

**Changes to legislation:** Higher Education and Research Act 2017, SCHEDULE 3 is up to date with all changes known to be in force on or before 13 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 3 **E+W**

Section 15

#### MONETARY PENALTIES: PROCEDURE, APPEALS AND RECOVERY ETC

##### *Introduction*

- 1 This Schedule applies in relation to the imposition by the OfS of a monetary penalty on a registered higher education provider under section 15.

##### **Commencement Information**

- II** Sch. 3 para. 1 in force at 1.8.2019 by S.I. 2018/1226, reg. 4(m)

##### *Procedure*

- 2 (1) Before imposing a monetary penalty on the provider under that section, the OfS must notify the provider of its intention to do so.
- (2) The notice must—
- specify the proposed amount of the penalty,
  - specify the OfS's reasons for proposing to impose the penalty,
  - specify the period during which the provider may make representations about the proposal (“the specified period”), and
  - specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The OfS must have regard to any representations made by the provider during the specified period in deciding whether to impose a monetary penalty on it.
- (5) Having decided whether or not to impose a monetary penalty, the OfS must notify the provider of its decision.
- (6) Where the decision is to impose a monetary penalty, the notice must specify—
- the amount of the penalty, and
  - the period within which the penalty must be paid or the periods within which different portions of the penalty must be paid.
- (7) The notice must also contain information as to—
- the grounds for imposing the penalty,
  - how payment may be made,
  - rights of appeal,
  - the period within which an appeal may be made, and
  - the consequences of non-payment.

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- (8) The requirement to pay the penalty is suspended at any time when—
- (a) an appeal under paragraph 3(1)(a) or (b), or a further appeal, could be brought in respect of the penalty, or
  - (b) such an appeal is pending.
- (9) But that does not prevent the requirement to pay taking effect if the provider notifies the OfS that it does not intend to appeal.

**Commencement Information**

**I2** [Sch. 3 para. 2](#) in force at 1.8.2019 by [S.I. 2018/1226, reg. 4\(m\)](#)

*Appeals*

- 3 (1) The governing body of a provider may appeal to the First-tier Tribunal against—
- (a) a decision under section 15 to impose a monetary penalty on the provider;
  - (b) a decision as to the amount of the penalty.
- (2) An appeal under this paragraph may be made on the grounds—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) On an appeal under this paragraph the Tribunal may—
- (a) withdraw the requirement to pay the penalty;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) remit the decision whether to confirm the requirement to pay the penalty, or any matter relating to that decision, to the OfS.

**Commencement Information**

**I3** [Sch. 3 para. 3](#) in force at 1.8.2019 by [S.I. 2018/1226, reg. 4\(m\)](#)

*Interest and recovery*

- 4 (1) This paragraph applies if all or part of a monetary penalty imposed on a provider under section 15 is unpaid by the time when it is required to be paid.
- (2) The unpaid amount of the penalty for the time being—
- (a) carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838, and
  - (b) does not also carry interest as a judgment debt under that section.
- (3) The total amount of interest imposed under sub-paragraph (2) must not exceed the amount of the penalty.
- (4) The OfS may recover from the provider, as a civil debt due to it, the unpaid amount of the penalty and any unpaid interest.

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**Commencement Information**

**I4** Sch. 3 para. 4 in force at 1.8.2019 by S.I. 2018/1226, reg. 4(m)

*Retention of sums received*

5 The OfS must pay the sums received by it by way of a penalty under section 15 or interest under paragraph 4 to the Secretary of State.

**Commencement Information**

**I5** Sch. 3 para. 5 in force at 1.8.2019 by S.I. 2018/1226, reg. 4(m)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. A1 inserted by [2023 c. 16 s. 1](#)
- s. A4 and cross-heading inserted by [2023 c. 16 s. 2](#)
- s. A5A6 and cross-heading inserted by [2023 c. 16 s. 3](#)
- s. A7 and cross-heading inserted by [2023 c. 16 s. 4](#)
- s. 2(1)(aa)(ab) inserted by [2023 c. 16 s. 5\(1\)](#)
- s. 2(7A) inserted by [2023 c. 16 Sch. para. 2\(3\)](#)
- s. 8A inserted by [2023 c. 16 s. 6](#)
- s. 9(3A) inserted by [2022 c. 21 s. 16\(2\)](#)
- s. 10(3A) inserted by [2023 c. 40 s. 2\(2\)\(a\)](#)
- s. 10(6A) inserted by [2023 c. 40 s. 2\(2\)\(b\)](#)
- s. 10(7A) inserted by [2023 c. 40 s. 2\(2\)\(c\)](#)
- s. 10(7B)(7C) inserted by [2023 c. 40 s. 1\(2\)\(b\)](#)
- s. 11(1A)(1B) inserted by [2023 c. 40 s. 2\(3\)\(b\)](#)
- s. 11(2)(2A) substituted for s. 11(2) by [2023 c. 40 s. 2\(3\)\(c\)](#)
- s. 31(1)(1A) substituted for s. 31(1) by [2023 c. 40 s. 2\(4\)\(a\)](#)
- s. 31(2A)(2B) inserted by [2023 c. 40 s. 2\(4\)\(c\)](#)
- s. 31(4) inserted by [2023 c. 40 s. 4\(4\)\(e\)](#)
- s. 67B(3A) inserted by [2023 c. 16 Sch. para. 5\(3\)](#)
- s. 67C(3) inserted by [2023 c. 16 Sch. para. 6](#)
- s. 69A and cross-heading inserted by [2023 c. 16 s. 5\(2\)](#)
- s. 69C inserted by [2023 c. 16 s. 8\(1\)](#)
- s. 73(1A) inserted by [2023 c. 16 Sch. para. 7\(3\)](#)
- s. 73(4A) inserted by [2023 c. 16 Sch. para. 7\(6\)](#)
- s. 85(1A) inserted by [2022 c. 21 s. 16\(4\)\(b\)](#)
- s. 119(2)(ha)(hb) inserted by [2023 c. 40 s. 2\(6\)](#)
- Sch. 2 para. 5(4) inserted by [2023 c. 40 s. 2\(7\)](#)
- Sch. 2 para. 1-1I substituted for Sch. 2 para. 1 by [2023 c. 40 s. 1\(4\)](#)
- Sch. 6A inserted by [2023 c. 16 s. 8\(2\)](#)
- Sch. 7 para. 4(5) inserted by [2023 c. 16 Sch. para. 13\(6\)](#)