

EXPLANATORY MEMORANDUM TO
THE HIGHER EDUCATION (FEE LIMITS FOR ACCELERATED COURSES)
(ENGLAND) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018 (“the general Fee Limits Regulations”) set variable limits on the maximum fees that prescribed registered higher education providers can charge students undertaking higher education courses, in respect of an academic year starting on or after 1 August 2019.

2.2 The Higher Education (Fee Limits for Accelerated Courses) (England) Regulations 2018 (“these Regulations” or “this instrument”) set variable limits on the maximum fees in the case of accelerated courses where the first year of that course starts on or after 1 August 2019.¹

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only because it applies only to English higher education providers (see regulation 2 of these Regulations).

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to education, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the

¹ For accelerated courses which began before 1 August 2019 the limits prescribed in the general Fee Limits Regulations will apply.

subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is not a reserved matter listed within Schedule 7A to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Minister of State for Universities, Science, Research and Innovation, Sam Gyimah, has made the following statement regarding Human Rights:

“In my view the provisions of the Higher Education (Fee Limits for Accelerated Courses) (England) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 10 of the Higher Education and Research Act 2017 (“the Act”) provides that the Office for Students (OfS) must ensure that the ongoing registration conditions applicable to registered providers of a prescribed description include a fee limit condition, which applies to qualifying courses attended by qualifying persons. The Higher Education (Fee Limit Condition) (England) Regulations 2017 (as amended by the general Fee Limits Regulations) set out those providers, courses and persons which will be subject to a fee limit condition. Paragraphs 2 and 3 of Schedule 2 to the Act allow the Secretary of State to prescribe the fee limits themselves by regulations. Section 119(2)(i) of the Act requires such regulations to be laid before, and approved by a resolution of, both Houses of Parliament.
- 6.2 Following the repeal of the relevant parts of the Further and Higher Education Act 1992 (in England) and of the Higher Education Act 2004 by the Act, the general Fee Limits Regulations prescribe the maximum tuition fees that will apply to different courses and cases at higher education providers which are registered in a certain part of the register maintained by the OfS under section 3 of the Act.
- 6.3 The general Fee Limits Regulations set a limit on the maximum fees that prescribed registered providers which have access and participation plans approved by the OfS in place, and which have a high level quality rating under arrangements made under section 25 of the Act may charge for full-time or part-time higher education courses which started on or after 1 September 2012 in respect of an academic year starting on or after 1 August 2019. This limit is known as the “higher amount”.
- 6.4 The general Fee Limits Regulations similarly set a limit on the maximum fees that prescribed registered providers which do not have access and participation plans approved by the OfS in place, but which do have a high level quality rating may

charge for full-time or part-time higher education courses which started on or after 1 September 2012 in respect of an academic year starting on or after 1 August 2019. This limit is known as the “basic amount”.

- 6.5 The “floor amounts” in respect of each of the higher and basic amounts are also prescribed by the general Fee Limits Regulations. The Secretary of State has the power under paragraphs 2(6) and 3(5) of Schedule 2 to the Act to determine fee limits where prescribed providers do not have a high level quality rating under arrangements made under section 25 of the Act. These limits are known as “sub-level amounts”, and by virtue of paragraphs 2(9) and 3(8) of Schedule 2, such sub-level amounts must be equal to, or greater than, the relevant prescribed floor amount.
- 6.6 This instrument sets maximum tuition fees in the case of different accelerated courses where the first year of that course starts on or after 1 August 2019. Paragraph 4(1) of Schedule 2 to the Act enables the Secretary of State to prescribe by regulations different maximum tuition fee limits for accelerated courses. An “accelerated course” means a higher education course where the number of academic years applicable to the course is at least one fewer than would normally be the case for that course or a course of equivalent content leading to the grant of the same or an equivalent academic award (see paragraph 4(2) of Schedule 2).

7. Policy background

What is being done and why?

- 7.1 A key policy intention of the Act is that registered higher education providers are able to charge varying tuition fees dependant on them meeting a number of conditions by virtue of registration in a particular part of the OfS register. Section 3 of the Act requires the OfS to establish and maintain a register of English higher education providers, and allows the OfS to divide the register into such parts or categories as it may determine. The OfS has divided the register into two parts: Approved, and Approved (fee cap). Providers registered in the Approved category will be able to charge unlimited tuition fees, although the maximum amount of student support (fee loans) which will apply to courses provided by Approved providers will be at a level set out in the Education (Student Support) Regulations 2011. Students who are qualifying persons and are undertaking qualifying courses at providers registered in the Approved (fee cap) part of the Register will be subject to the fee limits set out in this instrument and the general Fee Limits Regulations (as applicable).
- 7.2 The main policy objective for these Regulations is to enable providers of accelerated degree courses - which require more teaching to be delivered within each twelve-month period compared with standard degree courses - to charge annual fees up to a higher cap that will, in total, still result in total fee costs for accelerated degree courses being lower than their standard equivalent courses. The aim is to encourage greater provision of accelerated courses by providers, and greater take-up of those courses by students for whom they represent the best option.
- 7.3 For providers, accelerated degrees offer the benefits of a more consistent and focused pace of teaching, engaged and ambitious students, and a two-year cohort turnover. Students on existing accelerated degrees report a very high level of satisfaction, and highlight the opportunity to graduate and start or resume work a year sooner than their peers as the main benefit, together with costs savings and academic benefits.

- 7.4 These Regulations set maximum fees for an academic year of accelerated full-time courses which start on or after 1 August 2019. Maximum fees for accelerated full-time courses in 2019/20 will be 20% higher than the equivalent maximum fees for full-time courses that are not accelerated courses.

Maximum fees for accelerated courses starting on or after 1 August 2019

- 7.5 The higher amount for prescribed registered providers with a high level quality rating will be £11,100 for accelerated full-time courses in 2019/20. The floor amount in respect of the higher amount for prescribed registered providers without a high level quality rating will be £10,800 for accelerated full-time courses in 2019/20.
- 7.6 The basic amount for prescribed registered providers with a high level quality rating will be £7,400 for accelerated full-time courses in 2019/20. The floor amount in respect of the basic amount for prescribed higher education providers without a high level quality rating will be £7,200 for accelerated full-time courses in 2019/20.

Maximum fees for specified accelerated courses starting on or after 1 August 2019

- 7.7 Lower basic and higher amount tuition fees apply to a sandwich work placement year of an accelerated course, where the periods of full-time study are less than 10 weeks, for an accelerated full-time course provided in conjunction with an overseas provider where the periods of study at the UK provider are less than 10 weeks, and for an Erasmus study or work placement year. An Erasmus year is an academic year of a course where a student is participating in the European Union programme, Erasmus+, for education, training, youth and sport.
- 7.8 For a sandwich work placement year of an accelerated course where the periods of full-time study are less than 10 weeks, prescribed registered providers can charge up to 20% of the maximum full-rate fees for an accelerated course.
- 7.9 The higher amount for a sandwich work placement year of an accelerated course for prescribed registered providers with a high quality rating will be £2,220 in 2019/20. The floor amount in respect of the higher amount for a sandwich work placement year of an accelerated course for prescribed registered providers without a high quality rating will be £2,160 in 2019/20.
- 7.10 The basic amount for a sandwich work placement year of an accelerated course for prescribed registered providers with a high quality rating will be £1,475 in 2019/20. The floor amount in respect of the basic amount for a sandwich work placement year of an accelerated course for prescribed registered providers without a high quality rating will be £1,440 in 2019/20.
- 7.11 For an overseas study year of an accelerated course, where the periods of study at the UK provider are less than 10 weeks or an Erasmus study or work placement year, prescribed registered providers can charge up to 15% of the maximum full-rate fees for an accelerated course.
- 7.12 The higher amount for an overseas study year or an Erasmus study or work placement year of an accelerated course for prescribed registered providers with a high quality rating will be £1,660 in 2019/20. The floor amount in respect of the higher amount for an overseas study year or an Erasmus study or work placement year of an accelerated course for prescribed registered providers without a high quality rating will be £1,620 in 2019/20.

7.13 The basic amount for an overseas study year or an Erasmus study or work placement year of an accelerated course for prescribed registered providers with a high quality rating will be £1,105 in 2019/20. The floor amount in respect of the basic amount for an overseas study year or an Erasmus study or work placement year of an accelerated course for prescribed registered providers without a high quality rating will be £1,080 in 2019/20.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Consolidation is not appropriate as this is the first instrument prescribing fee limits in the case of accelerated courses under the Act.

10. Consultation outcome

10.1 During the passage of the Act in 2017, Ministers provided a commitment to public consultation on the level of the maximum fees for accelerated degree courses. The Department for Education published a consultation in December 2017, seeking views from the Higher Education sector and others on a proposed fee cap increase (as compared with their non-accelerated equivalents) of 20% for accelerated courses, and on related proposals to enable and encourage wider provision of accelerated degree courses and increased enrolment by students.

10.2 The consultation closed in February 2018. 97 responses were received from a wide range of Higher Education Approved (fee cap) and Approved Providers, HE representative bodies, Further Education Colleges, professional representative organisations, charitable organisations and individuals.

10.3 The key question sought views on the incentivising impact on providers of an annual accelerated degree fee cap of up to 1.2 x the standard equivalent. 31% of respondents agreed this measure would incentivise wider provision; 58% disagreed. On the parallel question of the incentivising impact of a reduction of 20% in total tuition fee costs for accelerated degree students, 40% agreed this would incentivise wider uptake of accelerated courses, and 49% disagreed,

10.4 Analysis of the comments received from respondents to these questions indicated:

10.4.1 There was no consensus from 'Disagree' respondents on what a sufficiently incentivising fee cap should be.

10.4.2 No quantitative evidence of why the annual fee cap of 1.2 x the current cap would be insufficient to fund any increased accelerated provision.

10.4.3 8 of the 22 HEIs who disagreed with the 1.2 multiple as a wider provision incentive, went on to answer 'yes' to the later question, "*Based on the policies set out in this document, are you considering offering new or additional accelerated degrees when tuition cap uplifts are enacted?*".

10.4.4 Several respondents who disagreed with both questions of incentivising sufficiency also noted that these values will incentivise some providers / students, but not all providers, across all subjects or for all students.

10.5 The Government response to the consultation was published on 19 November 2018, and is available on .GOV.UK².

11. Guidance

11.1 Guidance for current and potential future providers of accelerated degree courses, and for potential students enrolling on accelerated degree courses, at tuition fee levels as set out in these Regulations, will be published by the Department for Education before 1st August 2019.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. A preliminary Regulatory Impact Assessment of the consultation proposals to introduce higher annual maximum fees for accelerated courses was published on .GOV.UK in December 2017, alongside the consultation on accelerated courses. A final Regulatory Impact Assessment, reflecting data derived from the consultation responses, was published on 27 November 2018 and is available on .GOV.UK³.

12.2 There is no, or no significant, impact on the public sector.

12.3 From the Impact Assessment, the impact on business, charities or voluntary bodies of introducing the option to charge higher maximum tuition fees for accelerated courses is forecast to increase higher education providers' income from fees by £6.9 million a year, from eligible students starting accelerated courses from 1 August 2019. The reform is deregulatory in nature as it allows providers to charge a higher annual tuition fee for accelerated courses and so make them economic to maintain and expand provision.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses. Smaller higher education providers are free to decide whether to apply for the part of the OfS register which will bring them within the fee limit regime, including the new caps for accelerated degree courses. In the case of those providers which are already subject to fee limits, the provision of accelerated degrees, and the maximum fee cap applicable to them, are optional.

13.3 The impact of a tuition fee limit has positive elements in that it widens the pool of potential students who are able to undertake their courses. accelerated degree fee limits will alleviate the financial burdens of higher in-year provision (or more teaching weeks each year, within an annual fees cap structure), which will incentivise wider provision of a more flexible study option for students.

13.4 Finally, higher education providers which are small businesses will be able to choose whether they subject themselves to an accelerated course tuition fee limit in return for the benefits to which registration in the Approved (fee cap) part of the register entitles them. It will be for such providers to decide whether to accept that impact.

² <https://www.gov.uk/government/consultations/accelerated-degrees-widening-student-choice-in-higher-education>

³ <https://www.gov.uk/government/publications/accelerated-degree-courses-assessment-of-impact>

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that we will be monitoring the impact on providers, students and employers of the introduction of higher maximum fees for accelerated courses.
- 14.2 The regulation does not include a statutory review clause. However, a review will be conducted three years after these Regulations come into force. The precise scope of that review will be determined closer to the time.
- 14.3 We will also be monitoring the numbers of students who receive tuition fee loans. This information is published in the SLC's statistical first releases.

15. Contact

- 15.1 Julie Hull at the Department for Education (telephone: 07795 451387 or email: julie1.hull@education.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Anne Spinali, Deputy Director for Future Student Finance at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Sam Gyimah at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.