



# Higher Education and Research Act 2017

## 2017 CHAPTER 29

### PART 1

#### THE OFFICE FOR STUDENTS

##### *Enforcement of ongoing registration conditions*

#### **15 Power to impose monetary penalties**

- (1) The OfS may impose a monetary penalty on a registered higher education provider if it appears to the OfS that there is or has been a breach of one of its ongoing registration conditions.
- (2) A “monetary penalty” is a requirement to pay the OfS a penalty of an amount determined by the OfS in accordance with regulations made by the Secretary of State.
- (3) The Secretary of State may by regulations make provision about matters to which the OfS must, or must not, have regard in exercising its power under subsection (1).
- (4) Schedule 3 contains provision about—
  - (a) the procedure for imposing a monetary penalty,
  - (b) rights of appeal,
  - (c) the recovery of the penalty and interest, and
  - (d) the retention of sums received.

#### **16 Suspension of registration**

- (1) The OfS may suspend a registered higher education provider’s registration if it appears to the OfS that there is or has been a breach of one of its ongoing registration conditions.
- (2) Where a provider’s registration is suspended, the OfS—

- (a) must specify the purposes for which the provider is not to be treated as a registered higher education provider during the suspension (“the excepted purposes”), and
  - (b) may impose conditions on the governing body of the provider which, if satisfied, will result in the OfS lifting the suspension (“the remedial conditions”).
- (3) During the suspension of a provider’s registration—
- (a) the provider is treated as a registered higher education provider for all purposes other than the excepted purposes, and
  - (b) the provider’s entry in the register remains but must specify—
    - (i) that the registration is suspended, and
    - (ii) the excepted purposes.
- (4) The suspension of a provider’s registration ends—
- (a) when the suspension is lifted by the OfS because the remedial conditions have been satisfied or for any other reason, or
  - (b) if earlier, when the provider is removed from the register under section 18 (de-registration by the OfS) or section 22 (voluntary de-registration).
- (5) The OfS may vary the excepted purposes or the remedial conditions at any time during the suspension.
- (6) Where it decides to vary the excepted purposes or the remedial conditions, the OfS must notify the governing body of the provider of its decision.
- (7) The notice must specify the excepted purposes, or remedial conditions, as varied.
- (8) Where the excepted purposes are varied, the OfS must update the provider’s entry in the register with the excepted purposes (as varied).
- (9) Where the suspension of a provider’s registration ends otherwise than when the provider is removed from the register, the OfS must enter the date on which it ends in the provider’s entry in the register.

## **17 Suspension: procedure**

- (1) Before suspending a registered higher education provider’s registration under section 16, the OfS must notify the governing body of the provider of its intention to do so.
- (2) The notice must—
- (a) specify the OfS’s reasons for proposing to suspend the registration,
  - (b) specify the proposed excepted purposes and the proposed remedial conditions (if any),
  - (c) specify the period during which the governing body of the provider may make representations about the proposal (“the specified period”), and
  - (d) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The OfS must have regard to any representations made by the governing body of the provider during the specified period in deciding whether to suspend its registration.

- (5) Having decided whether or not to suspend the provider's registration, the OfS must notify the governing body of the provider of its decision.
- (6) Where the decision is to suspend the provider's registration, the notice must—
  - (a) specify the date on which the suspension takes effect,
  - (b) specify the excepted purposes,
  - (c) specify the remedial conditions (if any), and
  - (d) contain information as to the grounds for the suspension.
- (7) The OfS may vary the date specified under subsection (6)(a) at any time before that date by notifying the governing body of the provider.
- (8) Subsections (1) to (7) do not apply where the OfS considers that a suspension should take effect immediately because there is an urgent need to protect public money, including, in particular, payments made under—
  - (a) section 39 or 40 (financial support for providers),
  - (b) section 93 in the exercise of UKRI's power under that section to give financial support, or
  - (c) section 22 of the Teaching and Higher Education Act 1998 (financial support for students).
- (9) In such a case—
  - (a) the OfS must notify the governing body of the provider of its decision to suspend the provider's registration, and
  - (b) that notice must comply with the requirements of subsection (6).

## **18 De-registration by the OfS**

- (1) The OfS must remove a registered higher education provider from the register if the OfS becomes aware that the provider no longer is, or intends to become, an English higher education provider.
- (2) The OfS may remove a registered higher education provider from the register if condition A or B is satisfied.
- (3) Condition A is satisfied if—
  - (a) the OfS has previously exercised its powers under section 15 (monetary penalties) or section 16 (suspension) in relation to breach of one of the provider's ongoing registration conditions, and
  - (b) it appears to the OfS that—
    - (i) there is again a breach, or a continuing breach, of that condition, or
    - (ii) there is or has been a breach of a different one of the provider's ongoing registration conditions.
- (4) Condition B is satisfied if it appears to the OfS that—
  - (a) there is or has been a breach of one of the provider's ongoing registration conditions, and
  - (b) its powers under sections 15 and 16 are insufficient to deal with the breach (whether or not they have been, are being or are to be, exercised in relation to it).

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*Status: This is the original version (as it was originally enacted).*

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- (5) The OfS may make transitional or saving provision in connection with the removal of a provider from the register under this section.
- (6) That provision may include treating the provider as a registered higher education provider for such purposes as the OfS may specify.
- (7) The OfS must—
  - (a) maintain a list of providers removed from the register under this section,
  - (b) include in that list the details of any provision made under subsection (5), and
  - (c) make the list publicly available by such means as it considers appropriate.

## **19 De-registration by the OfS: procedure**

- (1) Before removing a registered higher education provider from the register under section 18, the OfS must notify the governing body of the provider of its intention to do so.
- (2) The notice must—
  - (a) specify the OfS’s reasons for proposing to remove the provider from the register,
  - (b) specify the period during which the governing body of the provider may make representations about the proposal (“the specified period”), and
  - (c) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The OfS must have regard to any representations made by the governing body of the provider during the specified period in deciding whether to remove it from the register.
- (5) Having decided whether or not to remove the provider from the register, the OfS must notify the governing body of the provider of its decision.
- (6) Where the decision is to remove the provider from the register, the notice must specify the date on which the removal takes effect.
- (7) The notice must also contain information as to—
  - (a) the grounds for the removal,
  - (b) rights of appeal, and
  - (c) the period within which an appeal may be made.
- (8) A removal under section 18 may not take effect at any time when—
  - (a) an appeal under section 20(1)(a) or (b), or a further appeal, could be brought in respect of the decision to remove, or
  - (b) such an appeal is pending.
- (9) But that does not prevent a removal taking effect if the governing body of the provider notifies the OfS that it does not intend to appeal.
- (10) Where subsection (8) ceases to prevent a removal taking effect on the date specified under subsection (6), the OfS is to determine a future date on which the removal takes effect.

- (11) But that is subject to what has been determined on any appeal under section 20(1)(a) or (b), or any further appeal, in respect of the decision to remove.

## **20 De-registration: appeals**

- (1) The governing body of an institution may appeal to the First-tier Tribunal against either or both of the following—
- (a) a decision of the OfS to remove it from the register under section 18;
  - (b) a decision of the OfS as to the date specified under section 19(6) as the date on which the removal takes effect.
- (2) An appeal may be on the grounds—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) On an appeal, the Tribunal may—
- (a) withdraw the removal;
  - (b) confirm the removal;
  - (c) vary the date on which the removal takes effect;
  - (d) remit the decision whether to confirm the removal, or any matter relating to that decision (including the date on which the removal takes effect), to the OfS.

## **21 Refusal to renew an access and participation plan**

- (1) This section applies where—
- (a) an access and participation plan condition is one of the ongoing registration conditions of a registered higher education provider, and
  - (b) it appears to the OfS that there is or has been a failure by the governing body of the provider to comply with—
    - (i) the requirement of that condition mentioned in section 12(3)
    - (b) (failure to comply with general provisions of an access and participation plan), or
    - (ii) a fee limit condition which is one of its ongoing registration conditions.
- (2) The OfS may notify the governing body of the provider that, on the expiry of the access and participation plan in relation to the provider which is currently in force, it will refuse to approve a new plan under section 29 during such period as the OfS may specify in the notice.
- (3) The Secretary of State may by regulations make provision about—
- (a) matters to which the OfS must, or must not, have regard in exercising its powers under subsection (2);
  - (b) the procedure to be followed in connection with the giving of notification under subsection (2);
  - (c) the effect of such a notification.
- (4) The regulations must include provision—

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- (a) requiring any decision of the OfS under subsection (2) affecting the governing body of a provider 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.
- (5) The OfS's powers in sections 15 to 19 (penalties, suspension and de-registration) are also available in the event of the breach of a condition described in subsection (1)(b).