
STATUTORY INSTRUMENTS

2022 No. 1191

EDUCATION, ENGLAND

The Higher Education (Investigation Fees) (England) Regulations 2022

<i>Made</i>	- - - -	<i>16th November 2022</i>
<i>Laid before Parliament</i>		<i>17th November 2022</i>
<i>Coming into force</i>	- -	<i>8th December 2022</i>

The Secretary of State makes these Regulations with the consent of the Treasury in exercise of the powers conferred by sections 71(1)(a) and (2) and 119(5) of the Higher Education and Research Act 2017⁽¹⁾.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Higher Education (Investigation Fees) (England) Regulations 2022.

(2) These Regulations come into force on 8th December 2022.

(3) These Regulations extend to England and Wales.

Fee payable to the Office for Students for investigation of a registered higher education provider

2.—(1) Subject to paragraph (6) and regulation 7, a fee is payable for the conducting by the OfS of an investigation of the activities of a registered higher education provider where, as a result of the investigation, the OfS—

- (a) finds that there is or has been a breach of any ongoing registration condition of the provider,
- (b) imposes a specific ongoing registration condition on the provider's registration,
- (c) requires the provider's governing body to provide information pursuant to an ongoing registration condition of the provider referred to in section 8(1)(b) of the Higher Education and Research Act 2017, or
- (d) makes a recommendation that, in order to mitigate what the OfS considers to be the increased risk of a breach of an ongoing registration condition of the provider, the provider should take or refrain from taking any action specified by the OfS.

(1) 2017 c. 29. The consent of the Treasury has been obtained in accordance with section 71(5).

(2) The fee is payable by the governing body of the institution whose activities were the subject of the investigation.

(3) The amount of the fee is a sum which is equal to the total amount of all the costs reasonably incurred by the OfS in conducting the investigation.

(4) That sum is to be determined by the OfS.

(5) For the purposes of paragraphs (1) and (3), conducting an investigation includes—

- (a) making and communicating a decision to conduct the investigation,
- (b) settling and communicating the findings of the investigation, and
- (c) making any other decision, and engaging in any other activity, in connection with—
 - (i) beginning the investigation;
 - (ii) conducting the investigation;
 - (iii) settling or communicating the findings of the investigation.

(6) But the fee under paragraph (1) is only payable if the OfS decides not to impose any sanction in relation to the provider as a result of the findings of the investigation (including where that is because it considers there to be no grounds to impose any sanction as a result of those findings).

(7) The references in paragraph (6) to imposing a sanction are references to—

- (a) imposing a monetary penalty under section 15 of the Higher Education and Research Act 2017,
- (b) suspending a provider's registration under section 16 of that Act, or
- (c) removing a provider from the register under section 18 of that Act.

Duty of the OfS to publish statement about approach to determining amount of fees

3. The OfS must publish—

- (a) a statement about its approach to making determinations under regulation 2(4), and
- (b) revised statements, where it changes the way in which it approaches such determinations.

Waiver and refund of fees

4. The OfS may—

- (a) waive all or part of any fee payable under these Regulations;
- (b) refund all or part of any fee paid under these Regulations.

Notice of fee payable and when it must be paid

5.—(1) The OfS must notify the governing body of an institution of any fee payable by the governing body under regulation 2.

(2) The notice must—

- (a) state the date on which the notice is issued;
- (b) specify the amount of the fee;
- (c) explain how the OfS has determined the sum referred to in regulation 2(3);
- (d) specify the period within which the fee must be paid;
- (e) explain the consequences under regulation 6 of not paying the fee within that period;
- (f) specify the period during which the governing body may make representations about the fee to the OfS (“the representations period”);

- (g) specify the way in which those representations may be made.
- (3) The period specified under paragraph (2)(d) within which the fee must be paid must not be of less than 30 days beginning with the date on which the notice is issued.
- (4) The representations period must not be of less than 14 days beginning with the date on which the notice is issued.
- (5) For the purposes of this regulation, representations in writing are made when they are received by the OfS.
- (6) Where the governing body makes representations about the fee during the representations period, the OfS—
 - (a) must have regard to the representations, and
 - (b) must within a reasonable period, by notifying the governing body—
 - (i) confirm the notice given under paragraph (1),
 - (ii) vary that notice, or
 - (iii) withdraw that notice.
- (7) A notice under paragraph (6)(b) must state the date on which it is issued.
- (8) Where the governing body makes representations about the fee during the representations period, the requirement to pay the fee is suspended until the date on which the OfS issues a notice under paragraph (6)(b) confirming or varying the notice under paragraph (1).
- (9) Where the OfS decides under paragraph (6)(b) to confirm or vary the notice given under paragraph (1)—
 - (a) the OfS must ensure, by varying the notice given under paragraph (1) as necessary, that the period within which the fee is required to be paid is a period of not less than 14 days beginning with the date on which the notice under paragraph (6)(b) is issued;
 - (b) the OfS need not allow any further period for representations to be made by the governing body about the fee.

Interest on fees and recovery of unpaid amounts

- 6.—(1) This regulation applies where all or any part of a fee payable under these Regulations by the governing body of an institution remains unpaid by the time when it is required to be paid.
- (2) The OfS may charge the governing body 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 is the percentage per annum found by applying the following formula—

Bank of England rate + 5

where the “Bank of England rate” is the official bank rate announced at the most recent meeting of the Monetary Policy Committee of the Bank of England⁽²⁾.

- (4) The total amount of interest charged under paragraph (2) must not exceed the amount of the fee.
- (5) The OfS may recover from the governing body, as a civil debt due to the OfS, the unpaid amount of the fee and the amount of any unpaid interest charged under paragraph (2).

(2) The Monetary Policy Committee of the Bank of England was established by section 13 of the Bank of England Act 1998 (c. 11).

No fee where decision to investigate made before 8th December 2022

7. No fee is payable under these Regulations for the conducting of an investigation where the decision to conduct the investigation was made by the OfS before 8th December 2022.

16th November 2022

Robert Halfon
Minister of State
Department for Education

We consent

14th November 2022

Nigel Huddleston
Amanda Solloway
Two of the Lords Commissioners of His
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 71 of the Higher Education and Research Act 2017 (“the Act”) provides that the Office for Students (“the OfS”) may, in accordance with regulations made by the Secretary of State, charge fees for activities specified in those regulations undertaken by the OfS in the performance of its functions. These Regulations have been made for that purpose.

Regulation 2 provides for a fee to be payable for an investigation by the OfS of the activities of a registered higher education provider where the investigation has resulted in any of the outcomes specified in regulation 2(1)(a) to (d). The fee is payable by the governing body of the institution in question, but no fee is payable unless the OfS decides not to impose any sanctions on the provider under section 15, 16 or 18 of the Act. Section 73 of the Act provides for the recovery of the OfS’s costs when it imposes such a sanction, and allows for the recovery of investigation costs (and other costs) in those circumstances.

The fee payable is a sum, determined by the OfS, which is equal to the total amount of all the costs reasonably incurred by the OfS in conducting the investigation in question.

Regulation 3 requires the OfS to publish statements of its approach to determining the amount of fees payable under these Regulations.

Regulation 4 provides for waiver and reduction of fees by the OfS.

Regulation 5 provides for the OfS to give notice when a fee is payable. The notice must specify the period within which the fee is to be paid and other matters. It must allow a period for representations to be made about the fee.

Regulation 6 provides for interest to be charged on unpaid fees, and for unpaid amounts to be recoverable as a civil debt due to the OfS.

Regulation 7 provides that no fee is payable where the decision to investigate was made before the date on which these Regulations come into force.

A full impact assessment has not been produced for these Regulations because no, or no significant, impact on the private, voluntary or public sector is foreseen.