



Department  
for Education

# **Establishment of a Higher Education Restructuring Regime in Response to COVID-19**

**July 2020**

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## Section 1: Ministerial foreword

1. COVID-19 has had a profound effect across our higher education sector. Clearly it will continue to do for a long time to come, in ways which we cannot predict with certainty. Government has already provided significant support to help providers through the very significant financial challenges COVID-19 has visited upon the sector. The higher education package we announced on 4 May, with its reprofiling of public funding and measures on admissions, has acted to stabilise the situation. In June, we announced further support in the form of the Department for Business, Energy and Industrial Strategy's research stabilisation package. Alongside this, HE providers can apply to the range of business support measures the Government has put in place to support our whole economy.
2. We recognise that there remains a very high level of uncertainty around the extent of those financial challenges higher education providers will face in 2020/21 and beyond. Against this backdrop, providers need to look not just to weather the financial storm, but also to emerge in a stronger position to contribute to our economy and society, as the nation recovers from the pandemic.
3. That is why we have set up the Higher Education Restructuring Regime to support providers in England who are at risk of market exit due to the challenges of COVID-19. In doing so I have set three clear and overarching objectives which will guide the Department's assessment of cases:
  - Protecting the welfare of current students;
  - Preserving the sector's internationally outstanding science base; and
  - Supporting the role that higher education providers play in regional and local economies through the provision of high quality courses aligned with economic and societal needs.
4. The Regime does not represent a taxpayer-funded bail-out of the individual organisations which make up the higher education sector. It is not a guarantee that no organisation will fail – though current students would be supported to complete their studies, either at that institution or another. Providers approaching DfE for support will be considered on a case-by-case basis, to ensure that there is a sound economic case for government intervention, with loans to support restructuring coming from public funds as a last resort.
5. The conditions imposed as part of the Restructuring Regime will be designed to ensure those providers make changes that will enable them to make a strong contribution to the nation's future. We need a future HE sector which delivers the skills the country needs: universities should ensure courses are consistently high quality and focus more heavily upon subjects which deliver strong graduate employment outcomes in areas of economic and societal importance, such as STEM, nursing and teaching. Public funding for courses that do not deliver for students will be reassessed. Providers will need to examine whether they can enhance their regional focus. I want it to be the norm for far more universities to have adopted a much more strongly applied mission, firmly embedded in the economic fabric of their local area, and consider where appropriate delivery of quality higher technical education or apprenticeships. And all universities must, of course, demonstrate their commitment to academic freedom and free speech, as cornerstones of our liberal democracy.
6. At this time of financial challenges, universities and other higher education providers must do much more to strip back bureaucracy, allowing academics to focus on the front-line. The growth of administrative activities that do not demonstrably add value must be tackled head on. The funding of student unions should be proportionate and focused on serving the needs of the wider student population rather than subsidising niche activism and campaigns. Vice-

chancellor pay has for years faced widespread public criticism. And while excessive levels of senior executive pay may have been the focus of criticism, equally concerning is the rapid growth over recent decades of spending on administration more broadly, which should be reversed. For our part, we are actively considering how to reduce the burden of bureaucracy imposed by Government and regulators.

7. The majority of providers will not need additional support from the Restructuring Regime, but will nevertheless be looking to undergo their own restructuring to ensure they are better suited for the post-COVID world. For some providers, this may mean maximising the potential for digital and online learning that the crisis has revealed to increase accessibility and rejuvenate their international offering. For others, it may mean greater specialisation to focus upon the areas in which they are truly outstanding. And for others it may mean a much greater reorientation towards the needs of the local and regional economy, which considers the provision of higher technical education, apprenticeships and part-time learning. In every case this must involve a much stronger alignment of the courses delivered with the economic and societal needs of the nation, in a way that ensures all graduates benefit from their studies. Further information on how the Government intends to support this, and to deliver on our manifesto commitment to tackle low quality courses, will be set out alongside our conclusion of the Post-18 Review at the next Spending Review.
8. As we enter a new decade, while we can be confident the higher education sector will continue to be a vital component of our education system and economy, it is probable that the sector in 2030 will not look the same as it does now. The principles set out in the Restructuring Regime represent a sound set of principles for all higher education providers and I would encourage all providers, whether or not they need to access the scheme, to carefully consider them as they develop their strategies for the future. And where it is needed, the Restructuring Regime will provide support to individual providers that are trying to head off financial failure and, when a case is made for public funding, we will provide support in a way that ensures it can emerge strongly from the challenges COVID-19 has brought, ready to make a valuable contribution to addressing our country's future needs.

## Section 2: Rationale for the establishment of a Higher Education restructuring regime

9. COVID-19 has already brought very significant financial challenges across the higher education (HE) sector with losses of income across teaching, research, commercial and other activities. We are aware of the risk that greater impacts may be felt in the forthcoming academic year, starting this autumn. This may have consequences on HE providers' viability due to reduced student numbers, both international and domestic, alongside continuing disruption to commercial income and increases in some operational costs.
10. The measures we announced to support HE providers in England on 4 May 2020, reprofiling public funding and putting in place student number controls, together with access to government-backed business support schemes, will have helped to stabilise most providers' finances. We know that providers have been rising to the challenges they face, taking immediate action where they can, to address cashflow issues and identifying contingency options to mitigate the risk they face for next academic year.
11. Government is also actively considering how to reduce the burden of bureaucracy imposed by Government and regulators.
12. We have recognised, however, that a very high level of uncertainty remains around the scale of problems that providers, as a whole and individually, may face in 2020/21 and beyond. We want to make sure that we are well placed to take action, where there is a case to do so, to make sure that we take into account adverse impacts from COVID-19. That is why we committed on 4 May to work with HM Treasury and other government departments to develop this restructuring regime to be deployed, as a last resort, when other steps to preserve a provider's viability and sustainability have not proved sufficient and when a decision has been made to support a provider that would otherwise exit the market.
13. We want to ensure that, where a provider undergoes a restructuring exercise to overcome the financial challenges COVID-19 has brought, it emerges stronger, more efficient and more focussed on delivering a high-quality offer aligned to local and national economic and social needs. Government support will only be deployed where it is good value for money for the taxpayer and will be conditional on addressing those beneficial outcomes for our students, economy and society. Providers in scope for consideration for government support through the restructuring regime are those that are on the Office for Students register in the approved (fee cap) category.

## Section 3: Purpose and Principles for Intervention

14. In line with the Government's overall approach to interventions to address COVID-19 impacts, the restructuring regime will undertake a case-by-case assessment and intervention will be considered provided the following conditions are met:
  - There is a clear economic and value for money case for intervention: not all providers will be prevented from exiting the market. Any intervention should be a last resort measure after all other finance options have been exhausted - including the government-backed business support schemes;
  - The problems are related to COVID-19 and there is a clear and sustainable model for future provision as a result of restructuring, meaning that the provider should not need further assistance;
  - The failure of the provider would cause significant harm to the national or local economy or society (for example, this could be the loss of high-quality research or teaching provision, a disruption to COVID-19 research or healthcare provision or overall disruption to policy objectives including a significant impact on outcomes for students).
15. Any public funding offered to support restructuring would come with conditions to be determined on a case-by-case basis.
16. Any financial support provided will be in the form of a repayable loan. An assessment of the provider's business model will determine the precise terms and conditions.
17. We will also require assurance that providers are fully complying with their legal duties to secure freedom of speech under section 43 Education (No.2) Act 1986.

## Section 4: Policy objectives

18. In undertaking a provider assessment, the restructuring regime will consider the following overarching policy objectives, alongside ensuring additional support is well targeted, where there is an economic and value for money case:

- Protecting the welfare of current students
- Supporting the role HE providers play in regional and local economies through the provision of high quality courses aligned with economic and societal needs
- Preserving the sector’s internationally outstanding science base (noting specific support is being made available for research activities)

We will assess the case for intervention across a range of related impact groups and have outlined indicative criteria below; further guidance on the assessment process will be published in due course.

Objective	Impact Group	Criteria
1) Protect the welfare of current students	Students	<ul style="list-style-type: none"> <li>• Number and type (e.g. level of study) of students at risk of not completing / finishing their course</li> <li>• Impact on the quality of teaching provision to current students</li> <li>• Impact on disadvantaged and local students – including any differential impact on students with different protected characteristics</li> </ul>
2) Supporting the role HE providers play in regional and local economies through the provision of high-quality courses aligned with economic and societal need	Teaching provision	<ul style="list-style-type: none"> <li>• Loss of strategically important or unique provision</li> <li>• Loss of high-quality provision</li> <li>• Impact on progression to graduate employment and continuation rates</li> <li>• Loss of provision supporting key workforce pipeline, especially workforce essential to the COVID-19 response (e.g. healthcare)</li> <li>• Loss of teaching capacity in cold spots</li> </ul>
	Local economy and communities	<ul style="list-style-type: none"> <li>• Impact on regional businesses, jobs and local growth</li> <li>• Impact on wider post-16 education delivery</li> </ul>
3) Preserving the sector’s internationally outstanding science base (noting specific support is being made available for research activities)	Research & knowledge exchange	<ul style="list-style-type: none"> <li>• Loss of strategically important research</li> <li>• Significant loss of research capacity and capability</li> <li>• Loss of key knowledge exchange capacity that promotes innovation in business and industry in the regional economy</li> </ul>

19. The assessment will particularly look at supporting the provision of high-quality courses, with strong learner outcomes that develop skills that are aligned to local and national economic and social employment needs.
20. An independently chaired Higher Education Restructuring Regime Board (see Annex 1 for further detail) will review the provider assessment and make recommendations to the Secretary of State for Education on whether to intervene in the case of a particular provider.



## Section 5: Intervention and conditionality

21. Providers who are facing financial difficulties should continue to engage with the Office for Students, and actively discuss the option of entering into the DfE Restructuring Regime with the OfS. Whether or not a provider initiates discussions with DfE about the Restructuring Regime, it must continue to meet the OfS's regulatory requirements.
22. Providers will now also be able to contact the DfE Restructuring Unit in parallel on [HE.RestrictingRegime@education.gov.uk](mailto:HE.RestrictingRegime@education.gov.uk) to initiate discussions about restructuring.
23. Once a discussion has been initiated, the DfE Restructuring Unit will work with providers to explore the need to bring in Independent Business Review advisers. Providers will be expected to work with DfE on an open-book basis.
24. Following these discussions, the first decision of the Secretary of State, with advice from an independently chaired Restructuring Regime Board, will be to commission an Independent Business Review (IBR), as part of an evidence-based and costed restructuring plan.
25. These restructuring plans will need to pay specific attention to:
  - **Provision** – examining whether there is any duplication of provision, refocussing provision on high-quality courses, defined as courses with strong learner outcomes (e.g. low dropout rates and large proportions of graduates finding highly-skilled employment) that develop skills that are aligned to local and national economic and social employment needs;
  - **Level** – examining whether any provision could be more effectively offered at Level 4 and 5, either at the institution or at a local FE college;
  - **Research** – ensuring research is internationally excellent (as defined by the Research Excellence Framework) or else of direct and demonstrable value to the national economy or to the local and regional business community;
  - **Governance** - strengthening governance and leadership;
  - **Efficiency** – reviewing administration costs, including but not limited to senior executive pay, identifying cost savings and efficiencies to ensure future sustainability; selling or repurposing assets to repay loans or fund restructuring; closing unviable campuses and considering options for merger, consolidation and service sharing, including with FE;
  - **Student protection** – ensuring all current students are supported to complete the course on which they enrolled or an equivalent course. This could either be at the same provider or involve transferring to a different provider.
26. We would encourage any provider looking to restructure outside the regime also to bear in mind the statement of policy direction set out in this document, to align with our overall strategic direction for HE in England.
27. Following the IBR, the provider, working with the IBR adviser and key stakeholders such as the DfE HE Restructuring Unit, would produce a restructuring plan for ministers to decide, with advice from the Restructuring Regime Board, as to whether to support the plan, including with any loan funding. The OfS will make its own judgement about the extent to which a restructuring plan would resolve any concerns about regulatory compliance.

28. The restructuring plan will appropriately address the range of business and policy considerations set out earlier in this document at paragraph 14. By way of illustration, the provider could be required to produce plan documentation along the following lines:

<b>A strategic business case</b>	<ul style="list-style-type: none"> <li>• Setting out the case for change and the outcomes and benefits to be delivered. This must demonstrate how the plan will deliver the wider objectives that guide the restructuring regime</li> <li>• Details of the governance and management plan for the provider including proposed changes to the Board, the roles of the executive team and detail of the processes available to hold management to account for financial performance, quality of provision, the delivery of the restructuring plan and other purposes</li> </ul>
<b>A market assessment</b>	<ul style="list-style-type: none"> <li>• Detailing demand and competition in all key provision types</li> <li>• Broad offering and alternative local providers (current marketplace, position and competition)</li> </ul>
<b>A provision plan</b>	<ul style="list-style-type: none"> <li>• Setting out at a high level the current offer and the planned changes to provision to deliver high-quality courses that meet societal and economic need</li> <li>• Plan sets out how the provider will focus on courses with strong continuation rates and graduate returns</li> <li>• Plan sets out consideration of whether courses could be offered Level 4 + 5, including links with FE</li> </ul>
<b>A research plan</b>	<ul style="list-style-type: none"> <li>• Setting out how the provider will focus resources on scientific research that is: internationally excellent (“three star”) or higher, or else of direct and demonstrable value to the national economy or to the local and regional business community</li> </ul>
<b>An estates plan</b>	<ul style="list-style-type: none"> <li>• Detailing the estate needed to deliver the plan and plans to ensure efficiency use of space, including any campus closures and sale of assets</li> </ul>
<b>A recruitment plan</b>	<ul style="list-style-type: none"> <li>• Plan to deliver student numbers to ensure that the proposal is viable, based on student recruitment forecasts which are realistic and sustainable</li> </ul>
<b>A financial plan:</b>	<ul style="list-style-type: none"> <li>• <b>An income plan</b>, with its assumptions derived from the provision plan</li> <li>• <b>A cost plan</b>, including efficiencies and synergies; with a particular focus on the pay of senior leadership, pension costs, marketing spend, funding for student activism and sabbaticals and the costs of administration or bureaucracy</li> <li>• Expected <b>transitional costs</b> associated with the change, including description, timing and evidence that all costs have been accurately costed and minimised</li> <li>• Detail of proposed and potential <b>sources of funding</b> being sought, and the role of any asset disposals in funding restructuring or repaying loans</li> <li>• Detail of all <b>assumptions</b> underpinning the financial model, including evidence for their values and how they will be achieved</li> </ul>

<b>Transition and Delivery plan</b>	<ul style="list-style-type: none"> <li>• Including a timeline, the proposed management and governance of the changes, a full appraisal of risks and how these have been taken into account in the financial model, a clear plan for all existing students and an Equalities Impact Assessment where relevant</li> <li>• This must include plans, approved by the Office for Students, giving details of how current students will be supported to complete the course on which they enrolled or an equivalent course. This could be at the same provider or a different provider</li> </ul>
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29. Conditions attached to government support will be determined and implemented by DfE. Monitoring and enforcement arrangements will be developed accordingly.

## Annex 1: Governance and decision making

30. We will establish an independently chaired Higher Education Restructuring Regime Board composed of external experts. The chair of the Higher Education Restructuring Regime Board will be able to draw on input from other members of the board who are external to government and have specialist knowledge, for example in fields such as HE business management, insolvency matters and real estate. Government officials will also attend and bring expertise on matters relating to managing public money in particular.
31. The Secretary of State for Education will draw on the expertise of the Board on individual cases before making a decision on whether to intervene.
32. In considering whether to recommend that ministers initiate intervention activity with a particular provider, the board will be able to draw on a wide range of information:
  - the restructuring plan which will include an assessment of provider financial risk, examining financial information including: cash position, costs, income sources, capital structures and loan terms;
  - a comprehensive set of other information about the provider, its provision and its students, to enable an assessment of its significance in each of four impact areas (as appropriate): 1) students, 2) research and knowledge exchange, 3) teaching provision, 4) local economy and communities;
  - this will comprise quantitative data and qualitative information; this will be set out in comparative way that is appropriate for each provider, to aid meaningful interpretation by decision makers; and
  - DfE will collaborate with the Department for Business, Energy and Industrial Strategy and UK Research and Innovation to ensure that appropriate advice on matters related to research and knowledge exchange is provided to support decision making.

## **Annex 2: The Relationship with the Office for Students and its Regulatory Framework**

33. The HE Restructuring Regime is led by DfE but DfE will work closely with the OfS to ensure that there is coherence with the way the OfS performs its regulatory functions. As such, the Restructuring Regime is strongly complemented in several different ways by the OfS's approach as regulator of HE in England, for example:

- The OfS requires providers to have in place appropriate student protection arrangements. These arrangements will inform restructuring plans, and help guard against adverse impact on students if a provider had to make significant changes to its provision or to exit the market
- The OfS monitors a provider's financial viability and sustainability, and its management and governance arrangements as part of its monitoring of compliance with conditions of registration. A provider's delivery of a restructuring plan would likely be relevant to the OfS's ongoing assessment of regulatory compliance.



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