
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first ones made under sections 15 and 21 of the Higher Education and Research Act 2017 (“the Act”).

Under section 15(1) of the Act the Office for Students (“OfS”) may impose a monetary penalty on a registered higher education provider (as defined in section 3(10)(a) of the Act) for breach of one of its ongoing registration conditions. These conditions are imposed on a registered higher education provider in accordance with section 5 or section 6 of the Act. Regulations 2 to 4 of these Regulations make further provision in relation to monetary penalties.

Regulation 2 provides for the maximum monetary penalty that the OfS can determine under section 15(2) of the Act. Regulation 3 sets out how the qualifying income of a registered higher education provider is determined as this in turn determines the maximum monetary penalty for some providers.

Regulation 4 sets out the factors to which the OfS must have regard when it exercises its power under section 15(1) of the Act to impose a monetary penalty.

Regulations 5 to 9 of these Regulations relate to an OfS refusal to renew an access and participation plan, as defined in section 29(2) of the Act. The Higher Education (Access and Participation Plans) (England) Regulations 2018 (S.I. 2018/470) make various provisions relating to access and participation plans.

Where a registered higher education provider that is subject to a mandatory fee limit condition under section 10 of the Act has an access and participation plan approved by the OfS under section 29 of the Act, that provider may charge fees at the higher limit. This higher limit is determined and prescribed in accordance with paragraph 2 of Schedule 2 to the Act. Section 12 of the Act requires the OfS to impose a registration condition on providers wishing to charge fees at the higher limits under paragraph 2 of Schedule 2, requiring those providers to have in force and to comply with an access and participation plan approved by the OfS. Sections 15 to 21 of the Act make provision regarding enforcement powers available to the OfS where such a registration condition is breached. These include powers in section 21 for the OfS to refuse to renew an access and participation plan.

Regulation 5 sets out the matters to which the OfS must have regard when deciding whether to notify the governing body of a registered higher education provider in accordance with section 21(2) of the Act that it will refuse to renew an access and participation plan. Regulation 6 sets out the procedure when the OfS intends to give such a notification. Regulation 7 sets out what a notification given in accordance with section 21(2) of the Act must contain. Regulation 8 provides for the OfS’s notification of a refusal to renew an access and participation plan to be treated as a provisional decision in the first instance and the procedure for the review of that decision. It also provides for the procedure when the OfS’s decision becomes final. Regulation 9 provides for the appointment of a person or panel to carry out a review.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

The Governance Code on Public Appointments referred to in regulation 9(2) is published electronically and may be obtained from the website of the Commissioner for Public Appointments: <https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/governance-code/>.