



About GuildHE

GuildHE is an officially recognised representative body for UK Higher Education. Our 54 members include universities, university colleges, further education colleges and specialist institutions from both the traditional and private sectors. Member institutions include some major providers in professional subject areas including art, design and media, music and the performing arts; agriculture and food; education; business and law; health and sports.

Response to consultation questions

Question 1: Do you agree or disagree with the proposed revision to the definition of a ‘reportable event’ in paragraph 494 of the regulatory framework? What are your reasons for this?

AGREE – We welcome the OfS’s consultation on reportable events and recognise reportable events as a helpful qualitative tool for the OfS to gather additional information in a risk-based way. It provides a proportionate way for autonomous institutions to consider their activities and highlight events that might impact on their ability to continue to meet the Conditions of Registration. We welcome the recognition that the materiality of these events will be different across the diversity of the higher education sector.

The OfS’s proposal moves away from reportable events in the Regulatory Framework being primarily based on changes to the corporate form of the provider (such as “legal form or business model”) to focus rather on events that might negatively impact on the provider’s “eligibility for registration” or “ability to comply with its conditions of registration”. The proposed definition moves further towards a principles-based definition and away from the list of possible events, outlined in para 494 of the Regulatory Framework, and therefore supports autonomous institutions to make decisions within a mature governance framework.

The insertion of the word “reasonable” in reference to the judgement of the OfS in terms of deciding whether an event is material or not is also a helpful clarification. The previous list outlined in para 494 of the Regulatory Framework included issues such as “The provider becoming aware of legal or court action”, “Any new partnerships, including validation or subcontractual arrangements” and “Intended campus, department, subject or provider closure” all of which might or might not impact on a provider’s ability to comply with its conditions of registration, but by being listed in the Regulatory Framework (rather than the Guidance) suggested that they should be reported to the OfS in all circumstances, resulting in unnecessary burden on the sector. The new definition will therefore allow a more nuanced and mature approach to reporting and reduce burden on providers.

The more principles-based approach to paragraph 494 in the Regulatory Framework is helpful, with additional clarity being provided through the Guidance document. However, if a general shift away from the Regulatory Framework towards Guidance documents becomes the norm of the OfS’s regulatory approach going forward that there are sufficient checks and balances on changes to Guidance so there does not become regulatory creep without appropriate scrutiny. It would therefore be helpful for the OfS to clarify how they will amend Guidance documents in the future, including consultation on major changes. It might be worth introducing a system of minor and major changes to Guidance documents, with the former not requiring full consultation but the latter requiring it.

For example, where the OfS was updating Regulatory Guidance for either underpinning principles or issues that should 'always be reported' we would consider this a Major change to the Guidance and therefore require sector consultation. However, if it was just a case of adding in an additional example of a type of event that governing bodies should consider but that wouldn't always be reportable that would usually just be considered a Minor amendment, and not always require sector consultation. It would be helpful for the OfS to develop a process to outline the situations in which it would update Regulatory Guidance and when it would be required to consult on these and when it wouldn't.

In paragraph 18 you refer to events that are 'material' and the 'materiality test' it could be suggested that this language has a very particular meaning in the world of Audit and so whilst that may be helpful for some providers it may be confusing for others? It is interesting to note that the Charity Commission's [guidance](#) on reportable events is much more focussed on the impact of what the event is (ie serious harm to people, the charity's assets and reputation, its ability to do its work) rather than specified events that may be beneficial or planned in the normal course of business (eg new campus, sale of assets, redundancy, change of chair). This might be something that the OfS might want to consider.

Question 2: Do you have any comments about the proposed consequential amendments to the guidance in the regulatory framework that underpins condition F3 (provision of information to the OfS)?

The changes to the Guidance document reflect the amended definition of Regulatory Events proposed for the Regulatory Framework. The list of possible events that Boards of Governors should consider whether they are reportable or not, outlined in Table 1, is helpful and only a set of possible events that might require consideration. It is important to note that this list is extended from the original list contained in paragraph 494 in the Regulatory Framework and should just be seen as a set of possible events that governing bodies should consider whether they are reportable or not, based on their materiality, rather than seen as creeping regulatory burden from the OfS.

As outlined in response to Question 1 it will be important for the OfS to consider the process by which it makes minor or major changes to Guidance documents in the future, and that this is placed within wider considerations of the bureaucratic burden on providers.

Question 3: Do you have any comments about the proposed guidance on reportable events?

Overall, the Guidance provides helpful guidance on a range of questions including materiality of issues, and that these are likely to be different for different providers. It is welcome that there is greater clarity on those issues that will always be reportable and where an institution might need to exercise its judgement.

There are also helpful clarifications on issues such as the timeliness of reporting issues and a helpful distinction between issues that have happened and those that might happen. There is perhaps still some ambiguity in paragraph 33 for future events when it talks about "first contemplated" as being when the "provider first formally discusses its plans or the matter with its governing body, owners or shareholders, even where details may not be firm" as there may be concerns surrounding confidentiality of ideas being, for example discussed at a Board away-day in a blue-skies discussion section rather than a topic being "formally contemplated".

Paragraph 48 outlining that where the OfS has considered a reportable event and does not need additional information it will write to the provider is a welcome step forward. It has previously sometimes felt like institutions were sending information into a black hole and not knowing what if anything was happening with the information. In this case however we believe that there needs to be a clear timeline attached to the written response from the OfS, say within 28 days.

Table 1 outlines examples of events that are always reportable and other issues that may be depending on the provider is helpful. There are some specific points:

It will be important to consider how this list relates to the proposal in the recently closed 'quality and standards' consultation and the list in that consultation of possible new reportable events to the guidance list. Changes to the degree classification algorithm, for example, hardly seems to fall into the same level of events as is listed in the new guidance, and I'd be surprised if it could be regarded as material to a provider's registration?

c.iii) it says that a "new campus" would always be reportable, but it might be helpful to have a definition of campus for the purposes of the guidance as this might vary in different providers.

d.iii) refers to "Termination of a partnership arrangement, whether in the UK or internationally, where this results in a contract change for students" so if there is a termination of a partnership arrangement but the students are fully taught-out, and therefore wouldn't be a contract change for any students would this still need to be reported? We would suggest that where there is a clear Student Protection Plan in place, considering the various impacts on students and outlining mitigations, this would not need to be reported.

d.iv) Refers to outcomes from appeals to the OIA that are either fully or partly justified. We welcome the recognition from the OfS that these would not be expected to always be reported. It is important for the provider to make a decision about the materiality of this, for example an institution shouldn't be expected to share a Justified decision of a stand-alone complaint with no wider considerations but might be expected to if it was symptomatic of a more systemic issue.

e.v) How would "A provider's trustees or directors are considering making an assessment that the provider is not a going concern." relate to para 33 about events being "first contemplated"? Surely most boards start their going concern discussion by at least contemplating the different options, and so in this case it would surely be a reportable event once the Audit and Risk Committee (or equivalent) made the proposal to the Board rather than when the Audit Committee considered it?

e.vi) "Tier 4" needs to be updated to reflect the terminology of the new immigration system.

Question 4: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or course or for any particular types of student?

No additional comments

Question 5: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

No additional comments

Question 6: Do you have any other comments?

Members have commented that they found the ability to speak to an institutional contact to seek advice and guidance during the COVID situation very helpful and we would hope that this could continue and help to develop the professional relationship that we are all keen to keep in place.

It will be important for the OfS to weigh up the impact of the current pandemic on institutions and not rush back to the normal regulatory environment until such a time as providers are able to respond to the increased expectations of the OfS in a proportionate way and not have to divert precious resources away from supporting students.

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