

**EXPLANATORY MEMORANDUM TO
THE HIGHER EDUCATION (BASIC AMOUNT AND (HIGHER AMOUNT)
(ENGLAND) (AMENDMENT) REGULATIONS 2018**

2018 No. 465

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 This instrument amends the Higher Education (Basic Amount) (England) Regulations 2016 and the Higher Education (Higher Amount) (England) Regulations 2016 which set variable limits on the maximum fees that higher education institutions funded by the Higher Education Council for England (HEFCE)¹ can charge students undertaking higher education courses which started on or after 1 September 2012.
- 2.2 HEFCE funded institutions that offer high quality teaching under the Teaching Excellence and Student Outcomes Framework (TEF) can charge up to higher maximum fees compared with institutions that do not have a TEF award. This instrument updates the Schedule of HEFCE funded institutions with a TEF award in respect of an academic year starting on or after 1 August 2018.
- 2.3 This instrument removes references to an obsolete category of course and corrects an error in previous regulations from the date that this instrument comes in to force.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument corrects an error from two sets of earlier regulations. The Department has considered whether to use the free issue procedure and has concluded that the free issue procedure should not be applied in this instance given the nature of the correcting provisions and the proportion that they represent of the whole instrument.
- 3.2 The errors are correcting S.I. 2016/1205 and S.I. 2016/1206.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument amends the Higher Education (Basic Amount)(England) Regulations 2016 (the ‘Basic Amount Regulations’) and the Higher Education (Higher Amount) Regulations 2016 (the ‘Higher Amount Regulations’) in respect of an academic year starting on or after 1 August 2018.

¹ For the 2019/20 Academic Year, the Higher Education Funding Council for England (HEFCE) is being replaced by the new Office for Students (OfS) which becomes fully operational on 1 April 2018. A new OfS website is being launched at that point.

- 4.2 The Basic Amount Regulations are made under sections 24(6) and 47 of the Higher Education Act 2004 and set a limit on the maximum fees HEFCE funded higher education institutions which do not have approved access plans may charge full-time or part-time undergraduates starting higher education courses on or after 1 September 2012.
- 4.3 The Higher Amount Regulations are also made under sections 24(6) and 47 of the Higher Education Act 2004 and set a limit on the maximum fees HEFCE funded higher education institutions can charge in accordance with approved access plans in respect of full-time or part-time undergraduates starting higher education courses on or after 1 September 2012.
- 4.4 The Basic Amount Regulations and Higher Amount Regulations each feature a Schedule listing HEFCE funded higher education institutions with a Teaching Excellence and Student Outcomes (TEF) award ('eligible institutions') that can charge up to higher maximum fees than HEFCE funded institutions that do not have a TEF award. This instrument updates the Schedule of eligible institutions in respect of an academic year starting on or after 1 August 2018. Maximum fee caps for HEFCE funded institutions in the 2018/19 academic year remain at the levels that apply for the 2017/18 academic year.
- 4.5 This instrument removes obsolete references relating to full-time distance learning courses starting before 1 September 2012. It also corrects an error in the definition of an 'end-on' student in regulation 5(3)(c) of each of the Basic Amount Regulations and Higher Amount Regulations by replacing references to 'full-time distance learning' courses with correct references to 'part-time'. This correction does not have retrospective effect in relation to previous academic years.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Introducing a revised Schedule of HEFCE funded Institutions with a Teaching Excellence and Student Outcomes Framework (TEF) award for 2018/19

- 7.1 The Higher Education Act 2004 ('the 2004 Act') enables HEFCE funded higher education institutions to charge up to a 'basic amount' threshold or up to a 'higher amount' threshold for tuition fees in relation to full-time and part-time courses starting on or after 1 September 2012. Institutions wishing to charge above the basic amount threshold up to the higher amount threshold are required to have an access agreement approved by the Director of Fair Access to Higher Education², whose role is defined in the 2004 Act. While regulations made under section 26 of the 2004 Act fix the

² For the 2019/20 Academic Year, the Director of Fair Access to Higher Education is being replaced by the Director for Fair Access and Participation in the new Office for Students (OfS) which becomes fully operational on 1 April 2018. A new OfS website is being launched at that point.

upper limit beyond which higher amount fees cannot go, it is the access agreement that sets out an institution's fee limits subject to that upper limit. Plans also set out the measures each institution should put in place (e.g. outreach work and financial support) in order to increase access to higher education at that institution from students from under-represented backgrounds. 2018/19 access agreements for individual institutions can be found on the Office for Fair Access (OFFA) website³: <https://www.offa.org.uk/access-agreements/>

- 7.2 The Government has introduced the Teaching Excellence and Student Outcomes Framework (TEF) to provide clear information to students about where the best provision can be found and to drive up the standard of teaching in higher education institutions. The list of institutions with a TEF award for 2018/19 was published on the Higher Education Funding Council for England's website on 22 June 2017⁴. The Schedule reflects this list, as updated by HEFCE as a result of institutional mergers and successful appeals, and is current as of 23 March 2018. This instrument amends the Basic Amount Regulations and Higher Amount Regulations by updating the Schedule specifying those HEFCE funded institutions with a TEF award for 2018/19 which can charge up to higher maximum fee caps for full-time and part-time courses starting on or after 1 September 2012 compared with HEFCE funded institutions that have not achieved a TEF award in 2018/19. Maximum fee caps for the 2018/19 academic year remain at the levels that apply in 2017/18.
- 7.3 The Schedule appears in the same form in both the Basic Amount and Higher Amount Regulations to reflect the fact that, in practice, access plans approved by the Director of Fair Access to Higher Education may have the effect that each of the two different fee regimes apply to one institution during the same academic year. For example, an institution that did not have an access plan in place when students started a course (and so was only entitled to charge fees at the Basic Amount at that point) may not be permitted to charge the Higher Amount for those students by an access plan that is subsequently approved in respect of that institution.
- 7.4 However, that access plan will permit the charging of the higher amount for students who started to attend that institution from the date that the plan was in place. In this way one institution may be permitted to charge both the Basic and Higher Amounts for students attending that institution during the same academic year, depending on when a student began attending that institution and what access arrangements were in place at that time. Including each institution in each Schedule ensures that where this is the case each eligible institution has access to the new higher maxima in each of the two fee regimes. The changes to the list of eligible institutions will apply in respect of an academic year starting on or after 1 August 2018.

Removing an obsolete category of course from Regulations

- 7.5 Students undertaking full-time distance learning courses ("designated distance learning courses") that started before 1 September 2012 who: (a) transferred to a full-time distance learning course starting on or after 1 September 2012 from a full-time distance learning course starting before that date, or (b) started a full-time distance

³ For the 2019/20 Academic Year, the Office for Fair Access (OFFA) is being replaced by the new Office for Students (OfS) which becomes fully operational on 1 April 2018. A new OfS website is being launched at that point.

⁴ <http://www.hefce.ac.uk/tefoutcomes/#/>

learning honours degree course on or after 1 September 2012 immediately after completing a previous full-time distance learning course starting before that date, are not subject to the maximum fees in the Basic Amount Regulations and Higher Amount Regulations that apply to most full-time courses (including full-time distance learning courses) starting on or after 1 September 2012.

- 7.6 This instrument amends the Basic Amount Regulations and Higher Amount Regulations to remove all references to this category of course as there are no students remaining who are undertaking this type of distance learning course. This change will apply in respect of an academic year starting on or after 1 August 2018.

Consolidation

- 7.7 The current Basic Amount and Higher Amount Regulations apply in respect of an academic year starting on or after 1 August 2017. This instrument is intended to be the final amendment to these Regulations under sections 24(6) and 47 of the Higher Education Act 2004. The Department plans to lay new Basic and Higher Amount Regulations for the 2019/20 academic year under the relevant new powers for prescribing fee caps in the Higher Education and Research Act 2017.

8. Consultation outcome

- 8.1 There is no statutory requirement to consult on these Regulations. However, as part of a quality review process in early 2018, the draft amendment regulations were sent to the Higher Education Funding Council for England (HEFCE) to check that the amendment regulations met policy intent.
- 8.2 An Equality Analysis (EA) has not been prepared for this instrument. However an EA covering changes to higher education student finance for 2018/19 and their impact on protected and disadvantaged groups was published on the .GOV.UK website⁵ in February 2018 when regulations introducing revised student support arrangements for 2018/19 were laid before Parliament.⁶

9. Guidance

- 9.1 HEFCE published a list of institutions with a TEF award for the 2018/19 academic year on their website on 22 June 2017⁷ The Schedule reflects this list, as updated by HEFCE as a result of institutional mergers and successful appeals, and is current as of 23 March 2018. Minister Jo Johnson announced that maximum fees for the 2018/19 academic year would remain at 2017/18 levels in a Written Ministerial Statement on 9 October 2017⁸.
- 9.2 Information on changes to higher education student finance for 2018/19 is available for students, universities, colleges and others on .GOV.UK and Student Finance

⁵ <https://www.gov.uk/government/publications/higher-education-student-finance-2018-to-2019-equality-analysis>

⁶ A hard copy of this EA is available from Linda Brennan at the Department for Education: Tel: 07391 018296 Email: Linda.Brennan@education.gov.uk

⁷ <http://www.hefce.ac.uk/tefoutcomes/#/>

⁸ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-10-09/HCWS145/>

England's practitioners' website. Guidance materials have also been produced by Student Finance England for students intending to apply for full-time and part-time financial support for 2018/19 and these are being made available in both hard copy and electronic formats.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Basic Amount Regulations and the Higher Amount Regulations will be kept under review and in particular we will be monitoring the views of stakeholders on the TEF.

13. Contact

- 13.1 Mark Williams at the Department for Education telephone: 07391 018340 or email: Mark.Williams@education.gov.uk can answer any queries regarding the instrument.