



Skills and Post-16 Education Act 2022

2022 CHAPTER 21

PART 4

MISCELLANEOUS AND GENERAL

CHAPTER 2

MISCELLANEOUS PROVISIONS

Publication by the Office for Students

33 Office for Students: publication and protection from defamation

In the Higher Education and Research Act 2017, after section 67 insert—

“Publication

67A Power for the OfS to publish notices, decisions and reports

- (1) The OfS may publish notices, decisions and reports given or made in the performance of its functions.
- (2) Subsection (1) does not affect any other power of the OfS to publish such a matter.
- (3) Publication under this section does not breach—
 - (a) an obligation of confidence owed by the OfS, or
 - (b) any other restriction on the publication or disclosure of information (however imposed).
- (4) But nothing in this section authorises the OfS to publish information where doing so contravenes the data protection legislation.

Changes to legislation: Skills and Post-16 Education Act 2022, Cross Heading: Publication by the Office for Students is up to date with all changes known to be in force on or before 30 April 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

For this purpose “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

- (5) In deciding whether to publish a notice, decision or report under subsection (1), the OfS must, in particular, consider—
- (a) the interests of—
 - (i) students on higher education courses provided by English higher education providers,
 - (ii) people thinking about undertaking, or who have undertaken, such courses, and
 - (iii) English higher education providers,
 - (b) the need for excluding from publication, so far as practicable, any information which relates to the affairs of a particular body or individual, where publication of that information would or might, in the opinion of the OfS, seriously and prejudicially affect the interests of that body or individual, and
 - (c) the public interest.
- (6) For the purposes of this section and sections 67B and 67C—
- (a) a reference to a decision includes a reference to the reasons for it, and
 - (b) any decision made in the course of exercising, or for the purposes of enabling the OfS to exercise, any of the OfS’s functions (including making any other decision) is made “in the performance of its functions”.

67B Publication of decision to conduct or terminate investigation

- (1) This section applies where under section 67A(1) the OfS publishes a decision to conduct an investigation.
- (2) If the publication identifies a higher education provider or other body or individual whose activities are being, or to be, investigated, and—
- (a) the OfS terminates the investigation without making any finding, or
 - (b) the findings of the investigation, so far as they relate to the higher education provider, body or individual, do not result in the OfS taking any further action,
- the OfS must publish a notice stating that fact.
- (3) Section 67C does not apply to the publication of the decision to conduct the investigation to the extent that it includes information other than—
- (a) a statement of the OfS’s decision to conduct the investigation,
 - (b) a summary of the matter being, or to be, investigated, and
 - (c) a reference to the identity of any higher education provider or other body or individual whose activities are being, or to be, investigated.
- (4) See section 67A(6) for the meaning of references to decisions.

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Defamation

67C Protection from defamation claims

- (1) For the purposes of the law of defamation, publication by the OfS of any notice, decision or report given or made in the performance of its functions is privileged unless the publication is shown to have been made with malice.

This is subject to section 67B.

- (2) See section 67A(6) for the meaning of references to decisions.”

Commencement Information

II [S. 33](#) in force at 28.6.2022, see [s. 36\(2\)](#)

Changes to legislation:

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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):

- s. 19(2)(ga) inserted by [2023 c. 55 Sch. 4 para. 222](#)
- s. 20(7)(ca) inserted by [2023 c. 55 Sch. 4 para. 223](#)