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STATUTORY INSTRUMENTS

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**2023 No. 801**

**EDUCATION, ENGLAND**

**The Higher Education (Assessment Fees) (England) Regulations 2023**

<i>Made</i>	- - - -	<i>13th July 2023</i>
<i>Laid before Parliament</i>		<i>17th July 2023</i>
<i>Coming into force</i>	- -	<i>7th August 2023</i>

The Secretary of State, with the consent of the Treasury, makes these Regulations in exercise of the powers conferred by sections 71(1)(a) and (2) and 119(5) of the Higher Education and Research Act 2017<sup>(1)</sup>.

**PART 1**

**General**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Higher Education (Assessment Fees) (England) Regulations 2023 and come into force on 7th August 2023.

(2) These Regulations extend to England and Wales.

**Interpretation**

2. In these Regulations—

“the Act” means the Higher Education and Research Act 2017;

“the 2022 Regulations” means the Higher Education (Investigation Fees) (England) Regulations 2022<sup>(2)</sup>;

“undertaking an assessment” has the meaning given in regulation 3.

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(1) 2017 c. 29. The consent of the Treasury has been obtained in accordance with section 71(5).

(2) S.I. 2022/1191.

### **Undertaking an assessment**

- 3.—(1) In these Regulations, undertaking an assessment includes—
- (a) engaging in any activity in connection with undertaking the assessment, and
  - (b) communicating the outcome of the assessment.
- (2) But undertaking an assessment does not include—
- (a) making a decision to undertake the assessment;
  - (b) making any decision, or engaging in any activity, in relation to which a fee is payable under the 2022 Regulations;
  - (c) making any decision, or engaging in any activity, in relation to which a fee would be payable under the 2022 Regulations but for the application of regulation 2(1)(a) to (d) or (6) of those Regulations.

## **PART 2**

### **Assessments of the quality of, and the standards applied to, higher education in connection with initial registration**

#### **Fee payable for assessment of the quality of, and the standards applied to, higher education in connection with initial registration**

4.—(1) Subject to regulation 14, a fee is payable to the OfS(3) by the governing body of an institution for the undertaking of an assessment of the quality of, and the standards applied to, higher education provided by that institution, where the assessment falls within paragraph (2).

(2) An assessment falls within this paragraph if it is undertaken by the OfS under section 23(2)(a) of the Act.

#### **Amount of the fee payable under regulation 4 and when it is payable**

5.—(1) The amount of the fee payable under regulation 4 is £28,463.

(2) Within a reasonable period after making a decision to undertake an assessment, the OfS must notify the governing body of an institution of the fee payable by the governing body under regulation 4.

(3) The fee must be paid by the governing body—

- (a) within the period specified in accordance with regulation 11(1)(d) in the notice given to it under paragraph (2), or
- (b) where the OfS has approved the payment of the fee by instalments, in the amounts and within the periods specified in accordance with regulation 11(1)(d) in the notice given to it under paragraph (2).

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(3) The Office for Students is referred to in the Act as the OfS: see section 1(2) of the Act.

## PART 3

Assessments of the quality of, and the standards applied to, higher education in connection with ongoing registration and authorisations to grant degrees etc.

### **Fee payable for assessment of the quality of, and the standards applied to, higher education in connection with ongoing registration and authorisations to grant degrees etc.**

6.—(1) Subject to regulation 14, a fee is payable to the OfS by the governing body of an institution for the undertaking of an assessment of the quality of, and the standards applied to, higher education provided by that institution, where the assessment falls within paragraph (2).

(2) An assessment falls within this paragraph if—

- (a) it is undertaken by the OfS under section 23(2)(b) of the Act, or
- (b) it is undertaken by the OfS for the purpose of—
  - (i) deciding whether to make an order under section 42(1) of the Act authorising the institution to grant taught awards or research awards or both,
  - (ii) deciding whether to make an order under section 42(1) or 45(1) of the Act varying or revoking an authorisation given to the institution to grant taught awards or research awards or both, or
  - (iii) monitoring the exercise by the institution of an authorisation to grant taught awards or research awards or both in a case where that authorisation has been given to the institution for a limited period in accordance with section 42(6) of the Act.

### **Amount of the fee payable under regulation 6 and when it is payable**

7.—(1) The amount of the fee payable under regulation 6 is to be determined in accordance with paragraphs (2) to (5).

(2) Within a reasonable period after making a decision to undertake an assessment, the OfS must—

- (a) prepare an estimate of the total amount of all the costs to be reasonably incurred by it in undertaking that assessment, and
- (b) notify the governing body of the institution of that amount.

(3) The amount of the estimate must be paid by the governing body—

- (a) within the period specified in accordance with regulation 11(1)(d) in the notice given to it under paragraph (2)(b), or
- (b) where the OfS has approved the payment of the amount of the estimate by instalments, in the amounts and within the periods specified in accordance with regulation 11(1)(d) in the notice given to it under paragraph (2)(b).

(4) Within a reasonable period after completing an assessment, the OfS must—

- (a) prepare a statement of the total amount of all the costs reasonably incurred by it in undertaking that assessment, and
- (b) notify the governing body of that amount.

(5) Where the total amount of all the costs reasonably incurred by the OfS in undertaking the assessment—

- (a) is greater than the amount estimated in accordance with paragraph (2), the amount of the difference is payable by the governing body to the OfS;

- (b) is less than the amount estimated in accordance with paragraph (2), the amount of the difference is payable by the OfS to the governing body;
  - (c) is equal to the amount estimated in accordance with paragraph (2), no further amount is payable.
- (6) The amount of the difference—
- (a) if payable by the governing body under paragraph (5)(a), must be paid by the governing body—
    - (i) within the period specified in accordance with regulation 12(1)(d) in the notice given to it under paragraph (4)(b), or
    - (ii) where the OfS has approved the payment of the amount of the difference by instalments, in the amounts and within the periods specified in accordance with regulation 12(1)(d) in the notice given to it under paragraph (4)(b);
  - (b) if payable by the OfS under paragraph (5)(b), must be paid by the OfS within 30 days of the date on which the notice under paragraph (4)(b) is issued.

**Duty of the OfS to publish statement about approach to determining the amount of the fee under regulation 7**

8. The OfS must publish—
- (a) a statement about its approach under regulation 7 to determining the total amount of all the costs reasonably incurred, or to be reasonably incurred, by it in undertaking assessments, and
  - (b) revised statements, where it changes the way in which it approaches such determinations.

## PART 4

### General provisions on fees

**Payment by instalments**

9.—(1) All or part of any fee payable under these Regulations may be paid by instalments with the approval of the OfS.

(2) Where the OfS approves the payment of all or part of a fee by instalments in a case where a notice relating to that fee has already been given to the governing body of an institution under regulation 5(2) or 7(2)(b) or (4)(b), the OfS may vary that notice.

**Waiver and refund of fees**

10. The OfS may—
- (a) waive all or part of any fee payable under these Regulations;
  - (b) refund all or part of any fee payable under these Regulations.

**Notice of fee under regulation 5(2) or amount of estimate under regulation 7(2)(b)**

11.—(1) A notice given to the governing body of an institution under regulation 5(2) or 7(2)(b) must—

- (a) state the date on which it is issued;
- (b) specify the amount which is payable;

- (c) in the case of a notice given under regulation 7(2)(b), explain how the OfS has determined that amount;
  - (d) specify the period within which the amount must be paid in full or, in a case where the OfS has approved payment by instalments, the amount of each instalment and the period within which each instalment must be paid;
  - (e) explain the consequences under regulation 13 of not paying the full amount or instalment within that period.
- (2) The period specified under paragraph (1)(d) within which an amount must be paid in full or, in a case where the OfS has approved payment by instalments, within which the first instalment must be paid, must not be of less than 30 days beginning with the date on which the notice is issued.

#### **Notice of fee under regulation 7(4)(b)**

- 12.—(1) A notice given to the governing body of an institution under regulation 7(4)(b) must—
- (a) state the date on which it is issued;
  - (b) specify the amount of the fee which is payable;
  - (c) explain how the OfS has determined that amount;
  - (d) specify the period within which the fee must be paid in full or, in a case where the OfS has approved payment by instalments, the amount of each instalment and the period within which each instalment must be paid;
  - (e) explain the consequences under regulation 13 of not paying the full fee or instalment within that period;
  - (f) specify the period during which the governing body may make representations about the fee to the OfS (“the representations period”);
  - (g) specify the way in which those representations may be made.
- (2) The period specified under paragraph (1)(d) within which a fee must be paid in full or, in a case where the OfS has approved payment by instalments, within which the first instalment must be paid, must not be of less than 30 days beginning with the date on which the notice is issued.
- (3) The representations period must not be of less than 14 days beginning with the date on which the notice is issued.
- (4) For the purposes of this regulation, representations in writing are made when they are received by the OfS.
- (5) Where the governing body makes representations about a fee during the representations period, the OfS—
- (a) must have regard to the representations, and
  - (b) must within a reasonable period, by notifying the governing body—
    - (i) confirm the notice given under regulation 7(4)(b),
    - (ii) vary that notice, or
    - (iii) withdraw that notice.
- (6) A notice under paragraph (5)(b) must state the date on which it is issued.
- (7) Where the governing body makes representations about a fee during the representations period, the requirement to pay that fee is suspended until the date on which the OfS issues a notice under paragraph (5)(b) confirming or varying the notice given under regulation 7(4)(b).
- (8) Where the OfS decides under paragraph (5)(b) to confirm or vary the notice given under regulation 7(4)(b)—

- (a) the OfS must ensure, by varying that notice as necessary, that the period within which the fee is required to be paid is a period of not less than 14 days beginning with the date on which the notice under paragraph (5)(b) is issued;
- (b) the OfS need not allow any further period for representations to be made by the governing body about the fee.

### **Interest on fees and recovery of unpaid amounts**

**13.**—(1) This regulation applies where all or any part of a fee payable under these Regulations by the governing body of an institution remains unpaid by the date on which it is required to be paid.

(2) The OfS may charge the governing body interest on the unpaid amount of the fee for the time being at the rate specified in paragraph (3) accruing on a daily basis until the unpaid amount is paid in full.

(3) The rate is the percentage per annum found by applying the following formula—

Bank of England rate + 5

where the “Bank of England rate” is the official bank rate announced at the most recent meeting of the Monetary Policy Committee of the Bank of England(4).

(4) The total amount of interest charged under paragraph (2) must not exceed the amount of the fee.

(5) The OfS may recover from the governing body, as a civil debt due to the OfS, the unpaid amount of the fee and the amount of any unpaid interest charged under paragraph (2).

### **No fee payable for assessments begun before these Regulations come into force**

**14.** No fee is payable under these Regulations for the undertaking of an assessment where the assessment was begun before the day on which these Regulations come into force.

## **PART 5**

### **Amendment of the Higher Education (Investigation Fees) (England) Regulations 2022**

#### **Amendment of the Higher Education (Investigation Fees) (England) Regulations 2022**

**15.** In regulation 2 of the 2022 Regulations—

(a) after paragraph (5), insert—

“(5A) But conducting an investigation does not include any activity in relation to which a fee is payable under the Higher Education (Assessment Fees) (England) Regulations 2023.”;

(b) in paragraph (6), for “But the”, substitute “The”.

13th July 2023

*Robert Halfon*  
Minister of State  
Department for Education

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(4) The Monetary Policy Committee of the Bank of England was established by section 13 of the Bank of England Act 1998 (c. 11).

We consent

12th July 2023

*Stuart Anderson*  
*Scott Mann*  
Two of the Lords Commissioners of His  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for fees to be charged by the Office for Students (“the OfS”) for the undertaking of assessments under the Higher Education and Research Act 2017 (c. 29) (“the Act”).

Regulation 3 defines undertaking an assessment for the purposes of these Regulations. This includes engaging in any activity in connection with undertaking the assessment, and communicating the outcome of the assessment, but does not include decisions and activities for which a fee is or would be payable under the Higher Education (Investigation Fees) (England) Regulations 2022 (S.I. 2022/1191) (the “2022 Regulations”).

Regulation 4 provides for a fee to be payable for an assessment by the OfS of the quality of, and the standards applied to, higher education provided by an institution where the assessment is undertaken under section 23(2)(a) of the Act. Assessments are undertaken under section 23(2)(a) of the Act to determine whether an institution satisfies any initial registration condition relating to the quality of, or the standards applied to, higher education provided by it. Regulation 5 specifies the amount of the fee and when it is payable.

Regulation 6 provides for a fee to be payable for an assessment by the OfS of the quality of, and the standards applied to, higher education provided by an institution where the assessment is undertaken under section 23(2)(b) of the Act, or for any of the purposes specified in regulation 6(2)(b). Assessments are undertaken under section 23(2)(b) of the Act to determine whether an institution satisfies any ongoing registration condition relating to the quality of, or the standards applied to, higher education provided by it. The purposes specified in regulation 6(2)(b) relate to the authorisation, variation, revocation and monitoring by the OfS of authorisations to grant taught awards, research awards or both.

Regulation 7 sets out how the amount of the fee payable under regulation 6 is to be determined and when it is payable.

Regulation 8 requires the OfS to publish statements about its approach to determining the amount of the fee payable under regulation 6.

Regulation 9 provides for fees to be paid by instalments with the approval of the OfS.

Regulation 10 provides for the waiver and reduction of fees by the OfS.

Regulations 11 and 12 make provision about the notification of fees under regulations 5 and 7. The notice must specify the period within which fee amounts are to be paid and other matters. In the case of the final settlement of the fee payable under regulation 6, the notice must allow a period for representations to be made.

Regulation 13 provides for interest to be charged on unpaid fees, and for unpaid amounts to be recoverable as a civil debt due to the OfS.

Regulation 14 provides that no fee is payable where the assessment was begun before the date on which these Regulations come into force.

Regulation 15 amends the 2022 Regulations so that the activities for which a fee is payable under these Regulations are not chargeable through the fee payable under those regulations.

A full impact assessment has not been produced for these Regulations because no, or no significant, impact on the private, voluntary or public sector is foreseen.



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