

Draft Regulations laid before Parliament under section 119(2) of the Higher Education and Research Act 2017 (c. 29), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

EDUCATION, ENGLAND

**The Students' Unions (Freedom of Speech)
(Monetary Penalties) (England) Regulations 2024**

Made - - - -

Coming into force - - *1st August 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 69B(3) and (4) 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, extent and interpretation

1.—(1) These Regulations may be cited as the Students' Unions (Freedom of Speech) (Monetary Penalties) (England) Regulations 2024 and come into force on 1st August 2024.

(2) These Regulations extend to England and Wales.

(3) In these Regulations, "the Act" means the Higher Education and Research Act 2017.

Maximum amount of monetary penalty

2. The amount of a penalty determined by the OfS(2) under section 69B(3) of the Act (functions of the OfS in relation to students' unions) must not exceed £50,000.

Matters to which the OfS must have regard

3.—(1) In exercising its power to impose a monetary penalty on a students' union(3) under section 69B(2) of the Act, in addition to any other matters it considers appropriate, the OfS must have regard to—

(a) the nature, seriousness, duration and impact of the relevant breach;

(1) 2017 c. 29; section 69B was inserted by section 7 of the Higher Education (Freedom of Speech) Act 2023 (c. 16).

(2) The Office for Students is referred to in the Higher Education and Research Act 2017 (c.29) ("the Act") as the OfS; see section 1(2).

(3) "Students' union" is defined in section A5(6) of the Act.

- (b) any financial or other gain made by the students' union as a result of the relevant breach which benefits the students' union;
 - (c) any financial or other loss avoided as a result of the relevant breach which benefits the students' union;
 - (d) where any gain described in sub-paragraph (b) or avoided loss in sub-paragraph (c) can be quantified, the amount of any such gain or avoided loss;
 - (e) any previous breach of the students' union's duties under section A5 of the Act (duty to take steps to secure freedom of speech) or A6 of that Act (code of practice)(4);
 - (f) any steps taken by the students' union following the relevant breach to avoid a breach in the future of its duties under those sections;
 - (g) the impact that imposing a monetary penalty on the students' union is likely to have on—
 - (i) members of the students' union;
 - (ii) other students of the provider, who are not members of the students' union which is for students at that provider;
 - (iii) students generally, or students of a particular description, of all providers.
- (2) In this regulation—

“provider” means a registered higher education provider that is eligible for financial support(5);

“relevant breach” means a breach of one or more of the students' union's duties under section A5 or A6 of the Act in respect of which the OfS is considering the imposition of a monetary penalty.

Date

Parliamentary Under Secretary of State
Department for Education

(4) Sections A5 and A6 of the Act were inserted by section 3 of the Higher Education (Freedom of Speech) Act 2023.

(5) “Registered higher education provider that is eligible for financial support” is defined in section 85(1) of the Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to England regarding the imposition of a monetary penalty by the Office for Students (“OfS”) on a students’ union in respect of a breach of its duties under section A5 (duty to take steps to secure freedom of speech) or A6 (code of practice) of the Higher Education and Research Act 2017 (c. 29) (“the Act”). The students’ unions which are subject to such duties are students’ unions for students at higher education providers registered with the OfS as approved (fee cap) providers.

Regulation 2 provides for the maximum monetary penalty that the OfS can determine under section 69B(3) of the Act (functions of the OfS in relation to students’ unions).

Regulation 3 sets out the factors to which the OfS must have regard when it exercises its power under section 69B(2) of the Act to impose a monetary penalty.

A full impact assessment of the effect that the Higher Education (Freedom of Speech) Act 2023 (c. 16) (which inserted section 69B in the Act) will have on the costs of business, the voluntary sector and the public sector is available at https://www.legislation.gov.uk/ukpga/2023/16/pdfs/ukpgaod_20230016_en_001.pdf or from the Department for Education, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT. A further impact assessment has not been produced for this instrument as no additional impact on the private, voluntary or public sector is foreseen.