

Summary of responses to Research England's consultation on terms and conditions of funding 2019-20

Summary

1. Research England's funding powers under the 2017 Act are linked to the definition of eligible higher education providers as set by the Office for Students (OfS) and prescribed in detail by the OfS' regulatory framework. The regulatory framework becomes active on 1 August 2019, drawing the 2018-19 interim arrangements to an end, and requiring updated terms and conditions of Research England grant.
2. In our 'Changes to Research England terms and conditions – consultation document' (annex 1), we described the:
 - substantive amendments and additions included in the 2019-20 revision
 - broader accountability framework of which the terms and conditions are a part
 - key principles that we focussed on in developing the 2019-20 terms and conditions.
3. The consultation ran from 17 June to 8 July 2019, and included engagement with representatives from the sector bodies. The substantive amendments formed the basis of 6 questions in a consultation survey; this document summarises the key themes from the feedback we have received, along with our responses to these themes.
4. We welcome the suggestions received and have taken them on board. The following summary seeks to provide additional clarity where it was sought, and indicates where we have reflected the responses to the consultation in the final terms and conditions of funding for 2019-20. Primarily this was to remove unnecessary duplication or burden where it was pointed out. We will also incorporate this consultation feedback into the development of future versions of our terms and conditions.

Summary of responses

Survey Q1.

From paragraph 18 onwards, the consultation document sets out the substantive amendments and additions contained in these terms and conditions compared to the 2018-19 document. This includes a continuing condition to comply with the Concordat to Support Research Integrity. It also includes a set of expectations around safeguarding which reflect those found in the existing Global Challenges Research Fund grant letters, and also in the UK Collaborative on Development Research (UKCDR) 'International Development Research Funders Statement on Safeguarding', of which UKRI are co-signatories.

The proposed approach is to update these expectations in line with national policy development, UKRI policy development, employment and sector good practice or legislative change, or as may be notified separately by Research England. Do you agree with this approach?

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5. A number of respondents expressed concern about the potential duplication of the reporting requirements and the need for co-ordination between existing concordats. In line with our key principles of complementarity and continuity, we commit to continuing to work alongside relevant agencies, together with UKRI and its constituent councils, to ensure that we do not duplicate reporting requirements, including those arising from the design and implementation of the independent Research Integrity Committee. Full details of our reporting requirements for research integrity, including the information required, how it is stored, shared and protected will be published in due course. Until such time any enquiries should be directed to researchintegrity@re.ukri.org.
 6. In response to concerns raised through consultation around the potential for confusion of reporting requirements and increased burden on providers, we have removed the specific requirement for providers to notify us if they become aware of any safeguarding issues or unlawful conduct related to research or researchers in the context of either local or UK legislation. Instead, we refer providers to the conditions set out in the GCRF terms and conditions.

Survey Q2.

The 2019-20 terms and conditions include the following statement:

'Higher education providers are obliged to consider how Intellectual Property arising from publicly funded research may be optimally exploited, taking account particularly of guidance from the Intellectual Property Office, including its 'Intellectual Asset Management for Universities'.

The statement does not seek to dictate the terms of IP exploitation arrangements, but it does set an expectation on higher education providers in relation to IP arising from public funds. Do you agree with this approach?

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7. Many responses sought to re-inforce the above statement that Research England does not seek to dictate the terms of IP exploitation, and that it is for the provider to determine both how and the extent to which they do this, in accordance with their freedom to operate. We support this view.
 8. The responses also included a number of suggestions which providers may wish to take account of when considering how to exploit IP. These included consideration of long-term exploitation strategies; how exploitable IP varies considerably by academic discipline; cost implications involved in IP registration.
 9. Respondents noted the limited resources of some providers and suggested that we consider making dedicated IP funding available. We would advise that the Higher Education Innovation Fund (HEIF) may be used to support institutions with IP registration, protection and exploitation.
 10. In response to questions about the scope of the definition of IP, we mean the widest definition as described in the Intellectual Property Office's guide.

Survey Q3.

The updates we have made to our terms and conditions are intended to reflect wider changes in the regulatory landscape, in particular arising from the implementation of the Office for Students' regulatory framework and register of providers. In developing these terms and conditions we have focused on two key principles:

- **Complementarity: replicating similar frameworks operated by other bodies and utilising existing sources of assurance where possible**
- **Continuity: avoiding unnecessary major changes in the relationship between Research England and the providers it funds**

However, this approach does require us, to a degree, to react to changes made elsewhere which affects our ability to publish terms and conditions as early in the year as we would like. Do you agree with this approach?

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11. Responses from the consultation were largely in agreement with the principles that Research England's terms and conditions are complementary and reflect changes to the wider regulatory landscape, and avoid duplication. Where the survey responses highlighted particular concerns (see responses to survey question 1), we have reflected these by amending the terms and conditions accordingly.
 12. Concerns were raised that Research England's reactive response to wider policy changes could put pressure on providers' ability to adapt if not done so in a timely manner. We recognise those concerns and we will work closely with our partners such as the Office for Students and UKRI across the coming year/s (in keeping with our principles of complementarity and continuity) to ensure timely notification of our responses.

Survey Q4.

A large majority of responses were supportive of the priority we have given to avoiding duplication over early publication of draft terms and conditions.

13. We welcomed a suggestion that a post-implementation consultation might be employed for significant changes which have to be implemented without full consultation. Having reflected on the responses we acknowledge that if we are not in control of the timing we cannot guarantee that very short consultation periods will only be employed where changes are non-material.
14. Universities and colleges will be able to contact their representative organisations to ensure that we hear the message that a light touch consultation is insufficient in a particular case. Where the representative organisations tell us this, we will give very serious consideration to post-implementation consultation.
15. A number of responses asked for clarification as to which representative organisations we will consult in the event of an accelerated consultation. Our aim would be to work with the main representative organisations, UniversitiesUK and GuildHE, and we hope that they will maintain the capacity they need to provide us with informed and timely feedback on behalf of the sector. We are very open to consulting more widely with the proviso that we would not want some parts of the HE sector or some stakeholder groups to have a greater opportunity to make their views felt than others.

Survey Q5.

Research England's draft terms and conditions for 2019-20 form part of a broader Accountability Framework, as set out in annex 2 of the consultation document. This describes the broad accountability framework that exists between Research England and the higher education providers that Research England funds, drawing on the authorities and legislative provisions that underpin Research England's funding role.

Please use this space to provide any other comments that you may have on the draft terms and conditions and associated accountability framework for 2019-20, in addition to those already provided.

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16. A number of comments were made about the potential administrative burden of accountability for providers, and several responses reiterated concerns expressed in response to survey question 1 in relation to reporting requirements.
 17. In future iterations of our terms and conditions, we commit to continuing to work closely with partners, notably the OfS and UKRI, to ensure that our terms and conditions and assurance processes are aligned where applicable, including complementarity with relevant concordats, such those for early career researchers, research integrity and KEF, and incorporating the outcomes of the UKRI open access review.
 18. We note from the comments that it is important for providers to maintain the right to develop their own strategies that reflect the research and teaching priorities of that university.
 19. In developing future versions of the terms and conditions, we will give due consideration to the suggestion that we strengthen the requirement for providers to integrate research students into the research environment and culture.

Survey Q6.

As described in the consultation document, there are areas where external factors will have a bearing on future iterations of our terms and conditions. Most notably where we include any future alignment to UKRI policies and terms and conditions. The questions in this consultation address both the content of the 2019-20 T&Cs and the approach we will take in developing the future 2020-21 version. In addition to those areas already covered, what other factors are there which you feel should be considered in developing the 2020-21 terms and conditions?

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20. A number of comments concerned sustainability and the cross-subsidy of research from other income streams. The relevant requirement in the terms and conditions (paragraph 45) has a limited purpose: ensuring that universities make decisions to use surpluses on other activities to support research consciously and having considered costing information, rather than by default. We are aware of the view that the scale of cross-subsidy raises wider policy issues for UKRI and others.
 21. Some comments implied that the terms and conditions should provide detailed guidance on how requirements on providers to share data or to authorise data sharing by others are to be reconciled with legal requirements (presumably relating to data protection). We do not consider that any such guidance is required because both providers and UKRI (of which RE is a part) are bound by the law. Manifestly, neither should share information with us illegally. But it is not our role to interpret the law for providers or for other bodies from which we may seek data.
 22. We considered responses seeking greater clarity in respect of the availability of appeals processes against decisions taken to recover the Exchequer Interest or to invoke financial or informational sanctions. These are actions of last resort and we would exhaust all other options before employing them. We have taken the view that to itemise the process for challenging all decisions which we might take in enforcing the T&Cs would lead to an unwieldy and excessively detailed document; but we are aware that a failure to offer a means for challenging contentious and impactful decisions would increase the vulnerability of those decisions to legal challenge, and we would proceed mindfully.

Annex 1

Changes to Research England terms and conditions – consultation document

Summary

23. This document invites comments on revised terms and conditions of funding administered through Research England under section 97 of the Higher Education and Research Act 2017 (see Annex 1), forming part of an overarching accountability framework between Research England and the higher education providers we fund.
24. The consultation questions can be found at paragraph 18. Comments are invited via a [survey](#) at **by 8th July 2019**.

Introduction

25. The Higher Education and Research Act 2017 established UK Research and Innovation (UKRI) to oversee and support the majority of publicly funded research and innovation activity in the UK. Research England is the Council within UKRI with delegated funding and regulatory responsibilities for university research and knowledge exchange in England.
26. Research England's role is to create and sustain the conditions for a healthy and dynamic research and knowledge exchange system in English universities. Working closely with the Research Councils and Innovate UK, and with our partner funding bodies in the devolved administrations, we ensure that our nation's universities are effectively supported and encouraged to deliver excellent research with impact and world-leading knowledge exchange.
27. UKRI is a non-departmental public body. This means that while UKRI's remit (and the remits of its councils) are set by the Secretary of State for Business, Energy and Industrial Strategy, UKRI is not part of any government department. The 2017 legislation provides clear protections for academic freedom and provider autonomy under the Haldane principle and the 'dual support' system for research funding. These protections enable UKRI and its councils to make investments that deliver excellent research that promote and incentivise impact, and that support high-performance knowledge exchange and business-led innovation. These protections

also enable Research England to act as a broker between universities and the Government ensuring the appropriate provider freedom for research and knowledge exchange.

28. Research England's funding powers under the 2017 Act are linked to the definition of eligible higher education providers as set by the Office for Students (OfS) and prescribed in detail by the OfS' regulatory framework. The regulatory framework becomes active on 1 August 2019, drawing the present interim arrangements to an end, and requiring updated terms and conditions of Research England grant.

Accountability framework

29. Our accountability framework, and the terms and conditions that fit within it, are intended to safeguard both higher education provider and academic autonomy, which are widely regarded as key factors in the success of English higher education. The principle of provider autonomy and the systems of regulation on which it depends rely on clear lines of accountability for the proper stewardship of public funds and on being able to demonstrate to Parliament and the public that, in the exceptional circumstance when something goes wrong, there is a clear mechanism to put it right.
30. Higher education in England is made up of a diverse range of providers of varying size and complexity. To give expression to the principle of autonomy, every higher education provider is headed by a governing body or equivalent which is unambiguously and collectively responsible for overseeing the provider's activities, determining its future direction, and fostering an environment in which the provider's mission is achieved and the potential of all students (including postgraduate research students) is realised. The governing body or its equivalent ensures compliance with the statutes, ordinances and provisions regulating the provider and its framework of governance. Research England's funding is provided explicitly to the governing body as the higher education provider's ultimate authority.
31. As accounting officer, the chief executive of UKRI has a personal responsibility to safeguard public funds and achieve value for money as set out in HM Treasury guidance, 'Managing Public Money'. This includes responsibility for the public funds allocated by Research England to universities for research, knowledge exchange and associated purposes. The Executive Chair of Research England makes a clear personal contribution to fulfilling this responsibility, in line with the delegated responsibilities defined by legislation.
32. The approach to accountability described above draws on the expertise and diligence of governors, the effective academic management of higher education providers and a relationship of trust between Research England and English

universities. Research England, in turn, has a responsibility to promote and protect the wider public interest, particularly in relation to the funding we provide.

Terms and conditions of funding

33. The purpose of our terms and conditions of funding is to provide clarity and assurance around the formal funding relationship between UKRI (operating through Research England), governing bodies and heads of providers.
34. The updates we have made to our terms and conditions are intended to reflect wider changes in the regulatory landscape, in particular arising from the implementation of the Office for Students' regulatory framework and register of providers¹. In developing these terms and conditions we have focused on two key principles:
- Complementarity: replicating similar frameworks operated by other bodies and utilising existing sources of assurance where possible
 - Continuity: avoiding unnecessary major changes in the relationship between Research England and the providers it funds
35. Our application of these principles means that these terms and conditions are much less prescriptive than last year's. The Office for Students has slimmed down its own terms and conditions to avoid duplicating the requirements of its separate regulatory framework. We have taken the opportunity to do the same.
36. UK Research and Innovation regularly reviews its terms and conditions. We will strive to ensure that where our aims are the same as those of the rest of UKRI we do not generate additional conditions. Increasingly, the Research England conditions will focus specifically on areas where our distinctive model of assurance is fundamental to what we do, cross-referring to other documents where we share interests with others.
37. Research England's purpose is to create and sustain the conditions for a healthy and dynamic research and knowledge exchange system in English universities. Our role is in securing flexibility for universities and colleges to make their own judgements and take risks. We are responsible for the element of dual funding which protects the capacity of universities to respond quickly to opportunities central policymakers may not even be aware of and our approaches to funding will ensure that we do that. We are also responsible for ensuring that the research system across our universities is capable of sustaining its level of achievement. We

¹ https://www.officeforstudents.org.uk/media/1406/ofs2018_01.pdf

will diverge from other existing accountability frameworks only in order to achieve these goals.

38. This approach does require us, to a degree, to react to changes made elsewhere which affects our ability to publish terms and conditions as early in the year as we would like. For this reason, in this consultation, we would very much welcome comments, not just on the current text but on observations or concerns you would like us to consider in future years. Having these insights available to us when we embark on the creation of next year's instrument will help us to identify and eliminate both gaps in regulation and unnecessary or unduly burdensome conditions.
39. For example, we note that the Wellcome Trust requires funded organisations to publicly commit to the principles of the [San Francisco Declaration on Research Assessment \(DORA\)](#), Leiden Manifesto or equivalent. Though this is not yet a condition of our funding, we intend to incorporate the outcomes of the UKRI open access review into future iterations of these terms and conditions, including any mandatory requirement to sign DORA or equivalent. Research England commits to assessing the intrinsic merit of research and will not consider the publication channel, its impact factor (or other journal metrics), or the publisher when assessing quality. We expect research organisations we fund to uphold these values.

Consultation questions

40. Although views are sought on any element of the revised terms and conditions, we have taken the opportunity to adjust a number of specific areas in our terms and conditions, reflecting wider policy developments. For ease of reference, the following paragraphs highlight the substantive amendments and additions. Paragraph references in brackets refer to the terms and conditions document at Annex 1:

Research Integrity Concordat (paragraph 36)

41. Following an inquiry into research integrity, higher education providers and research funders have consulted on and revised the Research Integrity Concordat.
42. We intend for compliance with the Research Integrity Concordat to remain a condition of funding, and invite views on this.
43. A new mechanism to confirm compliance with the concordat is being developed, and will be applied in line with wider UKRI policy and practice.

44. These revised terms and conditions now also include a specific, explicit reference to the pre-existing expectation for higher education providers to notify us promptly of the outcome of all formal misconduct investigations conducted at the higher education provider.

Safeguarding and Equality, Diversity and Inclusion (paragraphs 37-42)

45. A new section has been included which sets our expectations of higher education providers in terms of safeguarding for staff, students, volunteers, participants in research and direct and indirect research beneficiaries. In order to achieve consistency and clarity across the policy landscape, the wording and therefore the expectations set out in paragraphs 37-42 reflect those found in the existing Global Challenges Research Fund grant letters, and also in the UKCDR 'International Development Research Funders Statement on Safeguarding', of which UKRI are co-signatories.
46. A new section has also been added setting out our expectations for equality, diversity and inclusion to be considered and supported in the use of our funding. This expectation matches the expectation in the UKRI terms and conditions of grant funding.
47. Research England may update its expectations in line with national policy development, UKRI policy development, employment and sector good practice or legislative change, or as may be notified separately by Research England.

Knowledge Exchange and Intellectual Property (paragraph 51)

48. As recorded in the minutes of the Committee of Public Accounts on the Thirty First to the Thirty Seventh reports from Session 2017-19, the Committee recommended that: 'the Government is still not doing enough to safeguard the economic benefits of its research assets'. In response, the following statement is included at paragraph 51:

Higher education providers are obliged to consider how Intellectual Property arising from publicly funded research may be optimally exploited, taking account particularly of guidance from the Intellectual Property Office, including its 'Intellectual Asset Management for Universities'.

49. The statement does not seek to dictate the terms of IP exploitation arrangements, but it does set an expectation on higher education providers in relation to IP arising from public funds.

Allocation of Funds for Research Supervision (paragraphs 56-57)

50. Following the 2018 review of the UK Quality Code for Higher Education, references to the previous code's section B11 have now been removed. Instead higher education providers must demonstrate that arrangements for assuring and maintaining the academic standards and enhancing the quality of these programmes are compliant with the expectations and core practices of the 'UK Quality Code for Higher Education'², including the UK Quality Code for Higher Education common practices and advice and guidance.

Revision to Terms and Conditions of Research England Grant (paragraphs 78- 80)

51. Research England Terms & Conditions may be subject to further revision due to the dynamic funding environment in which we operate and the policy cycles of other organisations such as the OfS and UKRI. Therefore a section has been added on how we interpret our obligation to consult which includes a materiality test to determine the necessity for either a full public consultation or a lighter-touch consultation for minor or technical changes, and for changes which follow logically from principles already consulted upon.

52. The section also defines those with whom we would seek to consult in different circumstances.

Next steps

53. Responses to this consultation should be submitted via a [survey](#) by **8 July 2019**.

54. We will finalise the terms and conditions in light of feedback received through consultation. We will publish the final document on our website, together with a summary of the feedback received, before 31 July 2019.

² See: <https://www.qaa.ac.uk/quality-code>