

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT HIGHER EDUCATION (MONETARY
PENALTIES AND REFUSAL TO RENEW AN
ACCESS AND PARTICIPATION PLAN)
(ENGLAND) REGULATIONS 2019

Wednesday 8 May 2019

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

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| † Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con) | † Milling, Amanda (<i>Cannock Chase</i>) (Con) |
| † Burden, Richard (<i>Birmingham, Northfield</i>) (Lab) | Reynolds, Emma (<i>Wolverhampton North East</i>) (Lab) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † Skidmore, Chris (<i>Minister for Universities, Science, Research and Innovation</i>) |
| † Flint, Caroline (<i>Don Valley</i>) (Lab) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| † Hayes, Sir John (<i>South Holland and The Deepings</i>) (Con) | † Snell, Gareth (<i>Stoke-on-Trent Central</i>) (Lab/Co-op) |
| † Heald, Sir Oliver (<i>North East Hertfordshire</i>) (Con) | † Whately, Helen (<i>Faversham and Mid Kent</i>) (Con) |
| † Johnson, Joseph (<i>Orpington</i>) (Con) | † Zeichner, Daniel (<i>Cambridge</i>) (Lab) |
| † Kinnock, Stephen (<i>Aberavon</i>) (Lab) | Ben Sneddon, <i>Committee Clerk</i> |
| † Lord, Mr Jonathan (<i>Woking</i>) (Con) | † attended the Committee |
| † Marsden, Gordon (<i>Blackpool South</i>) (Lab) | |

Fourth Delegated Legislation Committee

Wednesday 8 May 2019

[STEWART HOSIE *in the Chair*]

Draft Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019

2.30 pm

The Minister for Universities, Science, Research and Innovation (Chris Skidmore): I beg to move,

That the Committee has considered the draft Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Hosie. I welcome the opportunity to debate the draft regulations. Last week, during our debate on the higher education registration fees regulations, I mentioned that we had come a long way since the passage of the Higher Education and Research Act 2017. It is good to see one of the architects of that Act, my predecessor as the Minister, my hon. Friend the Member for Orpington, as a member of the Committee. In the time since HERA gained Royal Assent, the Office for Students has taken shape as the new HE regulator.

Since the formation of the Office for Students, it has registered more than 350 education providers—352 at 26 April, to be precise—to exacting standards. It has also ensured that all registered providers with fee caps at the higher level have comprehensive access and participation plans to improve access and support for students from disadvantaged backgrounds and under-represented groups. All students should have equal opportunities to complete their courses, get a good degree grade and go on to a graduate-level job or postgraduate study. The OfS helps with that.

The OfS includes academic freedom as a core principle of governance for registered providers, and it works in partnership with the Department for Education on the best way to enhance and improve the information given to students about the quality and standard of teaching to justifiably expect. HERA gives the Office for Students the power to create a new single register of higher education providers to be maintained by the OfS. The register is the route for providers to charge fees that attract student loans, to become eligible for grant funding, to offer degrees or, indeed, to call themselves a university.

In return for those considerable benefits, providers must comply with registration conditions relating to, for example, their financial sustainability, quality of provision and student protection. Additional conditions—for example, on access and participation for students from disadvantaged backgrounds—also have to be met by providers on the OfS register.

HERA also gives the OfS the power to apply specific conditions to a particular provider if there is cause for regulatory concern. Those are not specified in the Act, but they can include such measures as imposing

improvement plans on providers in certain circumstances, which might involve the imposition of student number controls on an institution or particular course to protect the interests of students.

In the event of any of those measures failing to stop a provider falling short of its registration conditions, to protect the interests of students and the taxpayer, HERA specifically gives the OfS power to suspend a provider and to restrict its activity, or to remove it from the register with a loss of access to any of the benefits of being in the regulated system, such as student support. Section 15 of HERA also gives the OfS the power to impose monetary penalties on providers that fail to comply with their ongoing conditions of registration. Regulations are required to make provision for the amount of the penalty that can be imposed, and may set out the matters to which the OfS must or must not have regard when exercising the power to impose a monetary penalty. These are the regulations that we are debating today.

During the passage of the Act, Members in all parts of the House debated long and hard about the future of higher education. Indeed, HERA was the most amended piece of legislation in this Parliament's history. Irrespective of the different views of how we finance or regulate higher education, there will always be an imperative to ensure that students get a high-quality experience and positive outcomes from the time and effort that they put into their education.

Adherence to registration conditions is a vital component of our reforms to the regulatory landscape. It is critical to safeguard the interests of students and the quality and reputation of our higher education sector. The power of the OfS to impose this monetary penalty on providers is an important tool that it has at its disposal to enforce registration conditions and encourage compliance. Failure to put the draft regulations in place will mean that the OfS will not have that essential regulatory tool at its disposal at the very point at which it most needs it.

Monetary penalties provide an effective incentive to comply with regulation and act as an enforcement tool. However, they must also be proportionate and fair. There was no statutory obligation to consult on the draft regulations, but during the passage of HERA through Parliament, a commitment was made to consult on the matters that the OfS must have regard to when imposing a monetary penalty. The Department conducted its consultation between December 2017 and March 2018. To reassure the Committee, as these are new regulatory powers, we also took the opportunity to seek views on the maximum monetary penalty. Through that extensive consultation, we have established the fair and balanced approach set out in the regulations.

The consultation process identified some concerns that monetary penalties could take away provider income that might otherwise be used for the benefit of students. The majority of respondents did not support the Department's initial proposal for the maximum penalty as it was initially set out, but respondents were broadly supportive of the proposed factors, especially the factor relating to impact on students. We have listened. In response, the Government adopted the lower of their options for a maximum penalty amount—2% of qualifying income rather than 5%.

We remain of the view that monetary penalties need to be set at a level that ensures visible and meaningful consequences for providers in breach of ongoing registration conditions without being unduly punitive. The legal restraints that the draft regulations place on the OfS, including the mandatory factors to which it must have regard when setting the penalty, are designed to ensure that it is required to—but can do no more than—take appropriate, reasonable and proportionate action. In doing that, the draft regulations ensure that the interests of students—both those at the provider in question and students more generally—are taken into account.

Let me turn to the other element of the draft regulations, which permit the Office for Students to refuse to renew an access and participation plan. Ensuring that students from disadvantaged backgrounds and underrepresented groups can access and successfully participate in higher education is a priority for this Government. We have asked the OfS to secure greater and faster progress in this area. Access and participation plans are key to secure greater progress. The plans are not just about access to higher education but, importantly, are about support, so that students can successfully participate in their courses, helping to tackle drop-out rates, attain qualifications and progress from higher education.

Sir John Hayes (South Holland and The Deepings) (Con): This instrument speaks of disadvantage and under-representation. Among the challenges faced are those confronted by disabled students and people with disabilities who are seeking to become students. On the Minister's last point, on continuing support for those students, what results did the consultation provide? What further work might we do to ensure that people with disabilities can play their part and have their place in the sun?

Chris Skidmore: A total 54 organisations representing higher education organisations responded to the consultation. On the specifics relating to disabled students, I will be happy to write to my right hon. Friend with a range of views from those organisations during the consultation.

When it comes to support for disabled students, having been a secretary of the all-party parliamentary group for disability, I am keen to ensure that, as a Government and a higher education provider system, we do more to support disabled students. I have a roundtable organised for the Thomas Pocklington Trust on 17 May in Birmingham to talk to visually impaired students. I am keen to ensure that their needs are looked at. We are keen to ensure the disabled student allowance, which we raised for post-graduate study from £10,500 to £20,000 this year. A recent report demonstrated that just over 60% of disabled students found that the increase in support through DSA had allowed them to take up their course. Around 50% of those students felt that they may have dropped out if they had not had financial support.

It is not just about the money but about accommodation, and looking at what we can do—me as a Minister and the OfS—to reflect that in access and participation plans. If my right hon. Friend wishes, I can send him a copy of the Secretary of State's guidance letter to the OfS, which was published in February or the beginning of March. As Universities Minister, I specifically ensured that the needs of disabled students were, for the first

time, mentioned in the Secretary of State's guidance letter. I will write to my right hon. Friend on the consultation and I am happy to send him that guidance letter, and I reassure him of my commitment to disabled students, to ensure that we do all we can so that more disabled students feel that they have the opportunity to succeed and have access to higher education.

Sir John Hayes: I have rarely received such a comprehensive and persuasive response to an intervention. I reassure the Committee that the Minister did not know I was going to make it, which makes it even more impressive.

Chris Skidmore: I am humbled by my right hon. Friend's intervention. I am sorry to detain the Committee by giving a rather lengthy answer, but I thought it was important to do so. Ultimately, the draft regulations and the access and participation plans are about support, so that students can successfully participate in courses, and helping to tackle drop-out rates. Any provider that wants to charge up to the maximum permitted tuition fees to its students must be legally required by HERA to agree a plan with the OfS and then stick to it.

The OfS recently published guidance on the access and participation plans, which can be reviewed annually. There will therefore be an opportunity to update the plans with respect to new groups of students on which we may wish to focus in the future. I am fully aware that under-represented groups of students often present themselves, and we need to ensure that we have the flexibility in the system of access and participation plans to update them going forwards.

If we want to achieve real progress, it is vital that the OfS has strong powers where there are concerns that a provider has breached an access and participation plan—having failed, for example, to deliver on specific commitments laid out in it—or has exceeded the specified limits for course fees. In those circumstances, the OfS could, among other things, refuse to renew a provider's next access and participation plan for a specified period.

Such refusals are a powerful tool. Without an agreed access and participation plan, a provider cannot charge higher-level fees. That would have a significant financial implication for many providers. More importantly, it would encourage them to stick to the letter of their plans, and ensure that they implement them effectively for the benefit of all students. Given the potential impact of refusing to renew a plan, the regulations ensure that providers can ask for any such decisions made by the OfS to be considered by an independent reviewer. That should give providers additional reassurance about the fairness and transparency of the process.

The regulations ensure that the OfS is consistent in the use of its powers. As such, it will have to take into account broadly the same factors before it decides to refuse to renew a plan as it would if it wanted to impose a monetary penalty—again, going back to the point about transparency in the process, and giving providers the opportunity to engage in dialogue with the OfS before we reach an end point at which action may need to be taken. Importantly, refusing to renew a plan is not the only tool available to the OfS if it is concerned about a provider's performance on access and participation. Also available to the OfS are the sanctions and interventions that I have discussed, including monetary penalties, suspension of registration and deregistration, to address underperformance and encourage progress.

[Chris Skidmore]

It is planned that the regulations, if passed today, will come into force on 1 August 2019, when the new Office for Students regulatory framework successfully becomes fully operational. That will permit the OfS from 1 August 2019 to start imposing penalties where it appears to the OfS that there has been a breach of a registration condition. The OfS will publish detailed guidance on its monetary penalties policy and processes before that date. The Government firmly believe that the higher education regulatory system must effectively protect the interests of students in the short, medium and long term—especially the most disadvantaged. The regulations support that.

HERA established the Office for Students, and it is already operational. The regulations enable the use of an important tool that will give the OfS the opportunity to carry out its core task of the effective stewardship of the higher education landscape, so that all providers deliver positive outcomes in the students' interests. I therefore hope that the Committee agrees that the regulations are ultimately of benefit to students and the sector alike.

2.43 pm

Gordon Marsden (Blackpool South) (Lab): It is a great pleasure to serve under your chairmanship, Mr Hosie, and to discuss and debate the regulations. The Minister and I may have some sense of *déjà vu* because we were in this exact room at the exact same time last week. However, this is a case of sliding doors, for those Members who have seen the movie, because the outcome will be different today—we will not oppose the regulations. Having said that, these are important regulations that deserve to be probed properly. I will therefore ask the Minister a number of questions pertaining both to what he has said and to the content and implications of the regulations.

Talking of *déjà vu*, it is a great pleasure to see—I will not call him my old opponent—my old sparring partner from the Bill, the hon. Member for Orpington, on the Committee. I hope he does not have too many senses of *déjà vu*, because I will be returning to one or two of the arguments we talked through on that Bill.

The Minister has laid out in considerable technical detail how this process has come about. That is welcome, as is the fact that the Government have listened to some of the elements relating to the operation of the penalty clauses.

On the subject of participation, I absolutely agree with the Minister. Indeed, I will praise my friend, as I can call him in a non-parliamentary position, the right hon. Member for South Holland and The Deepings. It is extremely important that the letter of the regulations embodies the spirit in which access and participation need to go forward, to which I will make a couple of references.

For the moment, I would just ask the Minister two or three questions on the text of the draft regulations. He referred to monetary penalties, a matter to which the OfS has regard. I refer to regulation 4, which mentions having regard to

“any financial or other gain made by the provider”
or “loss avoided”.

It is true that paragraph (g) refers to the impact this is likely to have on students on higher education courses, and on students in general. However, this matter goes beyond the implications for students of a particular refusal or monetary penalty. In my view, which I will come to in relation to another part of the proposals, the measure needs to involve as closely as possible both students and staff at the institutions concerned.

There is a grave danger, as we discussed previously with the Bill, that we talk about the actors as though they are simply the university bodies and the Government or the Government's new organisations, in this case the OfS. That is not the case. The measures also intimately affect the people who work day to day for those higher education providers and the people who study with them. I am interested to hear the Minister's comments on that area.

Regulation 5 talks about

“the impact that a decision under section 21(2) of the Act is likely to have on—(i) students or prospective students on higher education courses at the provider”.

It would again be interesting to hear the Minister's explanation as to how that might be addressed in practice and what discussions there might be between the OfS and the Department on how that matter would be taken forward. The Minister will understand that one of the things I am probing here is what precisely the future relationship between the OfS and the Department will be.

We debated that issue long and hard during the passage of the Bill. Now we have an opportunity, with these statutory instruments, to see how the measures will work in practice. The Minister will be aware, as was the previous Minister, the hon. Member for Orpington, of our concerns that the OfS should not simply be a micromanager implementing minute Government decisions. In cases such as this there is an important argument for discussion.

Those are the main points I would like to raise on the regulations. The only other point I would make relates to the explanatory note that says:

“A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.”

I am not sure that I agree with that conclusion. We all hope, of course, that the regulations will be largely honoured in the observance rather than the breach. If a significant provider were to get into trouble and were to be subject to these penalties, I fear it would have a significant impact on the private, voluntary or public sectors.

I am not saying that there absolutely should have been a full impact assessment at this stage, but it seems a slightly cavalier way of looking at it. Perhaps the Minister would give some indication of whether, for instance, this might come as part of the OfS's annual report to Parliament, maybe a year or so after these regulations have gone through. As I say, I hope we do not have such incidents, but if we do, I hope some account will be taken of their impact in the way I have described.

Those are the specifics of these regulations. On the broader implications, the Minister has talked about consultation, and it is true that there were considerable concerns across the university sector about the size and relevance of any potential fines. I think it is still the case

that the sector, whether individual organisations or Universities UK itself, harbours, with good reason, some concerns about how the specifics of these sanctions might be taken forward. I want to probe the Minister about two or three of those.

In particular, UUK has talked about the way in which the OfS will judge higher education institutions that are judged to be of higher risk and that will need additional requirements for access and participation. In a note to me, UUK has said:

“While we agree that the approach by the OfS to access and participation would, theoretically, reduce burden for providers with a low risk of a future breach, it is currently difficult to understand levels of burden in practice without more detail on the risk assessment methodology. UUK would welcome more detailed clarity in the area of risk classification and associated timeframes.”

It may well be that such details exist at some level in the bowels of the Department and that it has not been felt appropriate or necessary to burden the Committee with them today. However, it would be helpful if the Minister were able to indicate whether such issues have been taken forward.

On the positive side, Universities UK and the Opposition welcome the fact that these plans now focus strongly on access and participation, and we support many of the OfS’s wider measures to make progress in this area. We particularly welcome the ability of the OfS, and its new director Chris Millward, to look at the performance of institutions on access and participation over a long period of time—three to four years. However, that has to be balanced by the ability of the OfS to act sharply, and of the Government to support it in that process, if institutions appear to be in a rocky position.

UUK also says that it would welcome

“access to more contextual data to inform universities’ access activity”

and

“a suitable basket of indicators of disadvantage”.

Here, again, I wish to pick up on a point made by the right hon. Member for South Holland and The Deepings. He made a specific and important point about disabled students that could be made about other areas, such as potential students from a black and minority ethnic background, service veterans or care leavers. This has not been discussed in detail today, but there are worrying signs that, in some areas, the Government are not necessarily following through on some of the promises they have made to care leavers. I therefore ask the Minister for an assurance that the Department will convey to the OfS the importance of looking at people who come from a care-leaver background; I hope that the OfS would do so anyway.

The issues about access and participation cannot be understood unless there is clarity and assurance about the minimum entry requirement. This obviously depends on what happens with the Augar review. However, there are concerns that a minimum entry requirement based on prior attainment would disproportionately affect young people from the most disadvantaged areas and under-represented groups.

In particular, it would severely disadvantage adult learners wanting to return to higher education because, by definition, in many cases they would not have those formal prior attainments—certainly not in the form

that is required. I press the Minister on that issue. The master of Birkbeck College, David Latchman, and various other people have made those points, too. We want to ensure that these groups are not caught out by the unintended consequences for access and participation that might come from this legislation.

Sir John Hayes: I do not intend to delay the Committee unduly, Mr Hosie—not that you would allow me to. On that point, the key is the structure and nature of courses. Birkbeck’s success—the hon. Member for Blackpool South knows that I know that place well—is borne from the fact that people study in the evenings, in modular fashion and part time. All those things allow all kinds of learners who would not otherwise engage to do so. It is high time that we revisited the structure and character of how people learn to allow them to engage.

Gordon Marsden: I thank the right hon. Gentleman for his observations, with which I absolutely agree. I also agree with the revisiting to which he refers. I have had conversations—I am sure the Minister has had similar conversations—with the Office for Students about the issues around adult students and how we deal with them in the context of standardised access and participation measures. I am not saying that the Government are not considering those things, but it would be useful as we move along to have a bit more detail.

There are a couple of other points in that particular area on which it would also be good to have clarity. For example, it would be useful to have clarity on what might happen regarding fines for providers, as detailed in the regulations, that are subsidiaries of larger organisations, some of which will be based overseas. I do not propose to reopen the debate I had with the hon. Member for Orpington about our concerns on how those processes with new providers might work, but it will be a fact—it is not necessarily *damnosa hereditas*—that a number of these new providers will be subsidiaries of overseas organisations. It would therefore be helpful if the Minister clarified how they will be dealt with and how the opportunities for evading such fines or instructions might be avoided.

We are talking today about a situation where we have come to the eleventh hour and various pressures have been put on by the OfS and the Department, and the institutions concerned have not budged. It is important that the Department and the OfS, in particular, keep a very close eye on how new providers, particularly those without much of a track record, go forward. That relates to the issue we most want to avoid. It is one of the reasons why we were concerned, and remain concerned, about the proviso that new providers can assume all the advantages of university status, including access to public funding, from day one.

I want to conclude by returning to a couple of points that we raised in the Bill Committee in September 2016. Those points related to how decisions would be made in the OfS. On that occasion, the hon. Member for Orpington and I had a detailed set of exchanges. We would have liked the issues to be resolved in legislation. They were not, but we had a number of assurances from him. However, with all due respect to him, I want to make the points again to the current Minister, because he is responsible for taking such things through.

[Gordon Marsden]

One of the things we were most concerned about—something that was certainly given in evidence to the Committee by Professor Les Ebdon, the previous director for fair access and participation—was where the ultimate responsibility for decisions lies. That is not stated in the Bill. In said in the Public Bill Committee that

“the ability of the director for fair access and participation to negotiate with institutions...would be seriously compromised if the director did not have the ultimate authority to approve or refuse access and participation plans.”—[*Official Report, Higher Education and Research Public Bill Committee*, 8 September 2016; c. 132.]

We also pointed out that the way in which the director had operated under the previous structures had led to some useful improved targets at various institutions and an increased level of predicted spend.

I will not return to the debates about whether the Higher Education Funding Council for England did better than the OfS—they are different bodies designed to do different things—but how the functions will be carried out remains an issue. It is crucial that the director for fair access and participation has the independence to challenge higher education institutions robustly, particularly in such areas, so I would welcome any further thoughts or clarifications that the Minister can offer.

3.1 pm

Joseph Johnson (Orpington) (Con): I welcome the regulations. They are an important part of the director for fair access’s powers in ensuring that people from all backgrounds have an opportunity to benefit from higher education. I understand that the Government have been very busy. We have had a lot of business and it has taken an awfully long time for us to reach this stage. I think it is two years since the Higher Education and Research Act received Royal Assent. Although it is good to see that it is still working its way through Parliament, the issue is of sufficient importance that we could perhaps have given a little more energy to ensuring that the director for fair access has the powers that he or she needs to enable everybody to benefit from the opportunities that universities can bring.

The Minister has exercised his judgment very effectively in coming down on the side of moderation on the scale of the penalties. I think that 2% of turnover or £500,000, whichever is the higher, feels about right, and I commend his good judgment on that.

I also commend the shadow Minister, the hon. Member for Blackpool South, for being so diligent in scrutinising the Bill. It has been almost four years now that we have been at it. It was a big piece of legislation, probably the biggest overhaul of higher education legislation in a generation or more, but he has been incredibly thorough and reasonable in his approach to scrutinising the legislation over the many months that it has been taking place.

I agreed with everything the Minister said in his remarks, although I want to pick him up on one tiny point that he made. I think he said that the Higher Education and Research Act was the most amended piece of legislation in parliamentary history, which I am afraid is complete nonsense. Certainly it attracted a lot of excitement, especially in the other place, where their lordships, many of whom have connections to our great higher education institutions, lost no opportunity to

table amendments. However, the tabling of an amendment does not mean that the Bill itself is amended. The Government accepted a few amendments that were proposed and the Act is much the better for it. When I was the Minister taking the legislation through the House, I welcomed all of the debate and expertise that the peers in the other place brought to bear, but by no means at all was it a record breaker. I can think of many other bits of legislation that could claim that title.

Lastly, given that we are now moving ahead with regulations that have a bearing on the upper limit that universities may charge in fees, is the Minister able to shed some light on where we are with the Augar review? By my recollection, it is getting on for two years since the launch of that review, which among other things was to opine on the upper limit. Given that the regulations touch directly on that, will he shed some light on whether the review is imminently to report, or will it require a much longer gestation?

3.5 pm

Sir Oliver Heald (North East Hertfordshire) (Con): On penalties, does the Minister have any estimate of what the total take is likely to be in money terms? What happens to those penalties? Is that money to be lost to higher education, or does it stay in the sector? Will it go back to the Treasury?

3.5 pm

Chris Skidmore: I thank hon. Members for their participation in the debate. The hon. Member for Blackpool South said he wanted to probe me properly, and indeed he did. I was also suitably amended by my hon. Friend the Member for Orpington. I will touch on some of the points raised and valuable contributions made.

It is important to repeat that the OfS can use the statutory power to sanction a provider only when it appears that there is or has been a breach of that provider’s ongoing registration conditions. Before that, as well as imposing monetary penalties as a last resort, the OfS may suspend a provider’s registration entirely or, for specified purposes, deregister a provider. In the case of a provider breaching an access and participation plan, it may refuse to renew that plan.

In addition to those formal sanctions, the OfS has other regulatory interventions available to it, which it is already using, such as enhanced monitoring of providers and the ability to impose specific ongoing registration conditions. Those less formal interventions may be used instead of or in addition to sanctions to address the specific risk presented by a provider. They may also be used when a registered provider is at risk of but has not yet breached an ongoing registration condition.

My right hon. and learned Friend the Member for North East Hertfordshire asked about monetary penalties and the amounts expected to be raised; this also touches on the overall impact assessment. We hope that such penalties will be used very much as a last resort when all other measures have failed. We do not expect this to be a revenue-generating exercise. Money from monetary penalties as well as income derived from its interest is required by HERA to go back to Her Majesty’s Treasury’s Consolidated Fund. That prevents the OfS from imposing penalties or charging interest to raise income, or of being accused of doing so. The OfS will account for all penalty income separately from its existing funds. It is important to put that on the record.

The hon. Member for Blackpool South touched on the processes of engagement. It will be for the OfS to work with providers on the implications for students and prospective students of refusing to renew an access and participation plan, as referenced in regulation 5. It is also legally required to have regard to those mandatory factors when deciding to impose a monetary penalty. At the risk of repeating myself, when making a decision it will need to have regard to its regulatory framework, its duties under HERA, and section 2(1) in particular, the regulators' code and any Secretary of State guidance.

On Secretary of State guidance—this touches on the point made by the hon. Gentleman about the relationship between the Department and the OfS—it is important to note that the Secretary of State issues annual guidance but has the ability to update that guidance at any point. As Universities Minister, I have a regular monthly meeting with the chief executive of the OfS to talk about specific issues that might be coming up on the agenda that require a discussion between the Department and the OfS.

The OfS must also comply with the principles of administrative law, such as reasonableness and taking into account relevant considerations while discarding irrelevant ones. I will come on to legal processes in a moment. The OfS must also follow the procedures in schedule 3 to HERA when informing the provider of its intention to propose a penalty and the reasons for that decision. Importantly, that allows the provider to make representations before the penalty is imposed. The OfS will therefore need to be transparent about how it has balanced those mandatory factors and other considerations, such as the individual circumstances, to determine the final monetary penalty amount, if indeed it has gone down that route.

The provider can also appeal a decision to impose a penalty, or the amount, to the first-tier tribunal of the Health, Education and Social Care Chamber, which is part of the court system of the United Kingdom. The provider's appeal can be on either the decision to impose the penalty or the amount, on the basis that the decision was based on a factual error, was wrong in law or was unreasonable.

The regulations include provisions to review decisions by the OfS to refuse to renew an access and participation plan. Since 2004, providers have been able to seek a review of such a decision. No such review has ever taken place. A new statutory reviewer was appointed as part of HERA 2017. Given the significant impact on a provider of a plan being refused—the provider cannot charge higher-level fees—it is right that providers have the opportunity to have such a refusal tested through an independent review.

The hon. Member for Blackpool South mentioned Universities UK. I, too, am keen to reflect on any of its concerns, ongoing or otherwise. I am assured that the OfS has considered the risk in developing arrangements for future access and participation plans. That has been subject to consultation with providers, and is being implemented for 2020-21.

A veritable feast of specific points came up that I could be tempted down the route of addressing. My hon. Friend the Member for Orpington raised Philip Augar's report. Hand on heart, I have not read it, as I said on Sky News yesterday. I wish to make it clear to the Committee that I have not seen the report, which

will be published in due course. I understand my hon. Friend's frustration, and that he wishes to engage with whatever recommendations come out of it. However, he will be well aware that it is just one part of the overall post-18 review.

There has been additional work on the level 4 and 5 consultation that is taking place. I think there has also been some work by PricewaterhouseCoopers, looking at how much a degree actually costs a university. Whenever the report is finally published, I am keen to ensure that we engage and work with the sector.

Gordon Marsden: The Minister is being extremely helpful, and I do not wish to detain him from being so, but he referred to the report being published. Does that mean that it will be published for public or stakeholder perusal before the Government give their response?

Chris Skidmore: I am unable to comment on decisions that may yet have to be taken. I expect a report of this magnitude to be published and, when it is, I am keen to ensure that the sector—as I have said to it—has the opportunity to engage with the report and its consequences. I am on record on specific issues and rumours. I will not prejudge the contents of the report.

Joseph Johnson: Has the committee that was producing the Augar report delivered its final report to the Department, and does the Department intend to publish it?

Chris Skidmore: I have not seen the report or been made aware of its being fully delivered. All I know is that any decisions that will need to be taken on this interim report into the overall post-18 review will need to be taken by the Department, the Prime Minister, who is fully aware—she commissioned the review in the first place—and Her Majesty's Treasury. That will be subject to future discussions. It is probably unwise for me, as Universities Minister, to speculate any further on the process, but I know that the sector is keen to engage.

On data use, which speaks to the wider arguments about how we can improve access and participation, that is not a political issue. We share a common desire on both sides of the Committee to ensure that we do more to raise access and participation for under-represented groups and disadvantaged groups.

The hon. Member for Blackpool South mentioned care leavers, and I am equally passionate about looking at that particular group. With the Under-Secretary of State for Education, my hon. Friend the Member for Stratford-on-Avon (Nadhim Zahawi), I published the care leaver principles. They look at what universities can do and try to spread best practice, such as that which can be seen at Kingston University and the University of Winchester, as well as the academic research looking at how to raise the attainment of care leavers.

I am also keen to ensure that young carers are not ignored and that estranged students are taken into account. I am now in my fifth month as Universities Minister and there is always another group that comes up on the horizon that I feel that I have not considered. I am determined to make sure that nobody is forgotten about in this mix, and that brings me to a wider point on admissions.

[Chris Skidmore]

I made a speech where I said that I think, when we move forward, we will look beyond access and participation to what I call a student transition experience and progress framework. That sets out that providers must be held to account not just for bringing students through their doors but also for outcomes—for students who are leaving being able to progress successfully through higher education. We probably share that common endeavour. The evidence and impact exchange that has been set up at Nottingham Trent and King's College London will examine how we can spread best practice and ensure that while the sector is improving at a rapid rate, we continue to ensure that we do not take our foot off the accelerator.

I know that the hon. Member for Blackpool South is fully aware of my comments on the record on minimum entry requirements. I do not believe that there are too many students going to university. If we look at the international context, we need more students going to university and we certainly need more students going into postgraduate education. In my first speech, I set out a road map towards 2.4% being spent on research and development by 2027. I am a passionate believer in the opportunities that higher education brings, and to introduce a minimum entry requirement would cap off the knees of students who should be able to access higher education. Someone might be a victim of domestic violence, or an Army returner, or a student with mental health problems. Just because someone does not achieve the A-level grades that they are expected to achieve does not mean that they should be denied opportunities for the future—I know I probably share that view with other hon. Members on the Committee.

Birkbeck was mentioned. I am very keen to ensure that the post-18 review does not lose sight of the fact that it needs to ensure that we bridge the opportunities between FE and HE. It also needs to ensure that those students who do not go to university at 18, who perhaps enter the world of work and then go back to university when they need to achieve a qualification in order to progress—for example, someone who has been a nursing assistant who needs to go to university to be a qualified nurse—are able to achieve their dreams.

I congratulate Tim Blackman, who has just been announced as the new vice-chancellor of the Open University, moving from Middlesex. I know that he will do an excellent job. It is the 50th anniversary of the Open University. It presents a paradigm—an opportunity—for looking at how lifelong learning can be done as well as possible.

I do not see new providers as a threat or as organisations that should not be given the opportunities of other universities—the Open University was a new provider at one point—and it is right that we allow those new providers to breathe. The regulations provide accountability for new providers, which makes sure that the OfS can

work with them and ensure that, if anything untoward takes place, it will be able to hold them to account. That is where responsibility should lie.

I agree with the point the hon. Member for Blackpool South made on the director for fair access and participation. Chris Millward is obviously an excellent individual who has strong ideas about how to expand access and participation. Institutionally, we want to ensure that the director for fair access and participation will be responsible for overseeing the performance of OfS access and participation functions, and for reporting to other members of the OfS on the performance of such functions.

It is right to say this is a delicate balance. When setting out access and participation aspirations, we must not infringe on institutional autonomy, which is one of the hallmarks of our world-class higher education system. We have a duty to protect academic freedom, including in relation to admissions, when carrying out those access and participation plan functions. In continuing with the previous approach, the intention is that the OfS will agree the targets and benchmarks that HE providers set for themselves. This year, the OfS has for the first time put together a common access and participation dataset, which it expects providers to use and set targets with their plans.

The hon. Member for Blackpool South is a fellow historian and obviously equally as interested as I am in the uses of data. I recently set up an HE data advisory committee in the Department for Education to look at some of the wider issues. On the participation of local areas classification, or POLAR, as an effective measure, we agree that more work must be done on the geographical location of disadvantaged pupils, on looking at household income and on what more we can do to ensure that we have a more granular and fine-tuned dataset in order to ensure that we are effectively targeting the students who we want to have opportunities to enter higher education. Should a provider fail to meet the requirements of the access and participation plan, the OfS will be able to hold the provider to account. Where appropriate, the OfS may consider the use of its sanction regime for breaches of registration conditions.

In discussing the regulations today, I hope I have set out the opportunities for the OfS to be held to account when administering the process of whether it should use its fining powers. There are a range of opportunities for the OfS to engage with providers to have that dialogue before implementing any particular penalties. Having had this discussion, I urge Committee members to support the regulations.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019.

3.22 pm

Committee rose.

