

2019 No. 543

EDUCATION, ENGLAND

**The Higher Education (Registration Fees) (England)
Regulations 2019**

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|-------------------------------|---------|------------------------|
| <i>Made</i> | - - - - | <i>11th March 2019</i> |
| <i>Laid before Parliament</i> | | <i>12th March 2019</i> |
| <i>Coming into force</i> | - - | <i>6th April 2019</i> |

The Secretary of State, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by sections 70 and 119(5) of the Higher Education and Research Act 2017(a):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Higher Education (Registration Fees) (England) Regulations 2019 and come into force on 6th April 2019.

(2) In these Regulations—

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

“date of entry in the register” means the date on which the OfS(b) registers an institution in the register(c) in accordance with section 3(3) of the Act;

“initial fee” means a fee for the initial registration of an institution under section 70(1)(a) of the Act;

“initial registration year” means the period of 12 months beginning with 1st August and ending with 31st July in which an institution’s date of entry in the register falls;

“number of full time equivalent students” means the number included in the most recent list published by the OfS under regulation 3(3);

“ongoing fee” means a fee for the ongoing registration of an institution for each ongoing registration year under section 70(1)(b) of the Act;

“ongoing registration year” means a period of 12 months beginning with 1st August and ending with 31st July, other than its initial registration year, in which an institution is a registered higher education provider(d) on 1st August.

(a) 2017 c. 29.

(b) For the meaning of “OfS”, see section 1 of the Act.

(c) For the meaning of register and registration, see sections 3(1), 3(10)(b) and 85(1) of the Act. For the meaning of institution, see section 83 of the Act.

(d) For the meaning of registered higher education provider, see sections 3(10)(a) and 85(1) of the Act.

Initial fees

2.—(1) Where an institution's date of entry in the register is before 1st August 2019, no initial fee is payable.

(2) Where an institution's date of entry in the register is on or after 1st August 2019, subject to regulation 4, an initial fee is payable.

(3) Subject to regulations 5 and 6, the initial fee payable is—

$$\frac{OF}{12} \times M$$

Where—

OF is the ongoing fee which would be payable by the institution in accordance with regulation 3 if that institution's initial registration year was to be treated as an ongoing registration year; and

M is the number of complete months within the period beginning with the institution's date of entry in the register and ending with 31st July in its initial registration year.

(4) Subject to regulation 10(2), an initial fee is to be paid by an institution within the payment period specified in accordance with regulation 9(2)(b)(i) in a notice given to it under regulation 9(1).

Ongoing fees

3.—(1) Subject to regulation 4, an ongoing fee is payable by an institution for each ongoing registration year.

(2) Subject to regulations 5 and 7, the ongoing fee payable is the amount in column 3 of the table in the Schedule which corresponds to the number of full time equivalent students for that institution as specified in column 2.

(3) For the purpose of ascertaining the ongoing fee payable in accordance with paragraph (2), the OfS must—

- (a) determine the number of full time equivalent students for each registered higher education provider;
- (b) make that determination in accordance with the principles set out in the 'Calculating student numbers' consultation response published by the OfS on 24th October 2018(a);
- (c) publish, on or before 1st July in each calendar year, a list of all its current determinations made in accordance with sub-paragraphs (a) and (b); and
- (d) whenever an institution is registered in the register after the date when the first list is published under sub-paragraph (c)—
 - (i) revise the most recent list published under sub-paragraph (c) by adding its determination for that institution; and
 - (ii) publish the revised list within the period of 30 days beginning with that institution's date of entry in the register.

(4) Subject to regulation 10(2), an ongoing fee is to be paid by an institution no later than the later of—

- (a) 1st August in the ongoing registration year to which it relates; or
- (b) the last day of the payment period specified in accordance with regulation 9(2)(b)(ii) in a notice given to it under regulation 9(1).

(a) The OfS carried out a consultation in September 2018 on the principles which would guide how they count student numbers for regulatory purposes and published its response on 24th October 2018. The consultation paper (OfS 2018.32) is available at <https://www.officeforstudents.org.uk/publications/calculating-student-numbers-consultation-on-the-principles-guiding-how-we-will-calculate-student-numbers-for-regulatory-purposes/> and the response (OfS 2018.48) is available at <https://www.officeforstudents.org.uk/publications/calculating-student-numbers-consultation-response/>. Hard copies are available from the Office for Students, Nicholson House, Lime Kiln Close, Stoke Gifford, Bristol, BS34 8SR.

Exemption for micro-entities

4.—(1) Where this regulation applies to an institution in relation to—

- (a) its initial registration, no initial fee is payable by that institution;
- (b) an ongoing registration year, no ongoing fee is payable by that institution for that ongoing registration year.

(2) This regulation applies to an institution in relation to its initial registration or in relation to an ongoing registration year if, at the time when an initial fee or ongoing fee (as the case may be) is determined—

- (a) its number of full time equivalent students is 300 or less; and
- (b) the OfS is satisfied that either—
 - (i) the institution was a micro-entity in the most recent financial year for which audited accounts are available; or
 - (ii) if audited accounts are not available, the institution is likely to be, or to have been, a micro-entity in the first financial year for which audited accounts are expected to become available.

(3) Subject to paragraph (4), an institution is a micro-entity in a financial year if it qualifies as a micro-entity in relation to that financial year under section 384A(1) or (2) of the Companies Act 2006(a).

(4) For the purposes of determining whether an institution qualifies as a micro-entity under section 384A(1) or (2) of the Companies Act 2006, section 384B(1)(f) of that Act is to be disregarded(b).

(5) In this regulation—

“annual accounts” has the meaning in section 471 of the Companies Act 2006(c);

“audited accounts” means annual accounts that have been audited by a person—

- (a) who is eligible for appointment as a statutory auditor under section 1211 of the Companies Act 2006; and
- (b) who, in relation to an institution, meets the independence requirement in section 1214 of the Companies Act 2006;

“financial year” has the meaning in section 390 of the Companies Act 2006.

New providers: eligibility for reduced fees

5.—(1) Subject to paragraph (3), this regulation applies to an institution in relation to its initial registration or in relation to an ongoing registration year if—

- (a) at the time when an initial fee or ongoing fee (as the case may be) is determined, its number of full time equivalent students is 1,000 or less; and
- (b) it is a new provider.

(2) An institution is a new provider if, immediately before its date of entry in the register—

- (a) it had not been eligible for funding under section 65 of the Further and Higher Education Act 1992(d) at any time on or after 1st August 2014;

(a) 2006 c.46. Sections 384A and 384B were inserted into the Companies Act 2006 by the Small Companies (Micro-Entities' Accounts) Regulations 2013 (S.I. 2013/3008). Section 384A(1) relates to a company's first financial year and section 384A(2) relates to subsequent financial years. Section 384B disapplies section 384A in specified cases to exclude certain entities from being treated as a micro-entity under s384A. For the application (with modifications) of the Companies Act 2006 to (i) limited liability partnerships, see the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008, S.I. 2008/1911; (ii) overseas companies, see the Overseas Companies Regulations 2009, S.I. 2009/1801; (iii) unregistered companies, see the Unregistered Companies Regulations 2009, S.I. 2009/2436.

(b) Section 384B(1)(f) of the Companies Act 2006 excludes charities from being treated as a micro-entity under s384A.

(c) Section 471(1) of the Companies Act 2006 was amended by S.I. 2012/2301, 2013/3008 and 2016/1245.

(d) 1992 c.13.

- (b) it had not provided higher education courses^(a) which were designated for the purposes of section 22 of the Teaching and Higher Education Act 1998^(b) by or under regulations under that section at any time on or after 1st August 2014; and
- (c) it had not previously been a registered higher education provider.

(3) This regulation does not apply to an institution which is exempt from liability to pay an initial fee or ongoing fee by virtue of regulation 4.

New providers: amount of reduced initial fees

6. Where regulation 5 applies to an institution in relation to its initial registration and its date of entry in the register is on or after 1st August 2019, the initial fee payable is—

$$IF \times 0.25$$

Where—

IF is the initial fee which, but for this regulation, would be payable by the institution if calculated in accordance with regulation 2(3).

New providers: amount of reduced ongoing fees

7.—(1) Where an institution’s date of entry in the register is before 1st August 2019 and regulation 5 applies to that institution in relation to an ongoing registration year, the ongoing fee payable for that ongoing registration year is—

- (a) for the ongoing registration year beginning with 1st August 2019—

$$OF \times 0.25;$$

- (b) for the ongoing registration year beginning with 1st August 2020—

$$OF \times 0.5;$$

- (c) for the ongoing registration year beginning with 1st August 2021—

$$OF \times 0.75;$$

- (d) for each subsequent ongoing registration year —

$$OF;$$

Where—

OF is the ongoing fee which, but for this regulation, would be payable by the institution if calculated in accordance with regulation 3 for the ongoing registration year in question.

(2) Where an institution’s date of entry in the register is on or after 1st August 2019 and regulation 5 applies to that institution in relation to an ongoing registration year, the ongoing fee payable for that ongoing registration year is—

- (a) for the ongoing registration year after its initial registration year—

$$\left[\frac{OF}{12} \times (12-M) \times 0.25 \right] + \left[\frac{OF}{12} \times M \times 0.5 \right];$$

- (b) for the ongoing registration year after the ongoing registration year in sub-paragraph (a)—

$$\left[\frac{OF}{12} \times (12-M) \times 0.5 \right] + \left[\frac{OF}{12} \times M \times 0.75 \right];$$

(a) For the meaning of higher education course, see section 83(1) of the Act.
 (b) 1998 c.30.

- (c) for the ongoing registration year after the ongoing registration year in sub-paragraph (b)—

$$\left[\frac{\text{OF}}{12} \times (12 - M) \times 0.75 \right] + \left[\frac{\text{OF}}{12} \times M \right];$$

- (d) for each subsequent ongoing registration year —

OF;

Where—

OF is the ongoing fee which, but for this regulation, would be payable by the institution if calculated in accordance with regulation 3 for the ongoing registration year in question; and

M is the number of complete months within the period beginning with the institution's date of entry in the register and ending with 31st July in its initial registration year.

Waiver and refund

8. The OfS may waive or refund part or all of any fee payable under these Regulations if it considers it fair and reasonable to do so in an individual case.

Notification of fees

9.—(1) Where a fee is payable by an institution under these Regulations, the OfS must notify the institution.

(2) The notice must—

- (a) specify the amount of the fee and the basis on which the OfS has determined that amount (including the number of full time equivalent students for that institution by reference to which the OfS has made its determination);
- (b) specify—
 - (i) the period within which the fee is required to be paid in full as a lump sum (“the payment period”); or
 - (ii) in a case where payment by instalments has been approved by the OfS, the amount of each instalment and the period within which each instalment is required to be paid;
- (c) contain information as to the consequences if the full fee, or an instalment (as the case may be), is not paid by the time by when it is required to be paid;
- (d) specify the period during which the institution may make representations (“the representations period”); and
- (e) specify the way in which those representations may be made.

(3) The payment period or, in a case where payment by instalments has been approved by the OfS, the period within which the first instalment is required to be paid, must not be less than 30 days beginning with the date on which the notice is received.

(4) The representations period must not be less than 14 days beginning with the date on which the notice is received.

(5) Where an institution makes representations within the representations period, the OfS—

- (a) must have regard to the representations; and
- (b) must, within a reasonable time, by notifying the institution—
 - (i) confirm the notice given under paragraph (1);
 - (ii) vary that notice; or
 - (iii) withdraw that notice.

(6) The requirement to pay a fee is suspended at any time when an institution has made representations within the representations period and the OfS has not yet notified the institution of its decision under paragraph (5)(b).

(7) Where the decision is to confirm or vary the notice—

(a) the OfS must ensure that the payment period or, in a case where payment by instalments has been approved, the period within which the first instalment is required to be paid, is not less than 14 days beginning with the date on which notice of that decision is received; and

(b) the OfS need not allow any further representations period.

(8) Where the OfS considers that an institution is exempt from liability to pay a fee under these Regulations by virtue of regulation 4, the OfS must notify the institution to that effect within a reasonable time.

Payment by instalments

10.—(1) A fee payable under these Regulations may be paid by instalments with the approval of the OfS.

(2) Where the OfS has approved the payment of a fee by instalments, the fee is to be paid by the institution in the amounts and within the periods specified in accordance with regulation 9(2)(b)(ii) in a notice given to it under regulation 9(1).

(3) Where the OfS approves the payment of a fee by instalments in a case where a notice relating to that fee has already been given to an institution under regulation 9(1), the OfS may vary that notice accordingly by notifying the institution.

Interest and recovery

11.—(1) This regulation applies if all or part of a fee under these Regulations is unpaid by the time when it is required to be paid.

(2) The OfS may charge an institution 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 of interest for the purpose of paragraph (2) is the percentage per annum found by applying the following formula—

Bank of England rate + 5.

(4) “Bank of England rate” means the official bank rate as announced at the most recent meeting of the Bank of England Monetary Policy Committee^(a).

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

(6) The OfS may recover from the institution, as a civil debt due to it, the unpaid amount of the fee and any unpaid interest.

11th March 2019

We consent

4th March 2019

Chris Skidmore
Minister of State
Department for Education

Paul Maynard
Mike Freer
Two of the Lords Commissioners of Her Majesty’s Treasury

(a) The Monetary Policy Committee was constituted on a statutory basis by section 13 of the Bank of England Act 1998 (c. 11).

**SCHEDULE
FEES PAYABLE**

Regulation 3

| <i>Column 1</i> Fee band | <i>Column 2</i> Number of full-time equivalent students | <i>Column 3</i> Ongoing fee |
|------------------------------------|---|---------------------------------------|
| A | No more than 25 | £12,300 |
| B | More than 25 but no more than 50 | £15,350 |
| C | More than 50 but no more than 75 | £19,200 |
| D | More than 75 but no more than 100 | £24,050 |
| E | More than 100 but no more than 300 | £30,100 |
| F | More than 300 but no more than 500 | £37,750 |
| G | More than 500 but no more than 1,000 | £47,350 |
| H | More than 1,000 but no more than 1,500 | £59,400 |
| I | More than 1,500 but no more than 2,500 | £74,600 |
| J | More than 2,500 but no more than 5,000 | £93,750 |
| K | More than 5,000 but no more than 10,000 | £117,900 |
| L | More than 10,000 but no more than 20,000 | £148,350 |
| M | More than 20,000 | £186,800 |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first ones made under section 70 of the Higher Education and Research Act 2017 (“the Act”). They set out the fees which the Office for Students (“OfS”) may charge institutions for their registration in the register of English higher education providers which is maintained by the OfS under section 3 of the Act.

Regulation 2 sets out the fee for initial registration. For institutions registered before 1st August 2019, when the new regulatory regime under the Act comes fully into force, there is no fee. For institutions registered on or after that date, an initial fee is payable. The initial fee is calculated as a proportion of the annual ongoing fee by reference to the number of months remaining until the next 1st August.

Regulation 3 sets out the fee for ongoing registration for each subsequent period of 12 months beginning on 1st August each year by reference to the table in the Schedule. The amount payable by an institution depends on the number of full time equivalent students on higher education courses at that institution. That number is to be determined and published annually by the OfS in accordance with principles set out in its ‘Calculating student numbers’ consultation response (OfS 2018.48). A copy is available at <https://www.officeforstudents.org.uk/publications/calculating-student-numbers-consultation-response/> or from the Office for Students, Nicholson House, Lime Kiln Close, Stoke Gifford, Bristol, BS34 8SR).

Regulation 4 provides for an exemption from fees for institutions with no more than 300 full time equivalent students which qualify as micro-entities by reference to the definition in section 384A of the Companies Act 2006. Regulation 4(4) disapplies section 384B(1)(f) of the Companies Act

(which excludes charities from being treated as a micro-entity under that Act) when determining whether an institution qualifies as a micro-entity for this purpose.

Regulations 5 to 7 provide for reduced initial or ongoing fees for ‘new providers’ with no more than 1000 full time equivalent students for up to three years after initial registration. ‘New provider’ is defined in regulation 5(2), broadly covering those institutions which have not previously been regulated by the Higher Education Funding Council for England, the Department for Education or the OfS. The amount of any such reduced fee is calculated as a proportion of the fee which would otherwise be payable under regulation 2 or 3. An increasing proportion of the relevant fee is payable each year. Reduced initial fees are calculated in accordance with regulation 6. Reduced ongoing fees are calculated in accordance with regulation 7. Regulation 7(1) applies where an institution is registered before 1st August 2019 and regulation 7(2) applies where an institution is registered on or after that date.

Regulation 8 gives the OfS a power to waive or refund part or all of any fee.

Regulation 9 requires the OfS to notify institutions when a fee is payable and sets out the matters which must be included in that notice. It also makes provision for an institution to make representations. Notice must also be given if an institution is exempt by virtue of regulation 4.

Regulation 10 provides for payment by instalments with the approval of the OfS.

Regulation 11 makes provision for interest and civil recovery if fees are not paid on time.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department of Education, Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT and is published with an Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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