

Draft Regulations laid before Parliament under section 119(2)(c) and (d) of the Higher Education and Research Act 2017, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

EDUCATION, ENGLAND

**The Higher Education (Access and Participation
Plans) (England) Regulations 2018**

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 29(5) to (7), 30(2), 32(1) and (3), 33(1), 34 and 119(5) of the Higher Education and Research Act 2017(1).

In accordance with section 119(2) of that Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Higher Education (Access and Participation Plans) (England) Regulations 2018 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

“a plan” means an access and participation plan within the meaning of section 29(2) of the Higher Education and Research Act 2017;

“the review body” means a person or panel of persons appointed by the Secretary of State in accordance with regulation 6(6).

Content of plans

2.—(1) A plan relating to an institution must set out the objectives of the institution, determined by its governing body, relating to the promotion of equality of opportunity(2).

(2) A plan relating to an institution must include provisions requiring the governing body of the institution to do the following—

(1) 2017 c. 29.

(2) “Equality of opportunity” is defined in section 32(5) of the Higher Education and Research Act 2017.

- (a) to take, or secure the taking of, the measures set out in the plan to attract an increased proportion of its total number of applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in that institution or in higher education⁽³⁾;
- (b) to take, or secure the taking of, the measures set out in the plan to support successful participation in higher education by specified prospective students and students;
- (c) to provide, or secure the provision of, the bursaries and other forms of financial assistance set out in the plan to students undertaking a higher education course at the institution;
- (d) to make the arrangements set out in the plan to make available to students undertaking a higher education course at the institution and prospective students wishing to undertake such a course information about financial assistance available to them from any source;
- (e) to make the arrangements set out in the plan to make available to prospective students, before they commit themselves to undertake a higher education course at the institution, information about the aggregate amount of fees⁽⁴⁾ that the institution will charge for the completion of that course;
- (f) to monitor and evaluate, in the manner set out in the plan—
 - (i) its compliance with the provisions of the plan; and
 - (ii) its progress in achieving the objectives set out in the plan by virtue of paragraph (1); and
- (g) to provide the OfS with such information as it may reasonably require from time to time regarding the contribution that the institution has made towards furthering equality of opportunity.

(3) The measures referred to in paragraph (2)(b) may include the provision of appropriate assistance to students during higher education courses regarding the educational, employment or other opportunities that may be available during or after completion of those courses.

(4) In paragraph (2)(b) “specified prospective students and students” are prospective students and students who are members of groups which, at the time when the plan is approved, are under-represented amongst those who—

- (a) complete higher education courses at that institution or at registered higher education providers; or
- (b) otherwise participate successfully, in the view of the OfS, in higher education provided by that institution or by registered higher education providers.

Approval of plans

3.—(1) In deciding whether to approve a plan, in addition to any other matters it considers appropriate, the OfS must have regard to—

- (a) whether the governing body of the institution provided its students with an opportunity to express their views about the content of the plan before it was submitted for approval; and
- (b) if it provided such an opportunity and received views from its students in response, what steps were taken subsequently by the governing body in relation to the plan.

(2) Where the governing body of an institution applies to the OfS for approval of a proposed plan—

(3) Section 32(5)(b) of the Higher Education Act 2017 provides that, for the purpose of that section 32, references to “higher education” do not include education provided by means of any postgraduate course other than a course of initial teacher training.

(4) “Fees” in relation to undertaking a course is defined in section 85(2) of the Higher Education and Research Act 2017.

- (a) the OfS must inform the governing body within a reasonable time whether it approves the plan or whether it is minded not to approve the plan, giving reasons in the latter case;
 - (b) where the OfS informs the governing body under sub-paragraph (a) that it is minded not to approve the plan, the governing body may, within a reasonable time, do either or both of the following—
 - (i) make representations as to why the OfS should approve the plan,
 - (ii) modify the plan and resubmit it to the OfS;
 - (c) where the governing body acts in accordance with sub-paragraph (b), the OfS must, within a reasonable time, consider the representations or modifications to the plan (or both) and, having considered them, inform the governing body whether or not it approves the plan;
 - (d) where the governing body does not act in accordance with sub-paragraph (b), the OfS must, within a reasonable time, inform the governing body whether or not it approves the plan.
- (3) Where the OfS has approved a plan, the governing body of the institution must publish it in a manner which makes it conveniently accessible to students and prospective students.

Variation of plans

4.—(1) The governing body of an institution may, at any time after a plan relating to it has been approved, apply to the OfS for approval of a variation of that plan.

(2) Where the governing body does so, regulation 3 applies, as if in that regulation all occurrences of the word “plan” were substituted by “variation of a plan”.

(3) A variation of a plan takes effect only if approved by the OfS.

Duration of plans

5. The maximum period of time during which a plan may be in force is five years.

Review of decisions

6.—(1) Any of the following decisions of the OfS has effect in the first instance as a provisional decision for the purpose of these Regulations—

- (a) whether to approve or not to approve a plan under regulation 3(2);
- (b) whether to approve or not to approve a variation of a plan under regulation 4.

(2) The governing body of an institution affected by a provisional decision may apply to the review body for a review of that decision.

(3) A provisional decision becomes final if the governing body—

- (a) informs the OfS that it accepts the provisional decision; or
- (b) does not apply for a review within 28 days beginning with the date of the provisional decision.

(4) Where the governing body applies for a review of a provisional decision—

- (a) the review body must complete the review within a reasonable time and may issue a recommendation upon completion of the review;
- (b) the OfS must reconsider its provisional decision having regard to any such recommendation and must issue a final decision within a reasonable time.

(5) The grounds on which the governing body may apply for a review are that the governing body—

- (a) presents a material factor for consideration which for good reason it had not previously drawn to the attention of the OfS;
 - (b) considers that the OfS had disregarded a material factor which it should have considered;
or
 - (c) considers that the provisional decision is disproportionate in view of all the relevant facts which were considered by the OfS.
- (6) The Secretary of State must appoint a person or a panel of persons to review provisional decisions.
- (7) In doing so the Secretary of State must act in accordance with the principles set out in the Governance Code on Public Appointments issued by the Minister for the Cabinet Office in December 2016.
- (8) The Secretary of State may pay remuneration and allowances to any person appointed under paragraph (6).

Date

Name
Minister of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first ones made under sections 29, 30, 32, 33 and 34 of the Higher Education and Research Act 2017 (the “2017 Act”). They make various provisions relating to access and participation plans, as defined in section 29(2) of the 2017 Act. Where a registered higher education provider that is subject to a mandatory fee limit condition under section 10 of the 2017 Act has an access and participation plan approved by the Office for Students (“the OfS”) under section 29 of that Act, that provider may charge fees at the higher limits determined and prescribed in accordance with Schedule 2, paragraph 2 of that Act. Section 12 of the 2017 Act requires the OfS to impose a registration condition on providers wishing to charge fees at the higher limits under Schedule 2, paragraph 2, requiring those providers to have in force and to comply with an access and participation plan that has been approved by the OfS. Sections 15 to 21 of the 2017 Act make provision regarding enforcement powers available to the OfS where a registration condition has been breached.

The provisions of the 2017 Act relating to access and participation plans apply in relation to registered higher education providers, as defined in section 3(10) of that Act. Section 3(3)(b) of the 2017 Act requires that, in order to be registered, a provider must be or intend to become an English higher education provider, as defined in section 83(1) of that Act.

Regulation 2 sets out the required contents of access and participation plans. Regulation 3 makes provision regarding the procedure for approval of plans. Regulation 4 provides for plans to be varied after they have been approved. Regulation 5 states the maximum duration of a plan. Regulation 6 makes provision enabling decisions of the OfS regarding the approval or variation of plans to be reviewed.

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 6(7) 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/>.