



# Higher Education and Research Act 2017

## 2017 CHAPTER 29

### PART 1

#### THE OFFICE FOR STUDENTS

##### *Access and participation*

#### **29 Power to approve an access and participation plan**

- (1) The governing body of an institution may apply to the OfS for the OfS's approval of a proposed access and participation plan relating to the institution for the purposes of satisfying an access and participation plan condition.
- (2) An access and participation plan is a plan that complies with sections 30 to 32.
- (3) The OfS may, if it thinks fit, approve the plan.
- (4) The OfS may issue guidance as to the matters to which the OfS will have regard in deciding whether to approve plans.
- (5) The Secretary of State may by regulations make provision about the procedure to be followed in connection with the giving of approval under this section.
- (6) The regulations may, in particular, specify matters to which the OfS is, or is not, to have regard in making any determination relating to approval.
- (7) The regulations may require the institution to which any plan approved under this section relates to publish the plan in the manner prescribed by the regulations.

#### **Commencement Information**

- 11** S. 29(2) in force at 1.1.2018 for specified purposes by [S.I. 2017/1146, reg. 3\(4\)](#)
- 12** S. 29(4) in force at 1.1.2018 by [S.I. 2017/1146, reg. 2\(f\)](#)

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### 30 Duration of a plan

- (1) An access and participation plan must specify the period during which it is to be in force.
- (2) The length of that period must not exceed such maximum as may be prescribed by regulations made by the Secretary of State.
- (3) Subsections (1) and (2) do not prevent the approval of a new plan taking effect on the expiry of a previous plan.

#### Commencement Information

**I3** [S. 30](#) in force at 1.1.2018 for specified purposes by [S.I. 2017/1146](#), [reg. 3\(4\)](#)

### 31 Content of a plan: fees

- (1) An access and participation plan relating to an institution must, in relation to each qualifying course in connection with which fees are to be payable to the institution by qualifying persons and in respect of each relevant academic year, specify or provide for the determination of a limit which those fees are not permitted to exceed.
- (2) The limit must not exceed—
  - (a) the higher amount, if the institution has a high level quality rating at the time the plan is approved, or
  - (b) in any other case, the sub-level amount.
- (3) In this section—
  - “the sub-level amount” means the amount determined from time to time under paragraph 2 of Schedule 2 as the sub-level amount;
  - “high level quality rating” has the same meaning as in that paragraph;
  - “the higher amount” means the amount from time to time prescribed as the higher amount under that paragraph;
  - “qualifying course” and “qualifying person” have the same meaning as in section 10;
  - “relevant academic year”, in relation to a qualifying course, is an academic year—
    - (a) which is applicable to the course,
    - (b) in respect of which fees are payable to the institution, and
    - (c) which begins when the plan comes into force or while it is in force.

#### Commencement Information

**I4** [S. 31](#) in force at 1.1.2018 for specified purposes by [S.I. 2017/1146](#), [reg. 3\(4\)](#)

### 32 Content of a plan: equality of opportunity

- (1) An access and participation plan relating to an institution—
  - (a) must also include such provisions relating to the promotion of equality of opportunity as are required by regulations made by the Secretary of State to be included in the plan, and

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- (b) may also include further provisions relating to the promotion of equality of opportunity.
- (2) In this section, any reference to the “general provisions” of an access and participation plan is a reference to the provisions included in the plan by virtue of subsection (1).
- (3) The general provisions that may be required by regulations made under subsection (1) include, in particular, provisions—
  - (a) requiring the governing body of the institution to take, or secure the taking of, measures to attract applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education,
  - (b) requiring the governing body of the institution to provide, or secure the provision of, financial assistance to students,
  - (c) requiring the governing body of the institution to make available to students and prospective students information about financial assistance available to students from any source,
  - (d) setting out objectives relating to the promotion of equality of opportunity,
  - (e) relating to the monitoring by the governing body of the institution of—
    - (i) its compliance with the provisions of the plan, and
    - (ii) its progress in achieving any objectives set out in the plan by virtue of paragraph (d), and
  - (f) requiring the provision of information to the OfS.
- (4) Regulations under subsection (1) may not require a plan—
  - (a) to include among the general provisions of the plan any provision referring to particular courses or to the manner in which courses are taught, supervised or assessed, or
  - (b) to include any provision relating to the criteria for the admission of students.
- (5) In this section—
  - (a) “equality of opportunity” means equality of opportunity in connection with access to and participation in higher education provided by English higher education providers, and
  - (b) references to higher education do not include education provided by means of any postgraduate course other than a course of initial teacher training.

#### Commencement Information

**I5** S. 32 in force at 1.1.2018 for specified purposes by [S.I. 2017/1146](#), [reg. 3\(4\)](#)

VALID FROM 01/04/2018

### 33 Variation of a plan

- (1) The Secretary of State may, by regulations, make provision enabling an access and participation plan which has been approved by the OfS under section 29 to be varied.
- (2) The regulations must provide for a variation to take effect only if approved by the OfS.

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VALID FROM 01/04/2018

### **34 Review of decisions on approval or variation**

Regulations made by virtue of section 29 or 33 must include provision—

- (a) requiring any decision of the OfS under section 29 or 33 affecting the governing body of an institution to have effect in the first instance as a provisional decision,
- (b) enabling the governing body to apply for a review of the provisional decision to a person, or panel of persons, appointed by the Secretary of State in accordance with the regulations,
- (c) enabling the Secretary of State to pay remuneration and allowances to any person so appointed,
- (d) prescribing the grounds on which an application for the review of a provisional decision may be made, and
- (e) requiring the OfS to reconsider its provisional decision, and make a final decision, having regard to any recommendation of the person or panel.

VALID FROM 01/04/2018

### **35 Advice on good practice**

- (1) The OfS may—
  - (a) identify good practice relating to the promotion of equality of opportunity, and
  - (b) give advice about such practice to registered higher education providers.
- (2) “Equality of opportunity” has the same meaning as in section 32.

### **36 Duty to protect academic freedom**

- (1) In performing its access and participation functions, the OfS has a duty to protect academic freedom including, in particular, the freedom of institutions—
  - (a) to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
  - (b) to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
  - (c) to determine the criteria for the admission of students and apply those criteria in particular cases.
- (2) In performing those functions, subsection (1) applies instead of section 2(1)(a) (duty of OfS to have regard to the need to protect institutional autonomy) in relation to the freedoms mentioned in subsection (8)(b) and (c) of that section.
- (3) For the purposes of this section, the OfS's “access and participation functions” are the functions conferred on it by or under—
  - (a) section 21 (refusal to renew an access and participation plan), and
  - (b) sections 29 to 34 (access and participation plans).

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### Commencement Information

**I6** S. 36 in force at 1.1.2018 for specified purposes by S.I. 2017/1146, reg. 3(5)

VALID FROM 01/04/2018

### **37 Power of Secretary of State to require a report**

- (1) The Secretary of State may, by direction, require the OfS to report to the Secretary of State—
  - (a) in its annual report under paragraph 13 of Schedule 1, or
  - (b) in a special report,on such matters relating to equality of opportunity as may be specified in the direction.
- (2) “Equality of opportunity” has the same meaning as in section 32.
- (3) Where the Secretary of State is provided with a special report, the Secretary of State must lay it before Parliament.
- (4) See paragraph 13 of Schedule 1 for the laying of the OfS's annual reports.

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