberately not creating a specific obligation that providers should do this.
 - c. We anticipate that providing these indicators will assist smaller providers in particular in understanding their performance, especially where they have very limited data analysis capacity.
 - d. We propose to adopt a prioritisation mechanism that will result in an assessment of compliance for a limited number of providers each year, rather than for every provider that has performance below a numerical threshold. We anticipate that this will create an incentive for providers to seek to address performance that is below a numerical threshold without regulatory intervention.
 - e. We would not normally expect a provider not selected through the prioritisation process to be required to submit any further information to us in relation to its compliance with ongoing condition B3.
 - f. We have proposed to use improvement notices, rather than the more intrusive sanctions available to us, in the first year of operation to reduce the immediate regulatory burden.
307. We accept that our proposals will result in increased burden for a provider that is selected for assessment of potential non-compliance. For such a provider there is likely to be a requirement to provide the OfS with additional information about the context in which it is operating and the effect this may have had on its past student outcomes. This may result from engagement with the OfS or from a provisional decision that there is a breach of condition B3. However, we consider that this burden is reasonable and proportionate given the risk to students and taxpayers that arises from unregulated poor outcomes.

308. We have identified in this consultation two specific areas where we expect our proposals would at some point in the future require an increase in the data submitted by individual providers:

- individualised data about students studying through a partnership arrangement where a registered provider validates the courses of an unregistered provider
- individualised data about students studying on TNE courses.

309. In each case we have committed to further consultation about the detail and potential timing of returning this data.

Questions relating to Considering regulatory burden on registered providers

Question 17: Is there anything else we could consider that would reduce regulatory burden for providers while regulating minimum requirements for student outcomes?

Annex A: List of consultation questions

General questions regarding this consultation

Question 1: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

Question 2: In your view, are there ways in which the objectives of this consultation (as set out in paragraph 7) could be delivered more efficiently or effectively than proposed here?

Questions relating to Proposal 1: Revising condition B3 and associated guidance in the regulatory framework

Question 3: Do you agree or disagree that the proposed wording of condition B3 will enable the OfS to meet its policy objectives? If you disagree, what changes do you think are necessary to do so?

Questions relating to Proposal 2: Constructing indicators to assess student outcomes

Question 4: Do you agree or disagree with the proposals for how we will construct a student outcome measures? Do you have any alternative suggestions?

Questions relating to Proposal 3: Setting numerical thresholds for student outcome indicators

Question 5: Do you agree or disagree with our proposed approach to setting numerical thresholds set out in Annex E? If you disagree, please provide reasons and any alternative suggestions.

Question 6: Do you agree or disagree with the proposed numerical thresholds set out in summary in Table 1 and shown in full in 'Setting numerical thresholds for condition B3'?

Questions relating to Proposal 4: Publishing information about the performance of providers in relation to the OfS's numerical thresholds

Question 7: Do you agree or disagree with our proposal to publish information about individual providers' student outcomes and performance in relation to our numerical thresholds, as well as sector-wide data, on our website?

Questions relating to Proposal 5: Making judgments about compliance with condition B3, including consideration of context

Question 8: Do you agree or disagree with the proposed approach to assessment set out in Annex F? Is there anything we could do to improve the clarity of this information for providers?

Question 9: Do you agree or disagree with our proposed general approach to prioritisation? If you disagree, do you have any alternative suggestions for how we should approach prioritisation?

Question 10: Do you think that the OfS should adopt Option 1 or Option 2 (see paragraphs 207) when defining the scope of each assessment for ongoing condition B3?

Question 11: Do you agree or disagree with our proposals for considering the context of an individual provider when assessing compliance with condition B3?

Questions relating to Proposal 6: How the OfS will address statistical uncertainty in the assessment of condition B3

Question 12: Do you agree or disagree with the proposed approach to using statistical measures when considering a provider's performance in relation to numerical thresholds?

Question 13: Do you have any suggestions for additional steps the OfS could take to provide greater clarity about the impact that the proposed approach to statistical confidence may have for individual providers?

Questions relating to Proposal 7: Taking regulatory intervention when a breach is identified

Question 14: Do you agree or disagree with our proposals to impose an 'improvement notice' where we find a breach of condition B3?

Question 15: Do you agree or disagree with our proposals to take account of a provider's compliance history in relation to condition B3 for the purpose of determining eligibility for other benefits of OfS registration?

Questions relating to Proposal 8: Timing of implementation

Question 16: Do you agree or disagree with the proposals for the implementation of the proposed approach to regulating student outcomes? If you disagree, do you have suggestions for an alternative timeline?

Question relating to Considering regulatory burden on registered providers

Question 17: Is there anything else we could consider that would reduce regulatory burden for providers while regulating minimum requirements for student outcomes?

Annex B: Consideration of our approach to student outcome measures

Considerations relevant to all student outcome measures

1. We have considered comments made in responses to the phase one consultation in developing the proposed definitions for the indicators we will use. We have set these out in detail in our separate data indicators consultation.
2. Detailed proposals for the definition and construction of the indicators for both condition B3 and TEF purposes, and the extent to which they are aligned, are set out in the indicators consultation. This includes proposals to define student outcome measures in a way that offers benefit of the doubt when considering what should count as a 'positive' outcome in the construction of each indicator. This means that, where an outcome could be interpreted in different ways, the measures we propose to construct interpret it as either positive or neutral, rather than treating it negatively. For example, we would treat any level of further study as a positive outcome when measuring progression, rather than requiring study to be at a higher level than the qualification recently obtained.
3. This benefit of the doubt is applied to how we define positive outcomes at the point of construction of student outcome measures and will be applied in the same way for all providers. We set out in paragraphs 221 to 224 how we intend to address circumstances where a provider's context means that those student outcome measures may not appropriately reflect the experience of its students.
4. We have noted points made in response to the phase one consultation about modular study and micro credentials. We recognise that the proposed indicators may not be appropriate measures for positive outcomes for this type of course. Current data limitations mean it is not possible to construct alternative indicators for this type of course.⁵⁶ Our intention therefore remains to consider what might constitute a positive outcome for this type of course and identify the data we would need to measure this on a longer timescale and subject to further consultation.
5. We have proposed an approach to data suppression which means that we will suppress and remove from publication any indicator that refers to fewer than 23 students. We will not publish indicators based on survey data where response rates fall below 30 per cent among the population of students informing calculation of that indicator. A detailed explanation of the reasons for this approach are set out in Proposal 7 of our data indicators consultation.

Construction of a continuation measure

6. We propose to calculate continuation rates based on the percentage of students who continue in higher education after one year (two years for part-time students). For courses that are one year in length or shorter (or two years or shorter for part-time courses), a student who gains a

⁵⁶ We consider the following to be the main issues preventing the creation of suitable indicators for these courses: frequency of data collections (year-end student data and student survey timings); survey coverage for progression indicators; granularity of data collections; and established concepts of positive student outcomes for these courses.

qualification would be counted positively within the continuation indicator. We consider this appropriate because continuation rates provide an early indication of quality concerns.

7. The continuation indicator would track students from the date they enter a higher education provider to their activity on a census date one year and 15 days after they started their course, or around two years after they started for part-time students. The census date is determined for each student individually, based on the anniversary of the start of their course whenever that falls in the year, to ensure that the calculation determines a comparable continuation outcome for all students. For example, if a full-time student started their course on 1 February 2022, their continuation would be tracked to a census date on 16 February 2023. This approach is intended to allow for circumstances in which a student leaves very early in the academic year, which may be for reasons unconnected with the course or the provider.
8. More detailed explanation about the construction of indicators relating to continuation can be found in Proposal 5 of our data indicators consultation.

Construction of a completion measure

9. A number of consultation responses identified possible challenges in constructing a completion measure. We agree that there are different ways to approach this, and we are therefore proposing two possible methods for measuring completion in our technical consultation. The first approach would be a cohort-tracking method that tracks students to measure actual outcomes. This results in a more accurate completion rate that reflects what happened to students; but the data is heavily lagged, particularly for part-time outcomes. The second approach is to construct a compound indicator that uses the rates at which students withdraw from higher education study in a given year to estimate rates of completion. This means the rate calculated may be different from the actual outcomes students achieve, but it does provide more timely values.
10. Our data consultation provides the technical description of both approaches, and we have provided each registered provider with data that shows its outcomes based on both indicators. These show that at a sector level these approaches are broadly comparable in terms of average performance. For example, the sector overall rate for full-time first-degree students is 87.5 per cent using the compound indicator method and 89.5 per cent using the cohort tracking method. You can see full details of our proposals for how to construct these indicators in our data indicators consultation. You can find the full datasets showing the differences between the indicators on our website.⁵⁷
11. We are seeking views through this consultation on which method we should use as our completion measure for the purposes of condition B3. We think that there are advantages to both methods, but our provisional view is that a compound indicator would be preferable as it would offer a more timely view of whether a provider is delivering positive outcomes for students.
12. In the construction of both options for the completion measure, we propose to treat the outcomes of students who have transferred to another course or provider as neutral, and also recognise that completion of a lower award than originally intended could still be interpreted as a positive outcome. We take the view that this, in combination with the way in which we propose to set numerical thresholds and the use of other information about an individual

⁵⁷ The data dashboards are available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/outcome-and-experience-data/.

provider's context in reaching regulatory judgements, will ensure that the use of completion as an indicator remains appropriate.

Construction of a progression measure

13. We propose to calculate rates of progression based on responses to the Graduate Outcomes (GO) survey, which students are invited to complete approximately 15 months after they gain a higher education qualification and which records outcomes for the students who respond.
14. There are currently two years of GO survey responses available. The supporting and indicative data released alongside this consultation uses GO responses of graduates in 2017-18 and 2018-19. If we were to implement the proposals set out in this consultation, the first time we consider compliance with condition B3 in autumn 2022 would include the GO responses of 2019-20 graduates.
15. Some reservations were expressed by respondents to the phase one consultation about the use of the GO survey responses to construct a progression rate. Some respondents suggested that a census point of 15 months is too soon to measure whether students would progress to managerial or professional jobs. Others suggested that current survey response rates mean that it is not representative of student outcomes.
16. When the GO survey was developed, the census point was set later than that of the previous survey, the Destination of Leavers from Higher Education survey, at 15 months after a qualification is awarded rather than six months. This recognised that it was likely to be more meaningful to survey students 15 months after graduation, when they could be expected to have taken up employment or study opportunities. It was recognised that this extended period may however increase the likelihood of lower response rates, and this balance was tested through consultation with providers and others.
17. Our view is that the GO survey is currently the best source of information on what graduates are doing, and we consider that it is appropriate for use for regulatory purposes alongside consideration of contextual factors. Recent research commissioned by the Higher Education Statistics Agency has shown that the responses are sufficiently representative to use without weighting.⁵⁸ We therefore take assurance that GO survey results provide a representative sample of graduates' employment and study destinations for use in the assessment of compliance with condition B3.
18. Further detail on the use of the GO survey is set out in Proposal 7 of the data indicators consultation.
19. We are not proposing to use responses to the questions that ask students to reflect on their outcomes. We think that these questions have potential value in supplementing information about what graduates have gone on to do but, as it is not mandatory for respondents to complete these questions, there is a higher non-response rate. Around a quarter of GO respondents do not answer one or more of these questions. Our view is that the level of non-response to these questions is sufficiently high (coupled with the overall survey response rates) for us not to use these questions for the purpose of condition B3 at this time. Further reasons why we are not proposing to construct measures based on these graduate reflection

⁵⁸ See 'Exploration of statistical weighting in the Graduate Outcomes Survey: technical report', available at <https://www.hesa.ac.uk/data-and-analysis/research>.

questions are discussed in Proposal 7 of our consultation on constructing student outcome and experience indicators for use in OfS regulation.

20. We propose that progression will count positively if a student has progressed to further study at any level, or to managerial or professional employment, at the GO census date 15 months after they were awarded a higher education qualification. This is a change from our original phase one consultation, where we proposed counting a student positively if they had progressed to study at a higher level. It is also a change from the policy in the regulatory framework, which states that we will consider progression to postgraduate study as positive.
21. We are not restricting positive outcomes to progression to a higher level or to postgraduate level study because we recognise that there will be study progression from Levels 4 and 5 to Level 6, which should be counted positively. There are also instances where further study at the same level may be viewed as a positive outcome. We are therefore applying benefit of the doubt to count progression to any level of study positively when constructing the progression indicator.
22. When defining progression to managerial and professional employment we propose to use the ONS Standard Occupational Classification 2020 (SOC) major groupings, using groups 1 to 3 and our intention would be that the measure would reflect any future updates to SOC groupings.
23. Some respondents to the phase one consultation commented that students' motivation for entering higher education may not be solely about achieving a managerial or professional employment outcome and that progression is something over which providers have insufficient influence. We accept that there may be other positive outcomes from higher education, but we take the view that considering the extent to which a provider is preparing students to be able to take up managerial or professional employment is in the interests of both students and taxpayers. For this reason, we do not think it is appropriate to construct this indicator to consider any employment as a positive outcome.
24. Some respondents to the phase one consultation gave examples of certain courses that do not lead to employment classed as managerial and professional, but that lead to valuable employment outcomes that are relevant to the qualification achieved by a student. This includes early years education (nursery), veterinary nursing, teaching assistants, construction and blacksmiths, and other vocational or work-based courses. There were also a number of responses that suggested that freelance or self-employment should be recognised as a positive outcome.
25. Some of the examples that were provided by respondents, such as teaching assistants and veterinary nurses, have been reclassified in relevant codes within SOC 2020 and would now therefore count as a positive outcome. Other examples provided by respondents (such as construction) have previously been taken into account as relevant context as we have assessed progression outcomes for an individual provider, and we would continue to take this approach. As we are proposing to consider performance at subject level this will make it easier to consider these issues.
26. Our technical consultation on the construction of the indicators provides information about the construction of the progression measure. It also explains that we propose to count positively within the indicator graduates who are either self-employed or undertake voluntary work that maps to SOC 2020 groups 1 to 3.

27. In proposing what we define as a positive outcome for the purposes of the progression indicator, we have given the benefit of the doubt to outcomes that might be counted as positive under our proposals. We are also aware that the indicator is likely to be generous in its reflection of positive graduate outcomes on the basis that it only reports the outcomes of those students who have successfully completed their higher education course. Students who did not complete their course are not included in the coverage of the measure and, not having completed their course, are unlikely to be considered as having achieved a positive outcome from higher education. If students who do not complete their course were included in the progression measures, the proportions of students achieving positive outcomes could be observed to be markedly lower than on our current measure. We are separately considering whether students who did not complete their course achieved positive outcomes through our student outcome measures relating to completion.
28. Many of the comments made in responses to the phase one consultation about the proposed progression indicator were about the contextual factors that may affect graduate employment and progression to further study. We have responded to these comments in our proposals for setting numerical thresholds based on trends that affect the whole sector (for examples see Annex E, paragraph 10) but also in our approach to considering the context of individual providers when making regulatory decisions (see paragraphs 221 to 224).

Annex C: Proposed condition B3 and revisions to the OfS's regulatory framework

Condition B3: Student outcomes

Scope and application

B3.1 This condition applies to the quality of higher education provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

B3.2 This condition applies as an initial and general ongoing condition of registration for each **relevant provider** and as a general ongoing condition of registration for any provider that is not a **relevant provider**.

Requirement

B3.3 Without prejudice to the scope of B3.1, the provider must deliver positive outcomes for students on its **higher education courses**.

B3.4 For the purposes of this condition, delivering positive outcomes means that either:

- a. in the OfS's judgement, the **outcome data** for each of the **indicators** and **split indicators** are at or above the relevant **numerical thresholds**; or
- b. to the extent that the provider does not have **outcome data** for each of the **indicators** and **split indicators** that are at or above the relevant **numerical thresholds**, the OfS otherwise judges that:
 - i. the provider's **context** justifies the **outcome data**; and/or
 - ii. this is because the OfS does not hold any data showing the provider's numerical performance against the **indicator** or **split indicator**; and/or
 - iii. this is because the OfS does hold this data but the data refers to fewer than the **minimum number of students**.

Definitions

B3.5 For the purposes of this condition:

- a. '**combination of mode and level of study**' means a specified mode of study combined with a specified level of study, as set out in the **technical documents**.
- b. '**context**' includes, but is not limited to:
 - i. factors that may explain the reasons for a provider's historical performance;
 - ii. actions a provider has taken, or will take, to improve its performance, and the extent to which those actions are **credible**.
- c. '**credible**' includes, but is not limited to, consideration of:
 - i. a provider's track record of improving outcomes for its students;
 - ii. the nature of a provider's plans, including whether they are likely to generate sufficient improvement in the provider's performance; and

- iii. whether a provider has demonstrated that it will invest sufficient resources to deliver a sufficient improvement.
- d. **'designated data body'** means:
 - i. the body designated under Schedule 6 to the Higher Education and Research Act 2017 for the purposes of sections 64 and 65 of that Act; or
 - ii. if there is no such body, the OfS.
- e. **'higher education course'** is to be interpreted:
 - i. in accordance with the Higher Education and Research Act 2017; and
 - ii. so as to include, for the avoidance of doubt:
 - A. a course of study;
 - B. a programme of research;
 - C. any further education course that forms an integrated part of a higher education course; and
 - D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.
- f. **'indicators'** means measures of the extent to which, for each **combination of mode and level of study**, students achieve positive outcomes in respect of:
 - i. continuing in their studies;
 - ii. completing their studies;
 - iii. progressing into managerial or professional employment, or further study; and
 - iv. any other areas as determined by the OfS,as defined in the **technical documents**.
- g. 'minimum number of students' means the minimum number of students set by the OfS in the **technical documents**.
- h. **'numerical thresholds'** means the numerical thresholds set by the OfS in the **technical documents** in respect of the **indicators** and **split indicators**.
- i. **'outcome data'** means data that the OfS considers is appropriate for showing a provider's numerical performance against an **indicator** or a **split indicator**, including but not limited to:
 - i. Data sourced from the **designated data body**;
 - ii. Data sourced from the Education and Skills Funding Agency and
 - iii. Data in respect of higher education provided in any manner or form by, or on behalf of that provider (including but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).
- j. **'relevant provider'** means a provider for which, in the judgement of the OfS, **outcome data** exists in respect of the five year period preceding the date of the provider's application for registration.

- k. **'split indicators'** means the **indicators** broken down into further indicators on the basis of the following:
- i. specified student characteristics, including disability, ethnicity and sex;
 - ii. students' year of entry or qualification;
 - iii. subject type;
 - iv. course type;
 - v. provider partnership and teaching arrangements; and
 - vi. any other bases as determined by the OfS,
- as defined in the **technical documents**.
- l. **'technical documents'** means one or more document published by the OfS from time to time which contain detail about the definitions in this condition.

Summary

Applies to: All registered providers (subject to B3.2).

Initial or general ongoing condition: Initial and general ongoing condition.

Legal basis: Section 5 of HERA.

Guidance

Condition B3.1

1. The reference to higher education provided 'in any manner or form' includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, that postgraduate research courses, the study of modules, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
2. The reference to higher education provided 'by, or on behalf of, a provider' includes higher education provided to students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
3. The reference to 'including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider' means that a provider is required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.
4. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the

avoidance of doubt, this means for example, that a provider delivering courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.

5. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.
6. While this condition can be applied to any higher education within the scope of B3.1, the scope of the condition's operative requirement, set out in B3.3, is set by reference to the definitions of 'indicators' and 'split indicators', which measure the extent to which the provider's students achieve positive outcomes in certain areas. The OfS may decide to make changes to the definitions of the indicators and split indicators in the future, and this would have the effect of changing the scope of the operative requirement.

Condition B3.2

7. A provider applying for registration with the OfS would only need to satisfy condition B3 as an initial condition if it is a 'relevant provider'.
8. A provider is a 'relevant provider' if, in the judgement of the OfS, data showing the provider's performance against the indicators or split indicators exists, and that data relates to any time during the five year period preceding the date of the provider's application for registration. This data could relate to higher education provided in any manner or form by, or on behalf of, that provider. This would cover, for example, data about a provider teaching courses under a subcontractual arrangement with a lead provider, where that data was collected from the lead provider rather than the delivery provider. It could also cover data collected from an entity which no longer exists, for example where a provider has merged with, or divided from, another provider or where a provider has changed its legal name.
9. Where a provider is not a 'relevant provider', the initial condition would not apply and the OfS would conduct its usual registration process without assessing the provider in relation to initial condition B3.
10. All registered providers are subject to condition B3 as a general ongoing condition.

Condition B3.3

11. This paragraph sets out the overall requirement of condition B3, which is that a provider must deliver positive outcomes for students on its higher education courses.
12. The reference to 'higher education courses' in this condition is to be understood in accordance with the Higher Education and Research Act 2017.

Condition B3.4

13. This paragraph explains the meaning of the overall requirement set out in B3.3, namely that a provider must 'deliver positive outcomes' for students on its higher education courses.
14. The OfS will consider a provider to be 'delivering positive outcomes' if it is performing at or above each of the numerical thresholds that the OfS has set in relation to the 'indicators' and 'split indicators'. The indicators and split indicators are measures of the extent to which a provider is achieving positive outcomes for its students in a range of areas. The OfS will assess a provider against the numerical thresholds using data it considers is appropriate,

including but not limited to data sourced from the designated data body and/or the Education and Skills Funding Agency. In making this assessment, the OfS will consider whether there is sufficient statistical evidence to support a view that the provider's performance is at or above a relevant numerical threshold.

15. Where the OfS cannot be satisfied that a provider is performing at or above a relevant numerical threshold on the basis of the data, the OfS will consider whether the context in which the provider is operating nevertheless justifies the provider's outcomes, in that they nevertheless represent positive outcomes for its students. Paragraphs x-x below contain an illustrative non-exhaustive list of examples to demonstrate how the OfS might reach a judgement about a provider's context.
16. Where the OfS does not hold any data on a provider's performance against an indicator or split indicator, or where the OfS does hold data but it refers to fewer students than the minimum number set in technical documents published by the OfS, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from meeting the condition. The minimum number set out in the technical documents is set by the OfS with the primary aim of preventing individual students from being identified from a provider's data.
17. The OfS has published a document which sets out each of the numerical thresholds, the approach it has taken to determine these, and the indicators and split indicators to which they relate.⁵⁹ Where the OfS decides that it is likely to be necessary to make changes to the level at which the numerical thresholds are set, the approach taken to determining the thresholds, or the indicators or split indicators to which they relate, it will consult on revised content of that document.
18. The OfS has published a document [link would be published if proposals are adopted] setting out the approach it will take to assessing a provider's compliance with this condition. Paragraphs 22 to 23 below provide a summary of the main features of that approach. Where the OfS decides that it is likely to be necessary to make material changes to that approach, it will consult on the revised content of that document.
19. The following is an illustrative non-exhaustive list of examples to demonstrate the factors the OfS may consider, and the approach the OfS may take, in determining whether the context in which a provider is operating justifies the provider's outcome data. These factors fall into two broad groups:
 - a. Factors that may help the OfS to understand the reasons for a provider's historical performance; and
 - b. Actions a provider has taken, or will take, to improve its performance.
20. The OfS may consider the following factors which relate to a provider's historical performance:
 - a. Evidence of the provider's performance in relation to benchmark values (where these are available). The OfS may test how an individual provider's outcome data compares to those of other providers for its specific student population using OfS individual provider benchmarks. The OfS will consider whether it has strong statistical evidence that the provider's performance is below a numerical threshold but above its individual

⁵⁹ See 'Setting numerical thresholds for condition B3', available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

benchmark. The OfS is likely to choose to place limited weight on evidence from benchmarking data where a provider makes a large contribution to its own benchmark. For the avoidance of doubt, the OfS will not treat a provider's performance against benchmark values as determinative of whether it satisfies condition B3.

- b. Any external factors the OfS considers to be outside the provider's control that might reasonably be judged to have affected its past performance. When considering a provider's context, the OfS will give consideration to external factors where a provider can evidence the impact of these factors on its outcome data. For example, this might include:
 - i. the evidenced impact of the coronavirus pandemic on a provider's performance and whether such impact is broadly consistent with that for other providers.
 - ii. Regional or localised issues that provide evidence of performance different from established patterns. For example, an evidenced rapid change in employment trends in a local area may be relevant to our decision about whether to take regulatory action where a locally recruiting provider was not able to continue its previously positive progression rates
- c. Evidence of particular course or profession attributes that are unique to that provider, or a small group of similar providers, and result in performance consistently below a numerical threshold, but that may otherwise be considered positive outcomes. For example, a provider may have courses that are designed to provide access to a particular profession, but that is not classified as managerial or professional in the way the indicator has been constructed. The OfS may consider this positively where graduates report through the Graduate Outcomes survey that they are using the skills developed on their course or where graduates are demonstrating above average earnings in Longitudinal Education Outcomes data.

21. The OfS may consider the following factors which relate to actions that a provider has taken, or is planning to take, to improve its performance:

- a. Evidence that a provider no longer delivers, or no longer plans to deliver, courses that are included in the indicators, and the reasons for ceasing the delivery of such courses. For example, the OfS would consider whether a provider had identified poor performance on its courses and taken a strategic decision to cease delivery of those courses. In assessing compliance with the condition in these circumstances, the OfS would interrogate the timing and the provider's rationale for taking that action and would consider whether a provider had:
 - i. Taken action to improve its performance before the OfS's interest;
 - ii. Supported its students;
 - iii. Drawn lessons from its under-performance and applied, or had an intention to apply, those to its other courses; and
 - iv. Not sought to evade regulatory action by closing courses with weak performance and launching new courses in their place.
- b. Evidence of any actions a provider has already taken to improve its performance in relation to numerical thresholds, and the effectiveness and sustainability of those actions. This could include instances where a provider could demonstrate that its aggregate performance for a particular indicator for the past four years was below the relevant

numerical threshold because of performance in an earlier year – and that performance showed significant and sustained improvement in the most recent years.

- c. Evidence of a provider's plans to improve its performance in relation to numerical thresholds, and the credibility and sustainability of those plans. The OfS would expect to see evidence of the actions a provider had already committed to taking to improve performance in the areas in which it had identified concerns. The OfS would consider whether a provider is able to demonstrate that it has credible and sustainable plans that are likely to sufficiently improve performance in an appropriate timescale. In determining credibility and sustainability, the OfS may consider the following factors:
 - i. The provider's track record of improving outcomes for its students.
 - ii. The nature of the provider's plans, including whether they are likely to generate improvement in the outcomes identified as of concern.
 - iii. Whether the provider has demonstrated that it will invest sufficient additional resources to deliver a sufficient improvement in outcomes and its ability to sustain that investment over a relevant period of time. In making this judgement, the OfS may seek additional information about the costs of proposals and consider the OfS's own assessments of a provider's financial viability and sustainability.

Assessing compliance for providers seeking registration

- 22. The OfS will assess a provider's compliance with this initial condition itself and will not commission the designated quality body to undertake assessment activity. It will undertake this assessment through the following broad steps. Further details are set out in associated regulatory advice [link would be published if proposals are adopted].
 - a. The OfS will review a provider's outcome data and consider whether it is satisfied that it has sufficient statistical evidence that the provider's performance against each of the indicators and split indicators is at or above the relevant numerical thresholds. Where the OfS is satisfied that this is the case (for all of the indicators and split indicators), it will determine that the provider has satisfied initial condition B3. The provider's outcome data will be assessed by reference to the principles set out in a document published by the OfS which outlines our approach to statistical confidence [link would be published if proposals are adopted], including the principle that the closer the OfS is to having 100 per cent statistical confidence in the evidence, the stronger it will likely judge that evidence to be.
 - b. Where the OfS cannot be satisfied from the provider's outcome data that its performance is at or above each relevant numerical threshold, the OfS will consider whether there is evidence available to the OfS that the provider's context means that any outcome data that is not at or above a relevant numerical threshold is justified, in that it nevertheless represents positive outcomes for students.
 - c. If the OfS is not satisfied that it holds such information, it may seek further information about contextual factors from the provider.
 - d. If, after following the step above, the OfS is not satisfied that there is context that means the provider's performance is justified, it will inform the provider that it has taken a provisional decision that the provider has not satisfied initial condition B3. The OfS will then consider representations from the provider before reaching a final decision.

- e. Where the OfS does not hold any data on a provider's performance against an indicator or split indicator, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from satisfying the condition.
 - f. Where the OfS holds data on a provider's performance against an indicator or split indicator, but that data refers to fewer students than the minimum number set by the OfS in the technical documents, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from satisfying the condition.
23. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a future breach of the general ongoing condition, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events.

Evidence gathering, assessment and enforcement for registered providers

24. The OfS will prioritise its assessment and enforcement activity for this condition. The OfS will publish the general approach that it will take to prioritisation in guidance. It may also choose to publish information about its specific approach in any given academic year.
25. In addition to this prioritisation process, the OfS will use its general risk-based approach to monitoring as set out in the regulatory framework to identify providers for which assessment of compliance with this condition is necessary, whether or not that provider is, or is likely to be, selected by the prioritisation process.
26. For a provider selected for assessment, the OfS will take the approach set out in [link to document published by the OfS which outlines its assessment approach]. The OfS will assess a provider's compliance with this condition itself and will not commission the designated quality body to undertake assessment activity. Broadly, this approach consists of the following steps:
- a. The OfS will review a provider's outcome data and consider whether it is satisfied that it has sufficient statistical evidence that the provider's performance against each of the indicators and split indicators is below the relevant numerical threshold.
 - b. Where performance below a relevant numerical threshold is identified, the OfS will then consider whether there is evidence available to the OfS that the provider's context means that the performance at issue is justified, in that it nevertheless represents positive outcomes for students.
 - c. If the OfS is not satisfied that it holds such information, it may seek further information about contextual factors from the provider.
 - d. The OfS will use this information to inform its assessment of whether the provider has complied or is complying with ongoing condition B3.
27. Having completed its assessment, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition it will write to the provider to set out the reasons for its provisional decision and set out the evidence it has used to reach this view. The provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.

28. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.
29. Where the OfS considers there to be an increased risk of a future breach, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are necessary, for example, a requirement to report additional matters as reportable events.
30. Where there is, or has been, a breach of this condition, or where the OfS considers there to be an increased risk of a future breach, the OfS may take this into account in the following ways:
 - a. The eligibility requirements for participation in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining eligibility for the TEF.
 - b. Changes to, or removal of, an existing TEF award. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF award.
 - c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.
 - ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for new or extended DAPs.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
 - iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

- d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, it will take that into account in the following ways:
 - i. The OfS will consider using its power to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and

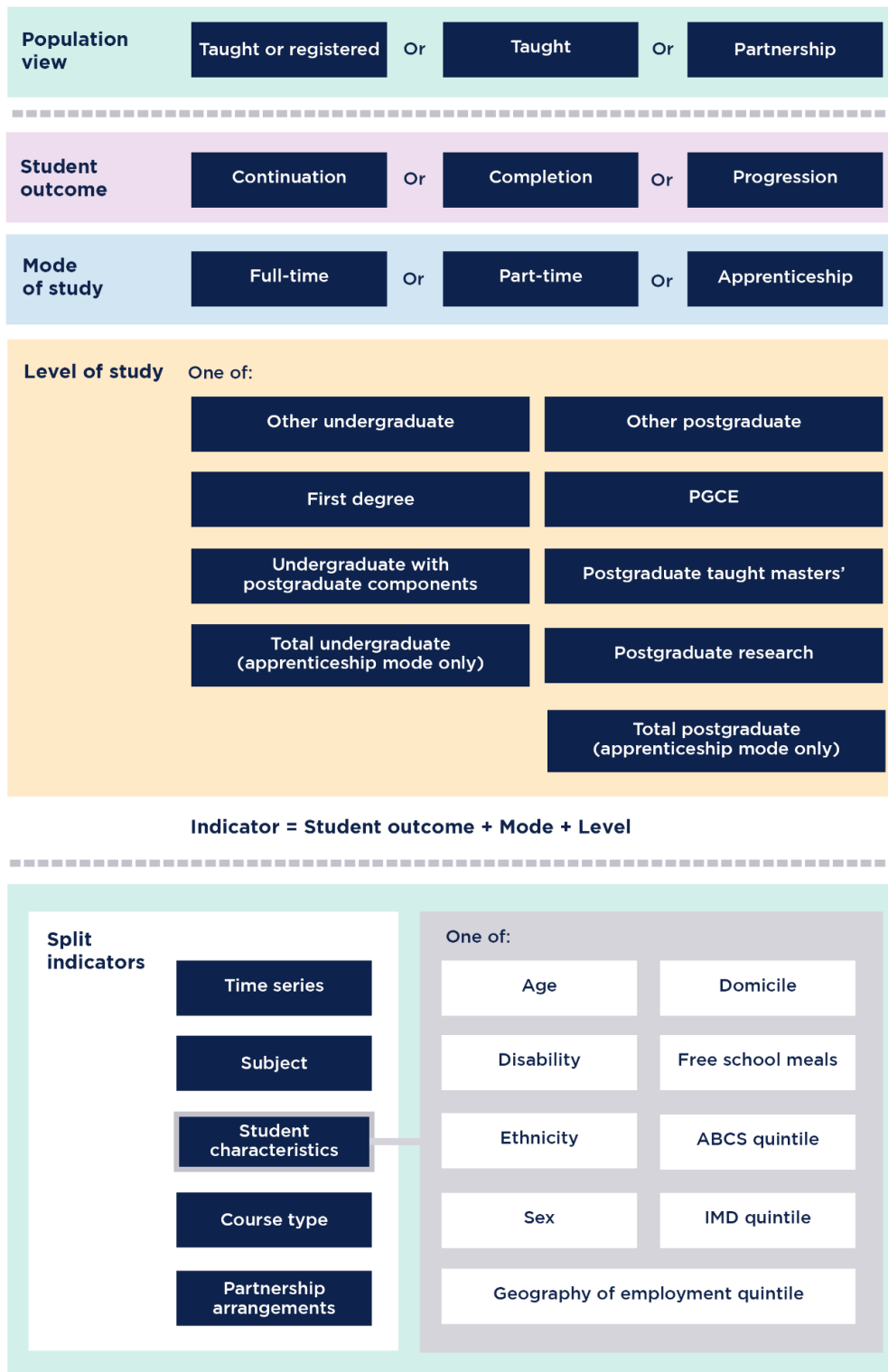
would be likely to suspend the provider's eligibility to be authorised for university or university college title.

- ii. Where the conduct that led to the finding of a breach is ongoing, the OfS would be likely to decide that the provider is not suitable to be authorised for university or university college title.
 - iii. Where the conduct that led to the finding of a breach is not ongoing, the OfS would be likely to decide to investigate further to determine whether that conduct has recurred such that it would consider there to be a new breach or an increased risk of a future breach.
 - iv. Where the OfS has previously identified an increased risk of a future breach, it would be likely to decide to investigate further to determine whether its concerns have been resolved or whether there is a new breach.
- e. The criteria for allocation of OfS public grant funding. The OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Annex D: Proposed data reporting structure for condition B3

- Figure E1 provides a visual representation of the reporting structure we propose using to create indicators and split indicators for our student outcome measures.

Figure D1: Reporting structure for indicators



Annex E: Proposed approach to setting numerical thresholds for student outcomes

1. This annex sets out how we propose to set numerical thresholds. To support respondents to understand the implications of these proposals we have published a document, forming part of this consultation, that sets out the proposed numerical thresholds we would set if we adopt the proposals set out in this consultation.⁶⁰
2. We will make final decisions about whether to impose numerical thresholds, the method for doing so and the level of numerical thresholds following our consideration of responses to this consultation.

Approach to setting a numerical threshold

3. Our proposed approach has three stages:
 - identify the starting point for a numerical threshold using analysis of sector performance
 - consider policy and contextual factors
 - set the final numerical threshold.
4. This annex sets out how this approach would work for each individual indicator for which we propose to set a numerical threshold.

Identification of the starting point for a numerical threshold

5. The purpose of this stage is to make a judgement about the point at which we consider there be to minimal risk that a provider is not delivering positive outcomes. We refer to this as the 'starting point value'.
6. We review the following data sources when considering where the appropriate starting point value is for each numerical threshold:
 - anonymised sector distributions for the indicator⁶¹
 - the mean performance of all students in the sector (the sector overall rate)
 - the median performance of all providers in the sector, both unweighted and weighted by size of provider.
7. There may be exceptions due to the particular data for a given indicator, but this starting point value will generally:
 - reflect the average performance of providers registered with the OfS, considering the sector rate, weighted and unweighted median performance

⁶⁰ See 'Setting numerical thresholds for condition B3', available at www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

⁶¹ These sector distributions are charts that plot data (unweighted for size) where each registered provider is a single anonymised point and performance carries equal value.

- be broadly in line with levels set for other numerical thresholds for similar levels of study.
8. We consider that the English higher education sector generally performs highly, and therefore that a provider with performance at or close to the sector average is in many circumstances likely to be achieving positive outcomes for its students. This being the case, we anticipate that the starting point value will generally be in line with sector average performance. However, there may be occasions when it is close to, but higher than, the overall sector rate. For example, as explained at paragraph 139, if we were setting a numerical threshold in relation to a particular indicator where the English higher education sector was not particularly high-performing (noting that we do not consider this to be the norm) this might result in a low numerical threshold that would not set an appropriate minimum expectation in relation to outcomes for students from all backgrounds regardless of where they study, or adequately protect the interests of students or taxpayers. In such circumstances, we may consider it reasonable and proportionate to set a numerical threshold higher than the sector average, even if that results in some providers being below the numerical threshold, to protect the interests of students and taxpayers.

Consideration of contextual and policy factors

9. Once we have established the starting point value, the next step is to consider whether there are any policy or contextual factors that mean this value should change. This stage ensures that we set a numerical threshold that represents the point at which we consider we may need to intervene to protect students, if there is no context that adequately explains performance for a provider. These adjustments will take account of discretionary contextual or policy factors as set out in paragraph 138.
10. We will consider making further adjustments if:
- a. Our analysis of sector performance indicates a wider distribution of performance when compared with other indicators, particularly for those indicators where there are fewer providers operating or where overall sector averages have been particularly affected by the performance of a small group of providers. We propose considering this adjustment because it will allow us to reflect circumstances where there have been unusual patterns of performance across the sector or where the data used to set a particular numerical threshold is dominated by a small number of providers.
 - b. Our analysis of sector performance for that indicator shows that there has been a generally observable difference in student outcomes in the past, when accounting for particular student or course characteristics for all providers in England. The text in the blue box on the next page sets out how we propose to use this analysis. We propose considering this adjustment because it will enable us to take account of the impact that different student and course characteristics have had in the past on student outcomes. Our regulation of student outcomes is intended to reduce these differences in the future, but we accept that in setting numerical thresholds for the purpose of condition B3 it is appropriate for the time being, to take account of these general historical trends.
 - c. An analysis of individual provider benchmarks shows that, for this indicator, a significant number of providers are below the proposed numerical threshold, but above their benchmark. We propose considering this adjustment because it will enable us to test whether our sector analysis is able to adequately account for the variation of different student populations at individual providers. We consider that this test will allow us to see

whether the adjustment made in paragraph 10.b. has been sufficient to account for the impact of past performance across the higher education sector.

- d. The final level would otherwise not meet our policy objectives or would be inappropriate with regard to our general duties and given our other statutory responsibilities (for example our responsibilities under the public sector equality duty or our responsibility to have regard to guidance from the Secretary of State). We propose considering this adjustment because we are using regulatory judgement to set our numerical thresholds rather than a formulaic approach. This means that we may, for example, make further downward adjustments if we are concerned about the impact on a particular group of students. We expect final levels to represent a point that a reasonable person would interpret as identifying underperformance in the sector. We also expect that there would be broad consistency between numerical thresholds where there is reasonable similarity between types of courses.

How we propose to take account of past student performance

We propose to use our Exploring Student Outcomes analysis to inform our judgment about the general impact that different student and course characteristics have had on student outcomes in the past. This modelling draws on information from all registered providers in England that have previously submitted data.

This analysis shows where particular student, course or provider characteristics have historically been associated with outcomes that are worse than those of other students, once a range of their other characteristics have been controlled for.

We will use the following approach to test whether any further adjustment to the starting point value is needed where we observe such marginal effects:

- We will consider the maximum size of the observed marginal effects of different characteristics and whether it is appropriate to make a downward adjustment that would allow for the impact this gap may have on an individual provider.
- We expect to make a sufficiently large adjustment to allow for the typical variation between individual provider populations and the impact of multiple different characteristics.
- We do not expect to make an adjustment for observed gaps where the population of students covered by those gaps is so small as to make it unlikely that any one provider would recruit such a significant proportion of those students that it would affect its overall performance – we expect that this will mean that we would be less likely to make a downward adjustment for smaller populations of students in the analysis.

The effect of this approach will be to make a single adjustment to the starting point value that accounts for the historical outcomes providers have delivered on different courses and with different characteristics.

Final numerical threshold

11. Following the stages set out in paragraph 10, the OfS will decide on the level of the final numerical threshold.
12. This level will represent the point below which the OfS may need to consider intervention to protect students from a provider not delivering a minimum level of performance in relation to student outcomes. In setting the numerical threshold at this level, we will have taken into account the general context in which registered providers are operating.
13. Subject to the outcome of this consultation and decisions about whether these proposals are taken forward, we would expect this process to result in numerical thresholds that are, in general, higher than those we used as part of the initial OfS registration process in 2018.
14. These numerical thresholds will then be used as part of our assessment of compliance with proposed condition B3.

Annex F: Proposed approach to assessing compliance with condition B3

Introduction

1. This annex sets out the approach that we propose to take to assessing an individual provider's student outcomes and how we will make judgements about whether:
 - an unregistered provider satisfies initial condition B3 and can therefore be registered with the OfS (if the other initial conditions are also satisfied)
 - a registered provider continues to comply with ongoing condition B3.
2. We are consulting on this proposed approach. However, subject to the outcome of this consultation, we anticipate publishing this information as guidance, so the exact wording and presentation of the information below may be adapted to suit publication as an OfS guidance document.

Making decisions about initial condition B3

3. When a provider applies for registration, the OfS is required to assess whether that provider satisfies each of the initial conditions of registration. The OfS has published information about the registration process.⁶² The OfS will therefore decide whether a provider satisfies initial condition B3 as part of the registration process. This section sets out how the OfS will make that decision.

Step1: Is the initial condition applicable to the provider?

4. We propose (see paragraph 45) that the initial condition would apply to any provider for which we are able to produce indicators for at least one of the previous five years..
5. The OfS will decide that the initial condition does not apply to a provider if:
 - the provider has never submitted data about higher education courses
 - the provider has previously submitted data about higher education courses, but that data is more than five years old.
6. Where the initial condition does not apply, and the provider is registered with the OfS, we will consider whether it is necessary to impose regulatory requirements to monitor the provider's performance. Such requirements may include, but not be limited to:
 - a. A requirement for the provider to submit information to the OfS about its student outcomes in advance of the normal data returns.
 - b. The OfS monitoring data from the Student Loans Company about continuation rates for the provider's students.
 - c. A requirement for the provider to publish information about its student outcomes in advance of inclusion of information about student outcomes in Discover Uni.

⁶² See www.officeforstudents.org.uk/advice-and-guidance/regulation/how-to-register/.

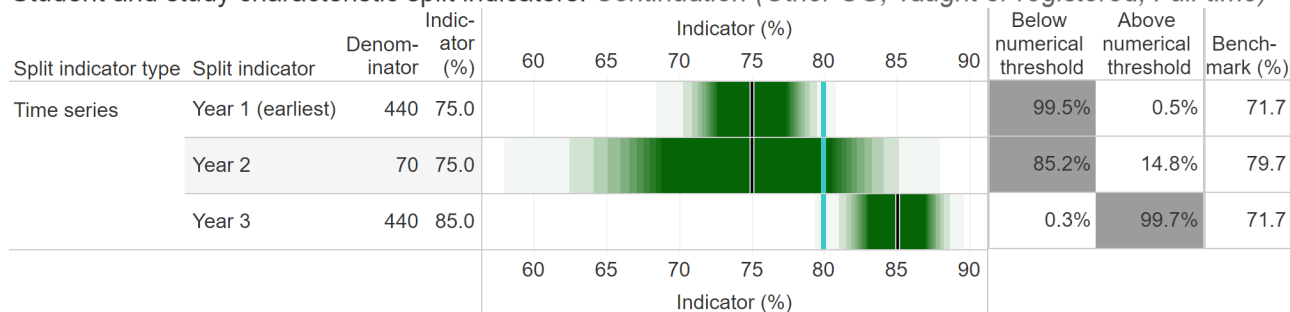
- d. Notification of the OfS’s intention to make a full assessment of the provider’s outcomes on a specific date, regardless of the approach the OfS would normally take to the prioritisation of assessments of ongoing condition B3.
- 7. If we decide that initial condition B3 does not apply to a provider, we will set out the reasons for this decision and any regulatory action we consider necessary alongside our registration decision.
- 8. If we decide that initial condition B3 does apply to a provider, we will move to Step 2.

Step 2: Assessment of a provider’s data in relation to numerical thresholds

- 9. We will complete a full assessment of a provider’s indicators regardless of its performance in relation to numerical thresholds. This means that we will review every indicator and split indicator available in a provider’s student outcomes workbook. For each indicator and split indicator we will consider whether we have sufficient statistical evidence that performance may be below the relevant numerical threshold.
- 10. In assessing each indicator and split indicator, we will consider performance to be:
 - a. Above the numerical threshold if the point estimate is above the numerical threshold.
 - b. Below the numerical threshold if the point estimate is below the numerical threshold and we have very strong statistical evidence that a provider’s underlying performance is below the numerical threshold.
- 11. Figure F1 sets out three examples to show how this would work in practice.

Figure F1: Examples of assessing indicators and split indicators

Student and study characteristic split indicators: *Continuation (Other UG, Taught or registered, Full-time)*



- 12. We will assess split indicators at as part of our consideration of the initial condition. We recognise that many providers applying for registration may have sparsely populated split indicators. This means that assessing split indicators at registration may mean that a provider would not satisfy the initial condition because of a very small proportion of its students. Our proposed approach to data suppression and statistical uncertainty means that this is less likely to occur in practice. This is because we will either suppress the split indicator (if it relates to fewer than 23 students) or take into account the likely wider range of underlying performance when making decisions about whether there is sufficient statistical evidence to determine that the provider’s performance is below the relevant numerical threshold. In addition, our approach to considering context will ensure we understand whether the provider had committed to taking action to improve student outcomes.
- 13. If all of a provider’s indicators are above relevant numerical thresholds, we will normally expect to decide that a provider has satisfied the initial condition. In these cases, the OfS will

not normally expect to impose any additional regulatory requirements in respect of condition B3.

14. The OfS will proceed to Step 3 (see below) if we are satisfied that there is sufficient statistical evidence that an indicator or split indicator is below a relevant numerical threshold.

Step 3: Use of the OfS's existing information

15. We will consider performance below a numerical threshold in relation to the relevant benchmark value for the provider, where this exists. We will use benchmark values to understand whether there are contextual factors that mean the provider's performance is positive despite being below a numerical threshold.
16. We may take this view, for example, where there is evidence that the provider's student population means that the adjustments we have made when setting a numerical threshold do not sufficiently account for historical trends in outcomes for its different student groups. For example, a provider may have a particularly large number of students which we have identified through our use of Exploring Student Outcomes as having significant historical differences in outcomes, but we may not have entirely accounted for these differences in setting the numerical threshold.
17. Where a provider is, or has previously been, registered with the OfS we will consider information we hold as a result of previous assessments.
18. As a result of this step, we may judge that a provider's performance in relation to indicators that are below a numerical threshold is positive. Where this is the case, we will judge the initial condition to have been satisfied.
19. If we decide to register a provider, for each indicator that is below the numerical threshold but nevertheless represents positive outcomes, we will consider whether it is appropriate to take any further regulatory action in line with the approach set out above (see Proposal 7).
20. If, as a result of this step, we do not judge that a provider's performance in relation to indicators that are below a numerical threshold is positive we will proceed to step 4.

Step 4: Engagement with the provider

21. If we have not identified any information as part of Step 3 that satisfies us that the provider has met the requirements in initial condition B3, we will invite it to provide us with any relevant contextual information in relation to indicators where performance is below a numerical threshold (as listed in paragraph 224). This may include any action it is taking to address such performance.
22. We will assess this information and, if we judge that a provider's performance has met the requirements in initial condition B3, we will include this in our assessment of the provider's application for registration. In making this judgement, we expect to consider the contextual factors that we have set out in this consultation (paragraphs 221 to 224 set out further information on the OfS's approach to considering context). We may also take regulatory action to mitigate any increased risk of a future breach of ongoing condition B3. For example, we may impose:
 - a. A requirement for the provider to submit information to the OfS about its student outcomes in advance of the normal data returns.

- b. The OfS monitoring data from the Student Loans Company about continuation for the provider's students.
- c. A requirement for the provider to publish information about its student outcomes in advance of inclusion of information about student outcomes in Discover Uni.
- d. Notification of the OfS's intention to make a full assessment of the provider's outcomes on a specific date, regardless of the approach the OfS would normally take to the prioritisation of assessments of ongoing condition B3.

23. If we do not consider that the initial condition is satisfied, we will proceed to Step 5.

Step 5: Provisional decision

- 24. If the information submitted in Step 4 does not satisfy the OfS that performance below a numerical threshold is nonetheless positive, we will make a provisional decision that the provider does not satisfy initial condition B3. We will write to the provider about this provisional decision and the reasons for it as part of a representations process in respect of a provisional decision to refuse registration.
- 25. The provider will have at least 28 days to make representations regarding the OfS's provisional decision. The provider may take this opportunity to submit further information about the context in which it is operating, or in respect of any other aspect of the OfS's provisional decision.
- 26. If at any stage in Steps 4 or 5, the provider relies on its own data regarding student outcomes we may require the provider's data to be audited to confirm its accuracy and reliability. If a provider refuses to participate in such an audit we may be unable to reach a positive decision about the provider's registration application.

Step 6: Final decision

- 27. When we have considered a provider's representations we will make a final decision about whether initial condition B3 is satisfied and determine the impact this may have on the provider's application for registration.

Making decisions about ongoing condition B3

- 28. When a provider is registered with the OfS it is subject to the ongoing conditions set out in the regulatory framework. These include ongoing condition B3.
- 29. Each year the OfS will identify those registered providers that may be at risk of non-compliance with ongoing condition B3. The OfS will determine which of these providers should be subject to assessment in relation to ongoing condition B3 by considering our prioritisation factors (see paragraphs 198 to 203).
- 30. This section sets out the approach the OfS proposes to take when a provider has been prioritised for assessment.

Step 1: Use of the OfS's existing information

- 31. We will consider performance below a numerical threshold in relation to the relevant benchmark value for the provider, where this exists. We will use benchmark values to understand whether there are contextual factors that mean the provider's performance is positive despite being below a numerical threshold.

32. We may take this view, for example, where there is evidence that the provider's student population means that the adjustments we have made when setting a numerical threshold do not sufficiently account for historical trends in outcomes for its different student groups. For example, a provider may have a particularly large number of students who we have identified through our use of Exploring Student Outcomes as having significant historical differences in outcomes, but we may not have entirely accounted for these differences in setting the numerical threshold.
33. We will further interrogate the data we hold in relation to the indicator we are assessing. This means that we will look both at the indicator we are assessing, the split indicators that relate to it and where necessary the underlying individual student data to develop a full understanding of where performance may be below our numerical thresholds.
34. We will consider other information we hold that is relevant to condition B3. For example, we may have relevant information from previous assessments of a provider's performance in relation to condition B3, from when the provider was first registered, or subsequently.
35. If, as a result of this step, we may judge that a provider's performance in relation to indicators below a numerical threshold is positive. Where this is the case, we will judge the ongoing condition to be satisfied and will confirm this in writing for the provider. We will also publish this information alongside the provider's data on the OfS website.
36. We may take further regulatory action in line with our normal approach to monitoring and intervention, as set out in the regulatory framework. This may include, but not be limited to notifying a provider that we will make a further full assessment of the provider's outcomes on a specific date, regardless of the approach the OfS would normally take to the prioritisation of assessments of ongoing condition B3.
37. If we do not identify evidence that means we judge a provider's performance in relation to indicators below a numerical threshold as positive, we will move to Step 2.

Step 2: Engagement with the provider

38. If we have not identified any information as part of Step 1 that satisfies us that the provider has met the requirements in ongoing condition B3, we may invite it to provide us with any relevant contextual information in relation to indicators where performance is below a numerical threshold. This may include any action it is taking to address such performance.
39. We will assess this information and, if we judge that a provider's performance has met the requirements in ongoing condition B3, we will confirm this in writing for the provider. We will also publish this information alongside the provider's data on the OfS website. In making this decision, we expect to consider the contextual factors that we have set out in this consultation (paragraphs 198 to 224 set out further information on the OfS's approach to considering context).
40. We may also take regulatory action to mitigate any increased risk of a future breach of ongoing condition B3. For example, we may impose:
 - a. A requirement for the provider to submit information to the OfS about its student outcomes in advance of the normal data returns.
 - b. The OfS monitoring data from the Student Loans Company about continuation for the provider's students.

- c. A requirement for the provider to publish information about its student outcomes in advance of inclusion of information about student outcomes in Discover Uni.
- d. Notification of the OfS's intention to make a full assessment of the provider's outcomes on a specific date, regardless of the approach the OfS would normally take to the prioritisation of assessments of ongoing condition B3.

41. If we do not consider that the ongoing condition is satisfied, we will proceed to Step Th3ree.

Step 3: Provisional decision

- 42. If the information submitted in Step 2 does not satisfy the OfS that performance below a numerical threshold is nonetheless positive, we will make a provisional decision that there is a breach of ongoing condition B3. We will write to the provider about this provisional decision and the reasons for it. This notice may also set out the regulatory action we propose to take and our reasons for this.
- 43. The provider will have at least 28 days to make representations regarding the OfS's provisional decision. The provider may take this opportunity to submit further information about the context in which it is operating, or in respect of any other aspect of the OfS's provisional decision.
- 44. If at any stage in Steps 2 or 3, the provider relies on its own data regarding student outcomes, we may require the provider's data to be audited to confirm its accuracy and reliability.

Step 4: Final decision

- 45. When we have considered a provider's representations we will make a final decision about whether there is a breach of ongoing condition B3, and determine whether any further regulatory action is necessary.

Annex G: Consideration of alternative proposals

1. In formulating the proposals in this consultation, we have considered alternative approaches. The following alternatives are summarised in this annex:
 - a. Make no changes to the current approach and apply the requirements currently set out in the regulatory framework.
 - b. Make proposals for more substantive changes to the general approach to monitoring and intervention set out in the regulatory framework.
 - c. Consult only on a proposed approach to regulation that uses student outcomes as a trigger for other regulatory action.
 - d. Make proposals for an approach that relies solely on the use of benchmark factors to consider performance.
 - e. Make proposals for an approach where numerical thresholds determine compliance with the condition.
 - f. Make proposals for an approach where two separate thresholds define performance that may be in need of improvement and performance that is unacceptably weak.

Make no changes to the current approach and apply the requirements currently set out in the regulatory framework

2. We have considered whether it is necessary to make any changes at all to our approach to regulating student outcomes. We have discounted the approach of not doing so, because our experience of regulating in this area over the past two years leads us to conclude that changes are necessary if we are to deliver our regulatory objectives and protect the interests of students and taxpayers.
3. In particular, we consider that our approach to regulating student outcomes, as set out in condition B3, requires further consultation and adaptation on the basis of our proposals outlined in this consultation. This is because we want to expand on the detail in the regulatory framework in respect of assessing B3, and explain the reasoning for our proposed policy changes. By consulting, we can take account of consultees' views in our policy development, and our proposed assessment practices for condition B3 (if taken forward subject to the outcome of this consultation) will be more transparent. We consider that this will mean that we can ensure that we operate and assess condition B3 in a fair, reasonable and proportionate manner.

Make proposals for more substantive changes to the general approach to monitoring and intervention set out in the regulatory framework

4. The proposals in the consultation are designed to work within the general approach to monitoring and intervention set out in the regulatory framework. We have considered whether we should propose more substantive changes to that general approach as it relates to the regulation of student outcomes. For example, we could move away from a monitoring approach that relies on indicators, reportable events and notifications, to one that involves scheduled cyclical quality review for all providers, regardless of our assessment of risk. Our view is that the general risk-based approach contained in the regulatory framework remains

appropriate and proportionate, allowing us to identify and follow up on particular areas of concern.

5. A risk-based approach avoids detailed and burdensome assessment of providers, which is not necessary if the risks to quality and standards are low, and allows regulatory action to be targeted towards providers most at risk of a breach of condition B3.

Consult only on a proposed approach to regulation that uses student outcomes as a trigger for other regulatory action

6. As set out in paragraphs 2 to 5 of this annex, we need to consult on our detailed operational approach to assessing student outcomes. We have, however, considered whether the other elements of this consultation are necessary at this time. Our experience so far of implementing the regulatory framework, including during the period of the coronavirus pandemic, leads us to conclude that these proposals are timely. Further clarity about the way the requirements of condition B3 is expressed, as well as about our approach for registration and monitoring of providers, will enable us to rebalance our approach to be better able to anticipate risks to quality and standards, either for individual providers or for the sector as a whole.
7. We have considered whether we should continue to have a condition that relates to student outcomes. An alternative approach could be to monitor student outcomes data and undertake a broader assessment of quality wherever we identified performance below a particular level. This approach would not be appropriate because it would require us to commission a broader assessment of quality wherever we identified weak student outcomes. This would be more expensive and burdensome for providers than our proposed approach.
8. In addition, this approach would mean that it would be possible for a provider to be delivering higher education which meets our minimum requirements for quality, but whose students are not achieving positive outcomes. We do not consider that this would be in the best interests of students or taxpayers.

Make proposals for an approach that relies solely on the use of benchmark factors to consider performance

9. Respondents to the phase one consultation asked the OfS to consider the use of benchmark factors in its assessment of a provider's student outcomes. We have set out in our proposals how we will include consideration of benchmark factors in our assessment of whether a provider has achieved positive outcomes for its students.
10. We considered whether we should go further than the proposals we have made. We could have done this by not setting numerical thresholds, but instead measuring positive student outcomes in relation to an individual provider's benchmark. One way of doing this would be to take regulatory action in cases where a provider's performance was statistically significantly below its benchmark, rather than in relation to a single numerical threshold we defined for the sector as a whole. The outcome of this approach would be that regulatory action would be likely to be taken in relation to providers with performance significantly better than any numerical threshold we might set.
11. We do not consider this approach would deliver our policy intention of setting a single expectation for all providers. We also think that it would increase the regulatory burden on providers, as there would be likely be more with performance below a benchmark than below

our proposed numerical thresholds. In rejecting this approach we also considered the Secretary of State's guidance: 'that providers delivering high quality provision and strong outcomes for students should not be adversely affected by additional unnecessary bureaucracy or reporting in relation to quality: I would like the OfS to take a risk-based approach to quality assessment and regulation, focusing its efforts on lower quality providers.'

Make proposals for an approach where numerical thresholds determine compliance with the condition

12. We considered whether we should adopt an approach that relied solely on indicator values when interpreting a provider's performance in relation to numerical thresholds. This would mean that we would seek to take regulatory action wherever a provider's performance was below a numerical threshold we had set, regardless of other contextual factors that may not have been captured in the indicators. We discounted this approach because we continue to take the view that there is value in understanding the context in which a provider is operating.

Make proposals for an approach where two separate thresholds define performance that may be in need of improvement and performance that is unacceptably weak

13. We considered whether setting two separate numerical thresholds would increase clarity for providers about the actions the OfS may choose to take in relation to different levels of performance. We considered setting one threshold to mark the point at which improvement was likely to be needed (this threshold would broadly be in line with the numerical thresholds set out in these proposals). We would then set a second, lower threshold to mark the point at which we would consider performance to be unacceptably weak, in relation to which we would quickly take more intrusive regulatory action.
14. We did not consider that this approach could be successfully implemented because it would introduce additional complexity to the process of setting numerical thresholds. We consider that the proposals we have made regarding the approach to enforcement will enable us to deliver a similarly escalatory approach without this complexity.

Annex H: Matters to which we have had regard in reaching our proposals

The OfS's general duties

1. In formulating these proposals, the OfS has had regard to its general duties as set out in section 2(1) of HERA; these are reproduced in Annex I. We consider that the proposals in this consultation are particularly relevant to general duties (a), (b), (c), (d), (e) and (g), which relate to: institutional autonomy; quality, choice and opportunities for students; competition where this is in the interests of students; value for money; equality of opportunity in connection with access to and participation in higher education; and best regulatory practice.
2. In formulating these proposals, we have given particular weight to (b), (d) and (e): promoting quality, choice and opportunities for students; value for money; and equality of opportunity.
3. The OfS's regulatory objectives reflect the things that are of significant importance to all students: high quality courses, positive outcomes, and the ongoing value of their qualifications. In the circumstances where a provider seeking registration, or already registered, is not meeting these objectives for its students, it is important that the OfS can intervene to ensure that current and future students are not exposed to courses of low quality. Students making choices about what and where to study need to be confident that the regulatory system ensures that they are able to choose from a range of providers and courses that meet minimum regulatory standards. Opportunities for study are not meaningful if students are able to choose low quality courses delivering weak outcomes, or to continue on such courses, because the regulatory system has endorsed such performance. Our provisional judgement is that this means that the interests of students outweigh the interests of a provider in this situation, and that an approach to regulating student outcomes that involves setting clear numerical thresholds for performance is an appropriate way to protect students' interests.
4. Value for money in the provision of higher education is important for both students and the taxpayer. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs. Investing in a higher education course that delivers weak outcomes is unlikely to represent value for money for students. Similarly, the taxpayer contributes significantly to higher education through the provision of government-backed student loans and, for some providers, public grant funding. This investment is unlikely to represent value for money if, for example, courses are of low quality, continuation rates are low and students do not proceed to managerial and professional employment or further study. To protect the interests of students and taxpayers, our provisional judgement is that it is appropriate to regulate quality and standards in the way described in this consultation to ensure that student and taxpayer investment is focused on providers and courses that deliver positive outcomes.
5. The OfS's approach to regulation is designed to promote equality of opportunity in connection with access to, and participation in, higher education. This means that we are concerned with ensuring that students from underrepresented groups are able to access higher education, and also to succeed on and beyond their courses. In determining the groups falling within the definition of 'underrepresented groups', the OfS has given due regard to students who share particular characteristics that are protected under the Equality Act 2010, as well as students who are otherwise underrepresented or disadvantaged. When referring to underrepresented

groups, the OfS considers this to include, among others: students from deprived areas, areas of lower higher education participation, or both; some black, Asian and minority ethnic students; mature students; and disabled students (whether or not they are in receipt of Disabled Students Allowance). There are some student groups with protected characteristics under the Equality Act 2010 for whom the OfS has been unable to determine whether they are underrepresented at different points of the student lifecycle, because data is either collected at a national level, but with gaps in disclosure and absence of comprehensive data (for example in relation to religion or belief, sexual orientation and gender reassignment), or not collected at a national level (for example in relation to marriage and civil partnership, and pregnancy and maternity).

6. Our proposed approach to regulating student outcomes is designed to ensure that students from all backgrounds are able to expect to achieve positive outcomes when attending a registered provider. Our proposed approach is applied to all providers, regardless of the type of students they recruit. We recognise that our proposed approach may present a challenge for some higher education providers that recruit significant numbers of students from underrepresented groups. Our position is that if providers are to recruit students from underrepresented groups, they must do so having understood the commitment they are making to support their students to succeed, irrespective of their backgrounds. This will include removing or minimising disadvantages suffered by students from underrepresented groups, and to take steps to meet the needs of students from underrepresented groups that are different from other students. Where providers fail to do this, and we see low continuation and/or completion rates, or disappointing levels of progression to relevant employment or further study, even where those providers may offer opportunities for students to enter higher education, we do not consider that this represents genuine and meaningful choice and opportunities for students which promotes equality of opportunity in connection with access to and participation in higher education.
7. Access for underrepresented groups is only one part of the OfS's approach. We consider it equally important that students from underrepresented groups are able to succeed when they enter higher education, and to do so at the same rates as students from more represented groups. The cost in financial and personal terms of failing to complete or progress to managerial and professional employment or further study, is significant for any student. For students from underrepresented groups, the cost may be more significant because there may be fewer choices available to them. Our view is that a provider that recruits students from such backgrounds is obliged to ensure that they have positive outcomes on the same basis as students from more advantaged backgrounds.
8. Our view is therefore that an approach to regulating student outcomes that resulted in setting lower numerical thresholds for students from underrepresented groups would not represent equality of opportunity for such students. The approach proposed in this consultation in relation to student outcomes is therefore to implement the policy in the regulatory framework and set numerical thresholds, take a provider's context into account, but not vary numerical thresholds for a provider that recruits students from underrepresented groups.
9. In formulating these proposals, we consider general duties (a), (c) and (g) important, but have given less weight to these.
10. The OfS is required to have regard to the need to protect institutional autonomy. It does not, however, have an absolute obligation to protect the autonomy of providers. Our proposals take a principles- and outcomes-based approach to setting minimum requirements for student

outcomes. Our proposed requirements for student outcomes as set out in proposed condition B3 have been expressed in relation to an overarching principle: the provider must deliver positive outcomes for students on its higher education courses. We go on to provide more certainty for providers about the performance required because we have proposed clear numerical thresholds. In that sense, the general approach set out in the regulatory framework and expanded on in this consultation attaches weight to institutional autonomy.

11. But we are giving weight to autonomy insofar as this is consistent with the need to protect the interests of students and, in particular, students from underrepresented groups. Where the quality of a provider's courses is of concern, including where the outcomes delivered for its students are below our minimum requirements, we propose that its autonomy is likely to carry less weight than the interests of current and future students. We have been clear in our proposals that we will focus regulatory attention where it is needed most and so we expect that the majority of providers, in particular those comfortably meeting our numerical thresholds, will have a significant amount of autonomy in relation to the delivery and quality of their higher education courses.
12. The OfS is required to have regard to the need to encourage competition, where that competition is in the interests of students and employers. Competition could be encouraged by removing regulatory barriers such that any provider is able to compete for students, regardless of the outcomes delivered for those students. However, our view is that such competition would not be in the interests of students or employers. The role of the regulator in this context is to set minimum requirements for student outcomes, to ensure that students are able to choose from a variety of providers and courses that meet that minimum regulatory standard.
13. Our proposal to ensure that a new provider seeking registration does not need to demonstrate that it has delivered positive outcomes for students where it has not submitted data to either HESA or the ESFA takes account of the context of providers that have not previously delivered higher education and is designed to encourage competition by reducing regulatory barriers for such providers.
14. We have considered the principles of best regulatory practice and, in particular, considerations of proportionality. We consider the proposed approach set out in this consultation to be proportionate and appropriate in ensuring that the OfS can protect the interests of students and balance this with the interests of providers. We have given particular consideration to the proportionality of our proposals, to ensure that regulatory attention is focused on those providers that represent most regulatory risk.

The Public Sector Equality Duty

15. We have had regard to Schedule 1, paragraph 21 of HERA, which extends the Equality Act 2010, and therefore the Public Sector Equality Duty, to the OfS. This requires the OfS to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity.
16. Protecting and promoting quality and equality of opportunity are at the heart of our work. When a student embarks on a higher education course it has the potential to be a life-transforming event – an enriching academic experience that paves the way for rewarding options in the labour market and a fulfilling life. Students pay a significant price for these opportunities, through their time and effort, as well as in financial terms. This is why the OfS is focused on ensuring through our regulation of quality and standards that all students,

whatever their background and characteristics, can have confidence that they will receive a high quality higher education and positive outcomes. At the same time, we are taking steps through our regulation of access and participation to reduce the gaps in equality of opportunity between students from underrepresented groups and other students, before, during and beyond their time in higher education.

17. In developing these consultation proposals we have had regard to our published equality and diversity objectives and action plan,⁶³ in particular the following objectives:
 - a. Objective 1, which states that the OfS will develop, implement and consult on our equality, diversity and inclusion objectives, evidence base, impact assessments and action plan to ensure successful implementation of our Public Sector Equality Duty.
 - b. Objective 3, which states that the OfS will challenge the sector to significantly reduce gaps in access, success and progression for students from all backgrounds and identities and across all disciplines.
 - c. Objective 4, which states that the OfS will work to address the risk of some students not receiving a high quality higher education experience. It lists as a priority 'implementing the initial and ongoing conditions of registration for quality to drive a high quality academic experience for all students, giving explicit attention to the outcomes for students from underrepresented groups.'
 - d. Objective 5, which states that the OfS will work to reduce the risk that some students are prevented from maximising their outcomes through their higher education experience and therefore do not maximise their potential in terms of employment or further study.
18. We have also had regard to the equality impact assessment conducted in relation to the OfS's regulatory framework, which states that the impact of the quality and standards conditions is assessed as positive, in particular because the regulatory framework frames these conditions in a way designed to achieve a positive impact on students with protected characteristics and from underrepresented groups.
19. We have considered whether there may be any tension between our consultation proposals in relation to student outcomes and equality of opportunity. Our view is that meaningfully extending equality of opportunity means providing all students irrespective of their characteristics with the opportunity to benefit from their higher education. This is only possible if they are able to have positive outcomes that meet rigorous requirements set by the regulator. If a subset of students, particularly those who share protected characteristics, is not provided with sufficient support to achieve such outcomes, they have not had a genuine opportunity to benefit from higher education, and therefore have not experienced meaningful equality of opportunity.
20. Through this consultation we are seeking views on any unintended consequences of our proposals, for example for particular types of provider or student. We are also seeking views about the potential impact of our proposals on individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.
21. We will continue to have due regard for our obligations under the Equality Act 2010, as we consider responses to this consultation.

⁶³ See www.officeforstudents.org.uk/about/equality-and-diversity/objectives-for-student-equality/.

Guidance issued by the Secretary of State

22. We have had regard to guidance issued to the OfS by the Secretary of State under section 2(3) of HERA, and specifically ‘Guidance to the Office for Students – Secretary of State’s strategic priorities (8 February 2021)’. We consider the following aspects of that guidance to be relevant to these proposals:
- a. Quality.
 - i. Progressing rapidly to ensure that a robust enhanced regulatory regime can be operational as soon as possible, following quality and standards consultation.
 - ii. Ensuring that decisions on regulatory intervention and registration can be made in relation to minimum absolute standards of quality that apply across the whole of higher education provision.
 - iii. Using the full range of the OfS’s powers and sanctions where quality of provision is not high enough: the OfS should not limit itself to putting in place conditions of registration requiring improvement plans for providers that do not demonstrate high quality and robust outcomes, but should move immediately to more robust measures, including monetary penalties, the revocation of degree awarding powers in subjects of concern, suspending aspects of a provider’s registration or, ultimately, deregistration.
 - iv. Not registering providers without rigorous quality and a commitment to robust graduate outcomes, which should be closely monitored once registered.
 - v. Taking a risk-based approach to quality assessment and regulation, focusing efforts on lower quality providers.
 - b. Admissions and equality of opportunity.
 - i. Focusing access and participation work on delivering real social mobility: ensuring students are able to make the right choices, accessing and succeeding on high quality courses which are valued by employers and lead to good graduate employment. Encouraging more and more students onto courses that do not provide good graduate outcomes does not provide real social mobility and serves only to entrench inequality.
 - c. Risk-based regulation and reducing bureaucracy.
 - i. Looking across everything that the OfS does to identify further opportunities to reduce unnecessary bureaucracy and reporting requirements for providers.
 - ii. Implementing a markedly more risk-based model of regulation, with significant, meaningful, and observable reductions in the regulatory burden on high quality providers within the next 12 months.
23. We have had regard to the most recent guidance letter setting out the Secretary of State’s strategic priorities (‘Future of access and participation (23 November 2021)’). We consider the following aspects of that guidance to be relevant to these proposals:
- a. A fresh focus from the OfS on the outcomes achieved by disadvantaged and underrepresented groups in higher education. Providers should not be incentivised, nor rewarded, for recruiting disadvantaged students onto courses where too many students drop out or that do not offer good graduate outcomes.

- b. Where courses exist on which significant numbers of students who start drop out or do not progress to graduate jobs or further study, the OfS should expect such providers to set clear, measurable targets to improve the outcomes of such courses, and hold them to account for meeting those targets, in a similar manner to how the OfS expects to see access targets in high-tariff providers.

The Regulators' Code

- 24. We have had regard to the Regulators' Code. Section 3 of the code is particularly relevant, which discusses the need to base regulatory activities on risk:
 - a. Paragraph 3.1 provides for regulators to use an evidence-based approach to determine priority risks and allocate resources where most effective.
 - b. Paragraph 3.2 provides for regulators to consider risk at every stage of the decision-making process and choose the most appropriate type of intervention, using a targeted approach.
 - c. Paragraph 3.5 provides for regulators to review the effectiveness of their activities and make necessary adjustments accordingly.
- 25. In Section 1 of the code, paragraph 1.1 is also particularly relevant. This requires regulators to have due regard for avoiding the imposition of unnecessary regulatory burdens through their regulatory activities.
- 26. We consider that our proposals particularly encapsulate these aspects of the code.

Code of Practice for Statistics

- 27. We have taken account of this code in preparing our proposals for the creation and publication of information about student outcomes. We have committed to compliance with the code through:
 - a. Trustworthiness – We have set out in these proposals (and in our separate consultation on data indicators) our approach to producing statistics that describe student outcomes. We have had regard to the need to explain what judgements we have made about the data, methods, and their strengths and limitations. We have described our approach and made available our underpinning calculations to enable users to understand our proposed approach.
 - b. Quality – Throughout this consultation, we are transparent about the methods and data sources we are proposed to use and the reasons for their selection.
 - c. Value – We are seeking to communicate clear information about student outcomes to support our approach to regulation. We have made commitments in these proposals to ensure the public can understand our approach and access the data we are using. In addition, we have indicated how our proposals are coherent with our approach to access and participation and to the TEF (which is subject to a separate consultation).

Annex I: Section 2 of the Higher Education and Research Act 2017

2. General duties

1. In performing its functions, the OfS must have regard to –
 - a. the need to protect the institutional autonomy of English higher education providers,
 - b. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,
 - c. the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers,
 - d. the need to promote value for money in the provision of higher education by English higher education providers,
 - e. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,
 - f. the need to use the OfS's resources in an efficient, effective and economic way, and
 - g. so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be –
 - i. transparent, accountable, proportionate and consistent, and
 - ii. targeted only at cases in which action is needed.
2. The reference in subsection (1)(b) to choice in the provision of higher education by English higher education providers includes choice amongst a diverse range of—
 - a. types of provider,
 - b. higher education courses, and
 - c. means by which they are provided (for example, full-time or part-time study, distance learning or accelerated courses).
3. In performing its functions, including its duties under subsection (1), the OfS must have regard to guidance given to it by the Secretary of State.
4. In giving such guidance, the Secretary of State must have regard to the need to protect the institutional autonomy of English higher education providers.
5. The guidance may, in particular, be framed by reference to particular courses of study but, whether or not the guidance is framed in that way, it must not relate to—
 - a. particular parts of courses of study,
 - b. the content of such courses,
 - c. the manner in which they are taught, supervised or assessed,
 - d. the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or

- e. the criteria for the admission of students, or how they are applied.
- 6. Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.
- 7. Guidance given by the Secretary of State to the OfS which relates to English higher education providers must apply to such providers generally or to a description of such providers.
- 8. In this Part, 'the institutional autonomy of English higher education providers' means –
 - a. the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way,
 - b. the freedom of English higher education providers –
 - i. to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
 - ii. to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
 - iii. to determine the criteria for the admission of students and apply those criteria in particular cases, and
 - c. the freedom within the law of academic staff at English higher education providers –
 - i. to question and test received wisdom, and
 - ii. to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.



© The Office for Students copyright 2022

This publication is available under the Open Government Licence 3.0 except where it indicates that the copyright for images or text is owned elsewhere.

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