

## **EXPLANATORY MEMORANDUM TO THE STUDENT FEES (AMOUNTS)(ENGLAND) REGULATIONS 2004**

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

### **Description**

This instrument performs two functions: it sets two limits – the basic and higher amounts - on the tuition fees that may be charged to full time undergraduates at £1,200 and £3,000 and it describes a number of Higher Education courses to which lower limits of £600 and £1,500 are to be applied in an academic year.

### **Legislative Background**

Section 23 of the Higher Education Act 2004 contains a duty on the Secretary of State for Education and Skills to set a condition on the grant paid to the two funding bodies for Higher Education in England: the Higher Education Funding Council for England and the Teacher Training Agency. The condition must require the funding bodies in turn to set a condition on the grant they pay to English Higher Education Institutions (HEIs) relating to the tuition fees to be paid by full time undergraduates.

Section 24 sets out the way in which the condition of grant should be constructed in terms of the basic and higher amounts, to ensure that: an HEI with an access plan (see policy background for a description) does not charge fees over the higher amount; and an HEI without an access plan does not charge fees in excess of the basic amount. It also sets out the sanctions which should be imposed on any HEI that breaches the condition, and specifies that the basic and higher amounts should be prescribed in regulations.

Section 26 sets out the arrangements for making annual increases to the basic and higher amounts, and the arrangements for approving regulations made under section 24.

During the passage of the HE Act, Ministers gave assurances that there would be no increases in the higher amount above the level of inflation in the lifetime of the next Parliament, that any such increase would be subject to a vote in both Houses, and that a proposal for an above inflation increase would only be made after a commission had reported on the first three years of the operation of variable fees. The first two of these commitments are embodied in section 26(2)(b) of the HE Act 2004.

### **Extent**

This instrument applies to England.

## **European Convention on Human Rights**

The Minister of State for Lifelong Learning , Further and Higher Education, Alan Johnson MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998: in my view the provisions of the Student Fees (Amounts)(England) Regulations 2004 are compatible with the convention rights.

## **Policy Background**

Higher Education Institutions in England are currently restricted as to the fees they may charge full time undergraduates to a standard amount - £1,150 for the 2004/05 academic year. This policy is enforced through provisions in the 1998 Teaching and Higher Education (THE) Act, which allow the Secretary of State to set a condition on the grant paid to the Higher Education Funding Council for England and the Teacher Training Agency, that they should in turn set a condition on the grant they pay to HEIs that they should only charge fees to full time undergraduates at a standard amount.

The policy of variable fees was first set out and justified in the Higher Education White Paper (Cm 5375): further explanation and justification is contained in the papers issued by the Department to accompany seminars given to MPs in December 2003. Copies of all documents are in the House Library. The key features of the policy are:

HEIs are to be allowed to charge variable fees of up to £3,000 (the higher amount), provided they have an access plan approved by the Director for Fair Access; but

If an HEI does not have an access plan, it may charge variable fees of up to whatever the current standard fee is by 2006 (the basic amount).

An access plan will set out what an HEI intends to do in order to widen access to Higher Education amongst under represented groups of students. It will set out: the limits on fees to be charged to students (which must be below the higher amount); what the HEI intends to do to promote equality of opportunity; what financial support the HEI intends to make available to students from poorer backgrounds in the form of bursaries; how the HEI intends to make information available to prospective students about the financial support available to them from all sources; and the milestones the institution is setting itself for the improvement of access amongst students of underrepresented groups.

The consultation on the HE White Paper attracted 719 responses of which 558 commented on the chapter on freedoms and funding, which contained the proposals on variable fees. The Commons stages of the passage of the Higher Education Act 2004 attracted significant media attention, and considerable back bench opposition. The main objections were to the

principle of variability - the replacement of a single fixed fee with a regime which allowed HEIs to decide on their level of fees; and also to the increase in the maximum level of fee that could be charged from the current level of £1,125 to £3,000.

### **Impact**

A Regulatory Impact assessment has been completed for the HE Act, and is attached.

### **Contact**

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