

**EXPLANATORY MEMORANDUM TO**  
**THE HIGHER EDUCATION (REGISTRATION FEES) (ENGLAND)**  
**(AMENDMENT) REGULATIONS 2023**

**2023 No. 558**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These regulations increase the registration fees payable by registered higher education providers to the Office for Students (the OfS) from the start of the 2023/24 academic year.
- 2.2 The increase in fees is needed to fund significant and important work which the OfS will be undertaking in the coming academic year. This includes the implementation of the Higher Education (Freedom of Speech) Act 2023, monitoring providers' compliance with their registration conditions, distributing grant funding, and preparing for the implementation of the Lifelong Learning Entitlement.
- 2.3 Full details of the increase are set out in section 7 of this Explanatory Memorandum.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The fee increase is above the rate of inflation due to the extent of the additional work being undertaken by the OfS. Further detail on this is set out in section 7 below. We do not currently have plans to increase the registration fees further in the immediate future but will need to keep this under review. The level of the OfS's registration fees for the 2024/25 academic year will be considered again during the 2023/24 academic year.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Section 1 of HERA established the OfS as the regulator for higher education in England. Section 3 of HERA requires the OfS to establish and maintain a register of English higher education providers. Section 70(1) of HERA provides that the OfS

may charge an institution a fee for its initial registration in the register and/or its ongoing registration for each period of twelve months in accordance with regulations made by the Secretary of State. Section 70(2) and (3) specify the matters which may be included in such regulations. By virtue of section 70(4), such regulations may only be made with the consent of the Treasury. Section 72(1) provides that the OfS must pay its fee income to the Secretary of State except to the extent that the Secretary of State, with the consent of the Treasury, directs otherwise. “Fee income” is defined by section 72(2) to include sums received by way of fees charged under section 70, as well as costs recovered.

- 6.2 The Higher Education (Registration Fees) (England) Regulations 2019<sup>1</sup> (“the 2019 Regulations”) were made under section 70 of HERA, and provide for the payment of initial and ongoing registration fees to the OfS. The 2019 Regulations were amended by the Higher Education (Registration Fees) (England) (Amendment) Regulations 2021<sup>2</sup> (“the 2021 Regulations”) to reduce the registration fees payable from 1 August 2021 by 3%.
- 6.3 This instrument amends the 2019 Regulations to increase the registration fees payable from 1 August 2023 – see section 7 below for full details.

## 7. Policy background

### *What is being done and why?*

- 7.1 The OfS primarily funds its operating costs through registration fees charged to registered higher education providers. This model is common amongst regulators: without registration fees, the OfS would have to rely heavily on government to fund its operating costs. The principle that the bodies being regulated should fund the costs of their regulation is government policy and follows good practice as set out in *Managing Public Money*<sup>3</sup>. An overview of how this funding is used can be found in the OfS’s Annual Report and Accounts<sup>4</sup>, published annually.
- 7.2 The OfS’s registration fees were initially set in 2019, with the laying of the 2019 Regulations. On 10 September 2020, with agreement from the OfS, the government announced its intention to reduce the registration fees by 10% in real terms over two years, in recognition of the fact that higher education providers were operating in a difficult financial environment caused by the COVID-19 pandemic. However, as inflation rates for financial year 2021-2022 were unusually low, the OfS and government agreed to a 3% real terms reduction in fees from 1 August 2021. This reduction was given effect under the 2021 Regulations. A further reduction of the remaining 7% in real terms was planned for the 2022/23 academic year but was not delivered because of the need for the OfS to deliver on new priorities, including revised conditions of registration in relation to quality and standards, new approaches to the Teaching Excellence Framework and access and participation, and a statement of expectations on harassment and sexual misconduct. The OfS’s registration fees therefore remained the same for the 2022/23 academic year, at the level set for the 2021/22 academic year.

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<sup>1</sup> [The Higher Education \(Registration Fees\) \(England\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> [The Higher Education \(Registration Fees\) \(England\) \(Amendment\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>3</sup> [Managing Public Money](#). Other regulators where the cost of regulation is at least partly borne by the bodies regulated include Ofsted, Ofcom, and Ofgem.

<sup>4</sup> [Office for Students Annual report and accounts 2021-22 – June 2022](#)

- 7.3 The OfS’s ongoing registration fees currently range from £0<sup>5</sup> to £181,000 per provider per annum, depending on the number of full-time equivalent students at the provider. These Regulations will increase the OfS’s registration fees from the start of the 2023/24 academic year. This increase is needed to fund significant and important work which the OfS will be undertaking in the coming academic year. This includes the implementation of the Higher Education (Freedom of Speech) Act 2023, to ensure that freedom of speech is protected and promoted within higher education. This will include developing guidance, consulting on a new free speech complaints scheme, developing new registration conditions and making changes to the regulatory framework.
- 7.4 The OfS will also be continuing its work in distributing grant funding and monitoring providers’ compliance with their registration conditions, particularly those relating to quality and governance, and preparing for the implementation of the Lifelong Loan Entitlement.
- 7.5 In addition, following the de-designation of the Quality Assurance Agency for Higher Education as the designated quality body (DQB) under HERA, the OfS has taken on functions relating to the assessment of quality and standards, and this fee increase will enable it to fund infrastructure costs associated with that work. It should be noted that the DQB previously charged registered providers an annual fee under section 28 of HERA to cover its infrastructure costs.
- 7.6 This work brings with it a need for considerable additional resource and funding for the OfS. These regulations will increase ongoing registration fees by £4.96 million in total, an increase in gross terms of 18.5%<sup>6</sup>, with additional DfE funding of £1.5 million going directly to the OfS to cover its remaining funding requirements. However, when taking into account the fact that providers will no longer have to pay an annual fee to the DQB, the net increase will equate to £2.33 million in total, or between 0% and 12% (depending on the level of DQB fees charged) per provider per annum, depending on student numbers. The table below sets out the increase for each fee band.
- 7.7 The fees prescribed by these regulations continue to be determined by reference to the number of full-time equivalent students at that provider. This fee structure fulfils the policy aim for fees to be proportionate to provider size.

*Table of registration fees per band*

<i>“Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<b>Fee band</b>	<b>Number of full-time equivalent students</b>	<b>AY22/23 Fee</b>	<b>AY23/24 Fee</b>
A	No more than 25	£11,900	£14,220
B	More than 25 but no more than 50	£14,850	£17,597
C	More than 50 but no more than 75	£18,600	£22,041
D	More than 75 but no more than 100	£23,300	£27,611
E	More than 100 but no more than 300	£29,150	£34,543
F	More than 300 but no more than 500	£36,550	£43,312

<sup>5</sup> With a micro provider exemption – see Section 13 of this memorandum.

<sup>6</sup> There is one exception to this increase. The Band A fee is increased by 19.5% instead of 18.5%. If this band was also increased by 18.5%, these providers would see their fees, net of forgone DQB fee savings, fall by 1%. Given the burden being placed on other providers in the sector, the Band A fees are uplifted by 19.5% to ensure no net gain: equal to a net change of 0%.

G	More than 500 but no more than 1,000	£45,850	£54,332
H	More than 1,000 but no more than 1,500	£57,550	£68,197
I	More than 1,500 but no more than 2,500	£72,250	£85,616
J	More than 2,500 but no more than 5,000	£90,800	£107,598
K	More than 5,000 but no more than 10,000	£114,200	£135,327
L	More than 10,000 but no more than 20,000	£143,750	£170,344
M	More than 20,000	£181,000	£214,485

### Mitigation of Impacts

- 7.8 The 2019 Regulations provide for fee reductions for new providers in their first three years of registration and an exemption for micro providers (see paragraph 13.1 below). These will not be affected by these regulations. The Department will provide funding to the OfS in the 2023-2024 financial year to cover the costs of the reduced fees and the exemption. Ongoing government support is subject to future spending reviews. The 2019 Regulations also allow the OfS flexibility to collect fees in instalments, thereby easing the burden on institutions. These regulations will not affect this.
- 7.9 In addition, DfE is providing a £1.5 million of programme funding to the OfS this year, to support its work and mitigate the impact of rising costs on providers. Without this funding, the fee increase under these regulations would have been higher, and the impact on providers more significant.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 These regulations are not suitable for consolidation with any other instrument.

## **10. Consultation outcome**

- 10.1 A fee review was carried out with representative bodies from the higher education sector ahead of the Secretary of State's decision on the level at which to set the registration fees, and the laying of these regulations. This review was carried out via face-to-face meetings, with an opportunity to provide comments in writing on the proposal to increase the OfS's registration fees.
- 10.2 Representative bodies raised concerns about the impact of the proposed fee increase on providers and students in the current economic climate, including on smaller providers and further education colleges. In response to the concerns raised, the Department has secured £1.5 million of programme funding for the OfS, with a view to reducing the amount of the fee increase, and the impact on providers.

## **11. Guidance**

- 11.1 Guidance will be issued by the OfS in mid-June 2023 which will outline the process and timeline for payment of registration fees by registered providers.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 A full impact assessment has not been produced for these regulations because it has a low level of impact which falls below the +/-£5 million equivalent annual net direct cost to business threshold for producing a full impact assessment. The Department has, however, self-assessed the impact of these regulations and has produced a Low Impact Assessment. This identified that the additional financial burden on higher education providers registered with the OfS (net of the annual fees that would have been payable to the DQB) is estimated to be £2.4 million across approximately 410 providers, depending on their student numbers.

### **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses. To minimise the impact of the requirements on small businesses (employing up to 50 people), the 2019 Regulations, which this instrument amends, contains a micro-entity exemption. This exemption will continue to protect the very smallest higher education providers from the cost of fees by providing a 100% exemption. An institution will continue to qualify for this exemption if it meets the criteria for a micro-entity under section 384A of the Companies Act 2006<sup>7</sup> and have 300 or fewer full-time equivalent students. Government funding for this exemption beyond the 2023/24 academic year will be subject to future spending reviews.

### **14. Monitoring & review**

14.1 The level of the OfS's registration fees for academic year 2024/25 will be considered during academic year 2023/24.

14.2 The instrument does not include a statutory review clause because the relevant requirements of the Small Business, Enterprise and Employment Act 2015 do not apply to provisions imposing fees.<sup>8</sup>

### **15. Contact**

15.1 Joseph Staniforth at the Department for Education. Telephone: 07717 736538 or email: [Joseph.Staniforth@education.gov.uk](mailto:Joseph.Staniforth@education.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Zoe Forbes, Deputy Director for Higher Education Quality and Regulation, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Halfon, Minister for Skills, Apprenticeships and Higher Education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

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<sup>7</sup> [Companies Act 2006 \(legislation.gov.uk\)](https://legislation.gov.uk)