

INDEPENDENT HIGHER EDUCATION

IHE response to the DfE consultation on
strengthening oversight of partnership delivery in
higher education

April 2025

Introduction

IHE supports DfE's aim to bring more providers within the regulatory reach of the Office for Students (OfS), achieving greater transparency and accountability for students.

However, if undertaken in the wrong way and at the wrong time, this will limit opportunities for students and will act as a barrier to growth and innovation.

These proposals fail to adequately understand the disproportionate burden of regulation on smaller providers, passed on to the student through their fees, and the complexity of changing contractual arrangements with partners.

The proposed timeline for implementation is unrealistic, and there is understandable concern from IHE members and other independent providers about the capacity of the OfS to manage the increased workload and support providers in preparing their applications.

The DfE proposals do not take into account the wider context of changes proposed by OfS, nor allow for the extra time it will take for providers to familiarise themselves with any new initial conditions of registration and process for applying, on which OfS is yet to finish consulting let alone to have published guidance for.

It is notoriously difficult to capture flexible models using a headcount methodology and IHE does not support either the threshold of 300, or the use of a headcount. The proposals have failed to future-proof the system, with use of headcount rather than FTE. This will not be a suitable approach under the LLE, where students will be studying more flexibly, more of the time.

Providers may limit their intakes to stay below the threshold, potentially restricting economic growth as well as access to flexibility and innovation in provision. This could negatively impact students, particularly those who rely on the flexibility offered by franchised providers such as those with caring responsibilities or mature students.

It is important that routes to appeal remain, so that those who provide flexibility can do so for the right reasons without fear of redress, and the consequences should not be so severe as to risk institutional closure which will serve no good for the students.

IHE therefore recommends the introduction of an alternative method of registering providers, via an appropriate category, which will better enable timely scrutiny where it is required most.

Registration Requirements for Franchised Providers

14. Do you agree with our proposal to require franchise delivery partners with more than a specified number of students to register with the OfS?

Yes

15. Do you agree that a threshold of 300 students is appropriate?

No

16. If you answered 'No' to the previous question, at what level do you think this threshold should be set?

IHE has always believed that the first priority of the OfS when it was established should have been to bring as many providers as possible within its regulatory reach. This position is reflected in our membership conditions which require members to undertake to have their higher education regulated, where eligible. IHE is therefore supportive of DfE taking steps to protect students and the reputation of the sector, through greater transparency and accountability.

More than 250 providers in England offer UK degrees in partnership with a university but are not registered with the OfS. Their students are mostly invisible in the data and in regulation, and only recently has any attempt been made to change this. At least another 300 providers offer programmes that should be considered to be under the purview of the OfS, but no attempt has been made to contact them, let alone ensure that registration offers sufficient benefits to incentivise their participation, or to create streamlined and efficient enough regulatory processes that are proportionate to their size, scale and needs.

There are more than 700 independent providers of post-compulsory education at Level 4 and above in England who are eligible under HERA to apply for OfS registration, potentially offering their students access to funding and other benefits to support their success. Many of these providers are well established in delivering on the RQF already. Championing of HTQs will continue widening the pool of providers who can be regulated under the OfS. As the plans for the Lifelong Learning Entitlement (LLE) progress, we therefore need to be mindful of building

regulation that is futureproofed for an ever more diverse tertiary offer, so that changes now remain suitable under the LLE.

IHE recommends that DfE considers the role of awarding providers in managing the growth of the franchise partners that they hold agreements with. The current proposals do not address the problem being faced by the sector now, with concerns around fraudulent activity and inadequate student support. It is not enough to merely emphasise the role of lead providers and their accountability, they should be given the tools to fulfil this role. Identifying those individuals who are not fit and proper persons to govern and lead English higher education is a task much better suited to a regulator with access to data of other public bodies, than that of institutional managers in awarding providers. We therefore recommend a new category of registration, built on a process which is rigorous and targeted on the elements of oversight most essential to protecting the student and public interest in partnership provision:

- **due diligence** on a provider's suitability as a partner, and the fitness and propriety of their management and governance;
- **transparency** on ownership and the terms of any contract for provision;
- **accountability** which is clearly assigned for the critical aspects of provision;
- **quality** and **standards** which are managed effectively by the relevant partner;
- and with the process designed from the ground up to be proportionate and efficient, with the **flexibility** needed for the diverse range of providers who might wish to apply.

This would allow awarding partners the confidence that franchise partners had passed stringent due diligence checks by the regulator, which has access to the information necessary to perform checks at the right levels. If awarding partners opt to form collaborative agreements with franchise partners who have not registered with the OfS through this or any other route, the responsibility and risk is placed squarely with them to conduct the due diligence.

As outlined in our response below to the questions in the proposals, creating a system of designation for DfE to manage will cause a lack of clarity for all, risk and cost for students, and will not address the problems faced at this moment. There are already regulatory tools available for the current issue, through the use of site-specific student number controls on awarding providers for those with rampant growth in franchised provision.

Creating a new category would allow for the fee to be set appropriately; as outlined below it is not appropriate to pass unnecessary costs on to students for elements of regulation that are already being covered by the awarding partner. It will also enable a streamlined process of registration, which should not take providers as long to prepare for, nor the OfS so long to complete, allowing for an acceleration of providers entering into the regulated sector.

If the DfE is to continue with the planned proposals, the further points below should be considered:

Appropriate methodology for student number calculations

IHE urges DfE to use FTE rather than headcount when determining student numbers, as this reduces the cost of registration, which in providers dedicated to teaching students, is passed on

to the students through their fees. A headcount model means that if a student is registered for either a month (e.g. a student starting in a July cohort, toward the end of the data year) or for a full year, they pay the full cost of regulation for that year. It should be noted that these students already pay for the cost of regulation through the proportion of fee retained by the awarding provider attributed to covering OfS regulation. Perhaps this is easy to overlook, as there is no transparency on the fees being charged by awarding providers. It is also unclear whether, to comply with OfS conditions, the franchised providers are expected to pay the full annual fee to the Designated Data Body. The Public Bodies Review of the Office for Students by Sir David Behan noted: ‘...the current fee structure results in a disparity of burden for smaller providers compared to larger providers... the review encourages a thoughtful evaluation of how the fee structure impacts providers of different sizes. The fee structure should take into consideration fairness, proportionality, and future-proofing.’ The DfE proposals seem at odds both with Behan’s recommendations and with the Government’s own stated ambitions to reduce the cost and burden of regulation.

It is worth noting here that the OfS consulted with the sector in 2018 on their approach to calculating student numbers: <https://www.officeforstudents.org.uk/data-and-analysis/student-number-data/>. The OfS took the time to consult with the sector to find the most effective, accurate and least burdensome way of counting student numbers, that accommodates the complexities of burden associated with size. Registration fees are then based on this FTE model. It would be proportionate, and consistent, for DfE either to follow the same approach or to consult further on an appropriate approach if it is to deviate.

Clarifying the headcount approach in practice

There are a number of components to the proposal for a 300 headcount, which have not been clarified through this current consultation, and there are issues with how it could account for the nuance and complexity of the very part of the sector which this consultation is targeting. For example, there is no information on what the census point is for assessing the headcount. If a student joins a course in July, and finishes the next July, would they enter the headcount twice, as they cross two academic years? It is not reasonable to expect providers to plan without information, nor should they have to change established methods of delivery which work in the student interest to avoid falling foul of poorly devised student number counts. This will only be a barrier to innovation and growth.

The starting point for determining the requirement to register with the Office for Students (OfS), is the concept that this should be based on a proportionate system, where the burden is not a barrier to innovation, and the cost does not discourage new models from emerging.

Independent providers play an important role in extending access to higher education to underrepresented groups, and taking steps which deter providers from entering into partnerships to support this access could lead to indirect discrimination under the Equality Act. Franchised providers are flexible enough to drive innovation under the guidance of the awarding provider who is not agile enough to meet the needs of all learners, in all pockets of the country. The risk of providers limiting their provision to keep below 300 thresholds, is the risk of removing flexibility in provision and choice for students.

Applying headcount models to programmes of non-standard duration, multiple entry, and flexible mode is highly complex. For example: At the National Design Academy there are two programmes under franchise arrangements, which operate with monthly intakes. These types of models lead to fluctuating numbers and unpredictable headcounts at census points. Students learn at their own pace, able to take a break from studies and then rejoin again with a different cohort – their FTE calculation in this case would be different to their headcount.

For providers near the threshold, where students are allowed to take short study breaks with their flexible franchised courses, this may now be denied if their unpredictable return would jeopardise a headcount threshold. This will affect the most vulnerable students – those with caring responsibilities who rely on flexibility; mature students on maternity leave; students with disability. Protecting their options is essential.

300 FTE would still be a difficult threshold number

Through previous work with our members, IHE have identified that 1,200 FTE is the break-even point for regulatory burden (for those considering Approved (Fee Cap)). This is, in general, where economies of scale start to contribute more to growth and innovation rather than simply serving to reduce burden. 300 is simply too low to expect providers to be able to break-even, and is not the right threshold for these purposes.

DfE should consider whether the risk posed by a slowly growing specialist provider, that might have 299 students one year and 350 the following year, is significant enough to warrant such an extreme regulatory approach, or whether more attention should be paid and the OfS's limited resources focused on providers who aim for exponential growth over the course of a 3-5 year business plan – or where such growth is not planned for at all. Consideration should be given to monitoring growth through business plans of the awarding providers, who should have plans in place for their partnerships, and know whether there is a manageable growth plan as part of their own student numbers.

The full cost and burden of OfS registration in one of the two Approved categories is simply far too great for a provider with 300 students for it to be mandatory in its current form. The cost is disproportionate to the potential benefits to students and the public. It is particularly inappropriate in the current financial circumstances in the sector to ask the smallest providers to pay the most for regulation, knowing that this cost will in turn have to be passed directly through to students in a disproportionate manner which cannot help but have a negative impact on their experience.

Assuming that under DfE's proposals franchised providers would be most likely to register in the Approved category, some worked examples of the cost per student for their provider to register are as follows:

- a) Providers with 280 students: £220.25
- b) Providers with 301 students: £231.64
- c) Providers with 1,200 students: £77.83
- d) Providers with 10,001 students: £21.97

It is clear that the cost is disproportionate for smaller providers, and those with 300 students will be passing on more regulatory cost directly to their students, and diverting resources from their learning experiences too.

FTE Number of Students – OfS bands	OfS (annual) registration fee	Quality and Standards Assessment	HESA (annual) subscription fees	HESA cost per student (maximum for OfS band)	Total cost of regulation*	Cost per student (lowest number in band) **
0-25	£12,300.00	£28,463.00	£2,500.00	£50.50	£43,313.50	£43,313.50
26-50	£15,350.00	£28,463.00	£2,500.00	£101.00	£46,414.00	£1,785.15
51-75	£19,200.00	£28,463.00	£2,500.00	£151.50	£50,314.50	£986.56
76-100	£24,050.00	£28,463.00	£2,500.00	£202.00	£55,215.00	£726.51
101-300	£30,100.00	£28,463.00	£2,500.00	£606.00	£61,669.00	£610.58
301-500	£37,750.00	£28,463.00	£2,500.00	£1,010.00	£69,723.00	£231.64
501-1000	£47,350.00	£28,463.00	£2,500.00	£2,020.00	£80,333.00	£160.35
1001-1500	£59,400.00	£28,463.00	£2,500.00	£3,030.00	£93,393.00	£93.30
1501-2500	£74,600.00	£28,463.00	£2,500.00	£5,050.00	£110,613.00	£73.69
2501-5000	£93,750.00	£28,463.00	£2,500.00	£10,100.00	£134,813.00	£53.90
5001-10000	£117,900.00	£28,463.00	£2,500.00	£20,200.00	£169,063.00	£33.81
10001-20000	£148,350.00	£28,463.00	£2,500.00	£40,400.00	£219,713.00	£21.97
>20000	£186,800.00	£28,463.00	£2,500.00	£60,600.00	£278,363.00	£13.92

**Total cost of regulation includes the cost per student of the HESA per student fee based on the maximum number of students in the OfS band.*

***The cost per student is based on the lowest student number for the OfS band.*

It should also be noted that in 2018/19 the cost per student for a provider with 301 students to register in the Approved category was £150.02. In 2024/25 this has gone up by £81.62, predominantly due to costs associated with the OfS taking on the responsibility for Quality and Standards Assessments at registration. The costs associated with the Quality and Standards Assessments, and the HESA fees, should be reviewed for these providers when assessing the applicability of the Conditions of Registration to franchised providers.

These fees are based on the Approved category, on the assumption this would be the relevant category for providers required to register under the DfE proposals in this consultation.

These figures are the cost of regulation in the initial period, to reflect the payment of the Quality and Standards assessment. This fee may be payable more than once, if the initial assessment is unsuccessful or quality requires assessment again in the future.

It is unclear if franchised providers would be eligible for the 'new provider discount' which gives providers a percentage discount over the first three years of registration. This discount may not be allocated to franchised providers, where these are well-established entities in operation for a

number of years prior to the proposed requirement to register. As such we have not included the discount in these calculations.

As we do not know the company size of the providers who might be registered we have not accounted for the 'micro provider discount' which removes only OfS fees from the table.

These costs do not include the costs to administer regulatory compliance which often include a significant rise in administrative (non-teaching) staff numbers, the purchase of a data system, and associated consultancy and legal costs.

Although DfE attempts in table 19 of the Impact Assessment to calculate the costs of initial and ongoing registration, our own analysis reveals that a provider with 301 students will need to pay OfS and Designated Data Body fees for an ongoing cost of £40,858.02 (based on 2024/25 fees). This is substantially higher than the £16,720 indicated by DfE, and there are other inaccuracies in the calculations which fail to account for changes in OfS conditions, and the realities of the need to upskill staff in areas such as access and participation which has been attributed insubstantial and insufficient costs to support institutional understanding of this part of the regulatory framework, even if there is no expectation to produce an Access and Participation Plan (APP).

It is therefore important to recognise that the costs to the smallest of these providers are disproportionate to those incurred by the larger providers in the sector, and this is why if a threshold in the region of 300 is to be applied, it is even more important that this threshold be assessed using an appropriate methodology.

Impact on Providers & Students

17. To what extent and in what ways do you think providers might adapt their business model in response to this threshold?

The changes proposed will no doubt require complicated amendments to contractual arrangements, requiring legal advice, for contracts that will not expire prior to the implementation period for these proposed changes. (Most collaborative agreements are 5 years in length.) This increases cost to both teaching and awarding partners, and will therefore lead to more funding being drawn away from the student.

Some providers may not be able to meet the cost and burden of regulation, and therefore limit their intakes to keep comfortably below the threshold as that is the least costly path available to them, which still enables their students to access student loan through partnership arrangements. This will have a direct consequential impact on economic growth.

Awarding providers in franchise partnerships may limit flexible provision that would place the provider at higher risk of needing to register. These not only include limiting models more likely to reach the numerical threshold such as multiple intake models, but also delivery where the student articulates through levels. In these models, students first register for a level 4 or 5 qualification, which on completion articulates through to a level 6 qualification. Should the

provider reach the threshold of 300 while a student is at level 4, there is significant risk that the student will not be able to fund the full student journey if the OfS cannot register the provider before the step up to the next-level qualification.

There is a heightened likelihood of instability in academic partnerships due to perceptions of risk even where the actual risk is low.

There have been comments from IHE members and other independent higher education providers that two opposite and conflicting behaviours could emerge, which will prove a challenge for promoting innovation and choice for students if strategic vision in partnership formation proves difficult to align:

- Awarding providers may demonstrate a growing preference to enter into franchise arrangements, which allow greater room for profit, once potential partner providers are directly regulated by the OfS. This direct regulation may be seen to reduce the risk for and accountability of the awarding partner whilst still allowing it to reap the benefit of enhanced profits. In turn, validation arrangements may actually become more difficult for teaching providers to find. This seems unlikely to be an intended consequence of DfE's proposals.
- Teaching providers are more likely to want to pursue validation models as they are able to directly access the benefits of registration in this type of arrangement, to offset the costs of regulation. But if, as posited above, awarding providers shift away from validation models, this tension will increase volatility in partnerships, which would be detrimental to efforts to enhance student protection and student choice.

18. What positive impact might there be on providers or students as a result of these changes?

IHE welcomes the positive aim of the proposals, where students at regulated providers are offered more protection – from institutional failure by the implementation of student protection measures, and from poor quality provision through quality assessments at initial stage and throughout registration.

The proposed changes will allow greater transparency of franchised provision for students within OfS data, although it should be noted that this could be achieved through changes to partnerships data already being brought in by the OfS.

There will be benefit of greater transparency of spending for the teaching grant associated with franchised students, many of whom would significantly increase the grant value due to protected and underrepresented characteristics, ensuring the money is distributed to those who are in most need when in partnerships.

There can be benefit through regulatory scrutiny but the proposed changes are clearly aimed at reducing the risk of fraud – this is made clear in the stated aims of the consultation – and there is a strong sense among IHE members and other independent providers that the proposals are

not aimed at positively impacting the student experience through a more holistic approach to the oversight of partnership provision. In isolation, they will not lead to providers spending an increased proportion of tuition fee income on the student experience.

The mechanisms to support proportionate and fit for purpose regulation need to be in place. This consultation cannot be considered alone, without:

- a) clear guidance on how the regulatory conditions can be applied to franchised provision, and where accountability ultimately rests
- b) reference to other changes recently proposed by OfS which are unresolved, such as how a franchised provider will be accommodated in plans for the integrated quality model. The Impact Assessment notes the following on costs involved for providers:

i. "Participation [in the TEF] is only mandatory for providers with at least 500 registered undergraduate students (not including students taught through franchising arrangements). We would expect any provider meeting this threshold to be registered with the OfS already."

ii. This does not take into account the current intention for *all* registered providers to participate in the TEF, and the significant cost involved which the OfS has acknowledged is greater for smaller providers.

19. If you are a lead or delivery partner in a franchising arrangement, what, if any, financial impact do you think the proposal could have for you as a provider?

It should be noted that many independent providers are planning to seek to adopt validation models rather than franchise arrangements in the future due to the proposals by DfE, which will be likely to reduce the income of the awarding providers in future years. Although as noted above this may run into the opposing preferences of awarding providers, potentially introducing more volatility which could have detrimental impacts to financial sustainability.

Many members – including those registered who have experience of navigating the regulated sector, whilst in partnerships – are concerned that the consultation is failing to address wider issues. The regulation of franchised providers alone does not tackle the awarding partners who have entered into the types of partnership DfE seeks to deter. Members feel that the OfS has ample powers to act, but have not done so due to delays in processes plus their attentions and duties taking their focus elsewhere.

It is advisable for DfE to work with the OfS on how to manage growth via the awarding providers in the franchise partnerships, who should be expected to both track and manage any growth and expansion as part of student protection measures. These would be reasonable expectations of organisational business plans of the awarding providers.

20. What, if any, risks might there be from these changes?

Inaccessible data

DfE and the OfS must enable providers to understand the expectations of data sharing between lead and franchised providers, and ensure that franchised providers know how their data will be presented by their partner. There is an assumption in the consultation proposals that all franchised providers have access to the data that they need in order to determine their 2025-26 'data year' information, and/or the 2024/25 data that DfE will use initially to inform providers of their likely need to register. However, franchised providers often have difficulty accessing the HESA data held by their partners as there is a lack of clarity on ownership of the data, and ability to share, which stems from lack of transparency in collaborative agreements throughout the sector.

In IHE's 2024 [report on Academic Partnerships in the UK](#), this complexity in reporting requirements and the ability to support student experience and success was apparent. In a survey of awarding partners, 38% of the survey population were responsible for returning student data to the Higher Education Statistics Agency (HESA). From these, most (78%) responded 'unsure' when asked whether there is a data sharing arrangement allowing the teaching partner to meet regulatory requirements for student outcomes. This needs to be addressed by DfE, and the regulator, through making expectations clear.

No ownership and accountability to the detriment of students

The DfE Equalities Impact Assessment surmises that a reduction in number of places will be beneficial as any lost places will be from those failing to meet the expected standards, and therefore this will improve the quality of HE. This overlooks all the issues with registration to date, of which IHE members are amply aware. A failure to register can be because the guidance does not sufficiently understand the provider type, or has not given support for the purpose of registering, and is no reflection whatsoever on the quality or experience of the students. IHE members are understandably concerned that this is going to be exacerbated by the introduction of a new expectation to register, with dual responsibility for registration conditions, and lack of clarity over how providers who do not own the course content or student contract can meet the regulatory conditions as currently set out. Lack of clarity on where ownership and accountability sits with each partner in delivery will heighten risk to the student experience. There is substantial variation between awarding partners, and even within one awarding partner's portfolio.

Feedback from the IHE Student Advisory Board in the past has made it clear that one of the key areas where students experience risk in delivery is where there is lack of clarity in ownership between two partners, which causes barriers to resolutions and heightens anxiety. To help mitigate this, IHE recommends that to benefit students there is strengthened guidance on partnerships from the OfS, which accounts for the nuance in delivery and partnership models. This should be for the benefit of students, so that they are able to understand where accountability for their experience lies, particularly if both providers are OfS registered.

The method proposed of a headcount for student numbers does not futureproof the system for the LLE

In an LLE-funded modular course, a student on a 30-credit module would be counted the same way as a full year student. The risk to the public purse would be significantly less than that full year student. There would need to be separate methods for counting modular students, or an initial FTE methodology to allow for proportionality of assessing risk, and proportionality of associated cost/burden to the student of regulation. Of these options, use of FTE is preferable. This is particularly relevant to this consultation, as franchised providers are some of the most likely to be early adopters of LLE-aligned modular and stackable provision, with models already developed to accommodate mature learners in flexible modes. Some providers who are 'LLE ready' are already hesitant to register with the OfS due to being unclear on whether their courses will be fundable due to repeated slips in the timetable for implementing LLE. In this current consultation, DfE is further undermining the confidence of these providers by failing to futureproof its policy proposal for flexible modes of study.

Exemptions from OfS Registration

21. Do you agree with our proposal that state-funded schools, the statutory further education sector, NHS Trusts, Councils, and Police and Crime Commissioners should be exempt from the requirement to register with the OfS?

Yes

22. Do you agree that providers should not be exempt from registering with the OfS if their provision is regulated by an appropriate PSRB?

Yes

23. Are there any other regulatory partners that providers are regulated by that you think should qualify a provider as being exempt from the requirement to register with the OfS?

The list of exemptions is welcomed, and appears to cover the necessary categories. DfE is encouraged to consider two areas:

Ensure that the guidance is sufficiently flexible to accommodate the varying types of entity which exist beneath the broader exemption categories, and that this can tessellate with the OfS eligibility criteria. There may be instances where DfE would judge a provider too independent of the overarching entity to be exempt, but the OfS would conversely judge them ineligible for registration on the basis they were the type of provider on the exemption list.

It should be made clear whether degree apprenticeships are included in the headcount exemption; and they should indeed be excluded. The consultation states that apprentices are excluded, but IHE members would like this to be clarified. As these are subject to existing regulatory oversight, there is no need to have further regulatory scrutiny, or have students paying towards double regulation.

More broadly, it is worth noting that there is an incomplete mapping of the tertiary system, with no clarity on which regulator has oversight for which pieces of the system – and therefore what assurances those regulators can give. IHE believes it is necessary and timely to move to an approach of ‘one regulator per provider’, determining the lead regulator to be the most appropriate for the specific provider based on their dominant model of delivery, with a common framework for regulation that allows the other bodies access to the information required for their own purposes. Aligning with ambitions to reduce burden and cost of regulation, it will also enable providers to concentrate on the delivery of education and student experience. The proposals in this consultation to exclude some types of providers based on existing oversight are welcome, as this is a positive move toward a more proportionate type of system.

Implementation & Transition Period

24. Do you agree with our proposed approach to implementation?

No

IHE suggests exploring an alternative category of registration. This would be beneficial, as this would allow different conditions of registration, and the burden of regulation could therefore be appropriate to size and type of providers.

Currently, it appears all providers are being asked to continue to apply within the existing routes of Approved, and Approved (Fee Cap), regardless of whether this regulation is appropriate to the provider type.

If there will be no alternative category of registration, then the regulator will need to provide clear guidance on who is responsible for the conditions of registration, and how this might be expected to operate in practice.

There are multiple examples within the conditions of registration as they stand of where it will be unclear in practice for two providers to try to share regulatory responsibility.

For instance, it is an initial condition of registration for providers to be able to demonstrate compliance with conditions B7 and B8. Within a franchise agreement, the qualification is designed and owned by the awarding partner, and responsibility for curriculum design belongs to the awarding partner. OfS conditions B7 and B8 are not designed for providers operating solely under franchise agreements as they do not have control over quality and standards, which remain under the control of the awarding body. Even more plainly, there would be double burden on areas such as E7, with two providers responsible for Electoral Registration. It seems clear that DfE have not thought to avoid over-regulation in the approach within these proposals.

25. Are there any obstacles to submitting registrations to the OfS within the proposed timeframes?

Yes

The proposals for implementation do not take into account the significant issues that providers have faced when trying to register with the OfS over the course of the last few years. Add to this

the current pause in process, and the consultation on new initial conditions and a change in the process itself, leaves the sector with little confidence that the regulator has the capacity to deliver on the task it will have ahead of it between summer 2025 and May 2026. One key cause for concern is that the DfE proposals do not recognise the inherent risk for providers in the OfS consultation on C&E Conditions. Should a franchised provider be required to register due to headcount, but fail, there would be an 18-month delay in future attempts to register. The OfS review of how registration is undertaken leaves providers with no ability to plan with certainty in the lead up to the implementation of DfE's proposals, and no network of peers to draw on for expert advice and guidance.

This places them at a significant disadvantage, compared to those who often spend years preparing for their OfS applications.

DfE has not attempted to allow for the need for these SMEs to undertake the process of new business plans. This is evidenced clearly in the Impact Assessment, which states: *"The impacts of providers adapting their business plans are highly uncertain and are considered to be indirect for the purpose of estimating the impact of the policy intervention on businesses. We do not attempt to quantify this."*

Concurrently the OfS is consulting on the need for *"...a provider to submit a five-year business plan setting out its strategy and demonstrating that it has a sound understanding of the context in which it will operate."* This requirement is anticipated to be in place at the point where DfE expects franchised providers to register, in May 2026. DfE and OfS must coordinate their expectations if providers are to navigate these processes; DfE must accommodate the time required to incorporate production of business plans which meet the OfS requirements in the timelines of their proposals.

The OfS needs to be ready for more than just an Increase In activity due to franchised providers applying to the register. As noted in response to the question on changes to business models, providers are likely to require changes to their contractual agreements. This includes instances where providers opt to change their model to a validated arrangement, instead of continuing to teach via franchise models. This type of transition is a natural progression for many providers who are in periods of growth and maturity, seeking to gain further autonomy; the DfE proposals are likely to see providers taking the decision to transition earlier than planned, changing their contracts prior to ends of terms. This will increase OfS registration activity in areas other than that of franchise applications, as providers seek the benefits under Approved or Approved (Fee Cap) category without franchising arrangements. This is noted in the Impact Assessment as one possible outcome, but does not acknowledge the wider impact on providers of the work which needs to be completed to enable this change within a limited timeframe.

Regardless of whether providers remain in franchise arrangements or otherwise, becoming part of an academic partnership where two entities are directly regulated will change the nature of accountability and require clarification of contractual arrangements. These contractual changes will be impacted by the eventual outcomes of the OfS consultations on conditions of registration, and any new guidance on the process for registration. As it stands, DfE's timeline does not make any reference to the need for providers to have access to this guidance in order

to amend contracts, which in itself is a lengthy and costly process. IHE urges DfE to allow sufficient time for new guidance to be published and incorporated into contractual agreements as part of the timeline.

26. Do you agree that we should continue to fund any existing students who began their courses before 2028/29?

Yes

Appeals Process & Transition Period

27. Do you agree with the proposed ground for appeal?

Yes

28. Should there be any other grounds of appeal?

Yes

Marginal differences, for example:

- the provider can demonstrate that the number threshold has been exceeded by the region of 15%, or;
- a headcount was only exceeded for a matter of 30 days.

These scenarios do not create significant risk to the public purse but could accommodate flexibility to account for flexible delivery which is in the interest of students.

Other cases where there is a clear demonstrable case of student interest should be reason for appeal, for example if students have articulated from level 4/5 study to level 6 and therefore increased the planned headcount above the threshold.

29. Do you agree that a two-year transition period for appeals is sufficient?

No

It should be possible for providers to appeal on a continued basis, where this is in the best interest of students, such as cases where providers are marginally above headcount, particularly due to their flexible models of delivery, as outlined in response to question 28.

It should be noted that some providers were in the process of applying to register with the OfS but instead had to extend their contractual arrangements for partnerships due to the OfS pause in registrations. They may now not be able to register with the OfS without incurring further legal costs to change contracts again, and should be given more leeway than two years of transition.

Consequences for Exceeding the Threshold

30. Do you agree that there should be consequences for providers who exceed the threshold without being registered with the OfS?

Yes

31. Do you agree that it is a proportionate consequence for a provider to lose a year of student finance for new students for every year in which the threshold was exceeded without the provider being registered?

No

The DfE Equalities Impact Assessment makes clear that students with protected characteristics are likely to be impacted by these proposals, specifically mature students over 31 years of age, socioeconomically disadvantaged students, those with unknown entry qualifications, and those who do not relocate for study (such as online and commuter students). It is important that consequences for providers who exceed the threshold take into account the risk to students that the provider may close due to the financial penalty of losing a cohort. This would restrict options of study for those who are most disadvantaged, and remove study options in local areas.

There are other options available. For example, one year of funding could be withheld, and any future years could have a number cap applied via the awarding partner so that no more than 300 students would be fundable for the relevant period of time. That would limit growth, but enable students to continue to learn. Any form of consequence should avoid risk to the students.

Transparency & Decision-Making

32. Do you agree with our proposal to publish each year a list of franchised providers whose courses will be designated for student finance the following year?

Yes

It would be useful for DfE to publish a list of all providers, and then denote eligibility. This would be enormously helpful for the sector. However, it is not clear that students would easily navigate to any such list unless it were to be visible via for example the SLC portal.

The consultation uses the language of 'approved' list. The word approved should be avoided, in case of confusion with OfS categories of registration. It is important to ensure consistency across all government regulators and bodies, and that the list does not cause confusion on purpose for those using it.

Those who seek designation as franchised providers should be given clear rules about terminology so that there is clarity and transparency for students and other stakeholders who may use the list. These rules should include what is appropriate for providers to say while they are awaiting designation, and what happens if they lose that status, or have it suspended. There

will be lessons and precedent that can be found from the previous system of course designation.

33. Do you agree with our proposed timeline?

No

The timeline proposed is unsuitable. This leaves only 30 days for providers to apply to the OfS, during May 2026, and still retain funding for 2028. It is unrealistic to expect the OfS to have the capacity to manage engagement with providers who are unfamiliar with the regulatory system, and support them to submit applications that are of a good standard.

The proposed timeline also is problematic, as an announcement in summer 2025 of the response to the consultation will leave only around nine months from the publication of DfE's decisions to the application window for providers. During that time, any consultation OfS may need to undertake on new guidance for franchised providers will need to be completed, whilst still allowing time for the guidance to be used by those preparing applications. IHE's members tell us that it takes around six months to prepare and submit an application to the OfS; this simply will not leave enough time for everything which needs to be accomplished. The risk associated with a failed application due to being underprepared from lack of guidance is extreme. For future students, this will mean the loss of the funding for courses that would otherwise have been available to them. These are students with protected characteristics – being put at risk in order to protect the public purse. The balance of responsibilities needs to be very carefully thought through by DfE before rushing this timeline.

At the very least, an additional three months should be given to the deadline for applications, extending the May window, allowing providers time to use guidance produced, and being realistic about the capacity of the OfS to support the processes of registration.

34. Do you agree that DfE is a suitable body to make decisions about eligibility for student finance?

Yes

Whilst it is appropriate for DfE to make such decisions for matters relating to specific course designations, as OfS also have eligibility criteria the two must work closely to ensure that the guidance is clear on the responsibilities of each, without conflict or contradiction. Any changes must be reviewed by both parties.

An example of possible conflict could arise from the DfE threshold including all students that attract finance, as well as self-funded and international students. For instance, there is previous issue with online providers applying to the OfS and deemed ineligible for registration, as too many of the student population were international – and therefore the provider was not deemed to be English. In such circumstances, it is feasible that DfE would use their headcount and eligibility of population to deem it necessary for the provider to register, but the OfS would in turn deem the same provider ineligible.

Devolved Governments

35. Do you agree that no action is needed in relation to the delivery of provision by franchised providers operating in devolved government areas?

Yes

36. Do you see any risks associated with this approach?

Yes

IHE recommends that DfE actively continues work with the other UK nations, as there are current changes to funding and the methods of course designation outside of England. Student mobility and cross-border partnerships remain an important part of DfE's role, and without clarity there is a risk to student mobility within the UK. As all nations are embedding new processes, IHE recommends that DfE looks to review how arrangements are working in practice for providers and their students across borders, and in partnerships, in a three-year period.

Contact IHE

- For more information, or to speak to someone about this consultation response, please email info@ihe.ac.uk
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- Connect with us on LinkedIn at [@Independent Higher Education](https://www.linkedin.com/company/independent-higher-education)