

EXPLANATORY MEMORANDUM TO
THE HIGHER EDUCATION (BASIC AMOUNT) (ENGLAND) REGULATIONS 2016
2016 No. 1205
THE HIGHER EDUCATION (HIGHER AMOUNT) (ENGLAND) REGULATIONS
2016 No. 1206
AND
THE STUDENT FEES (INFLATION INDEX) (AMENDMENT) REGULATIONS 2016
2016 No. 1207

1. Introduction

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

2. Purpose of the instruments

- 2.1 The Higher Education (Basic Amount) (England) Regulations 2016 and the Higher Education (Higher Amount) (England) Regulations 2016 set variable limits on the maximum fees that publicly funded higher education institutions can charge students undertaking higher education courses which started on or after 1 September 2012, in respect of an academic year starting on or after 1 August 2017.
- 2.2 The Student Fees (Inflation Index) (Amendment) Regulations 2016 amend the Student Fees (Inflation Index) Regulations 2006 which set the index of prices to be used for uprating maximum amounts of tuition fees in order to maintain the value of these amounts in real terms. The Regulations clarify that the relevant index (which is preserved by the new Regulations) is now issued by the Office for Budget Responsibility instead of the Office for National Statistics.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 These instruments apply only to England.
- 3.3 These instruments apply only to England because they apply only to the maximum amounts of tuition fees that apply to higher education students in England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of the entire instruments 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; the devolved legislative competence of the Scottish Parliament

if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and the devolved legislative competence of 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 instruments relate to education which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instruments 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 instruments 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 the Act); the primary purpose of the subject matter of the instruments is within paragraph 5 of Schedule 7 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 108 of that Act).

4. Legislative Context

- 4.1 The Higher Education (Basic Amount) (England) Regulations 2016 (“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 publicly 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.
- 4.2 The Basic Amount Regulations increase maximum fees for publicly funded higher education institutions that are not permitted by an access plan to charge fees at the Higher Amount but which have been agreed by the Secretary of State as offering high quality teaching. For these institutions (defined as “eligible institutions” in the regulations and listed in a Schedule) the increased maximum applies in respect of fees payable for study in the 2017/18 academic year (which begins in or after 1 August 2017).
- 4.3 The Higher Education (Higher Amount) (England) Regulations 2016 (“the Higher Amount Regulations”) are made under sections 24(6) and 47 of the Higher Education Act 2004 and set a limit on the maximum fees publicly 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 Higher Amount Regulations increase maximum fees for publicly funded higher education institutions which are permitted by an access plan to charge fees at the Higher Amount and have been agreed by the Secretary of State as offering high quality teaching. As noted in paragraph 4.2, the increased maximum applies to fees payable for study in the 2017/18 academic year (which begins on or after 1 August 2017).

- 4.5 The Student Fees (Inflation Index) (Amendment) Regulations 2016 make a technical amendment to the Student Fees (Inflation Index) Regulations 2006 (S.I. 2006/507)) which are made under sections 24(6) and 47 of the Higher Education Act 2004. The latter regulations specify the All Items Retail Price Index Excluding Mortgage Interest Repayments (RPI-X) as the index of prices to be used for uprating maximum amounts of tuition fees for publicly funded higher education institutions in order to maintain the value of these amounts in real terms.

5. Extent and Territorial Application

- 5.1 The extent of these instruments is England and Wales.
- 5.2 The territorial application of these instruments is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

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

7. Policy background

7.1 Increasing maximum fees for full-time and part-time students in 2017/18.

- 7.1.1 The Higher Education Act 2004 (‘the 2004 Act’) provides that publicly funded higher education institutions can 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 Education, whose role is defined in the 2004 Act. While regulations made under section 26 of the 2004 Act fix the 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. The list of institutions which have access agreements for 2017/18 can be found on the Office for Fair Access (OFFA) website: <https://www.offa.org.uk/access-agreements/>
- 7.1.2 From 2016/17 the Government is introducing a Teaching Excellence 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 all higher education institutions. In Year One of TEF (2016/17), all higher education institutions who have met the eligibility criteria set out in Annex A of the Government’s White Paper – ‘*Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*’¹ - have received a rating of Meets Expectations. The TEF Year One list was published on GOV.UK on 01 September 2016².

¹ <https://www.gov.uk/government/publications/higher-education-success-as-a-knowledge-economy-white-paper>

² <https://www.gov.uk/government/publications/teaching-excellence-framework-year-1-list-of-eligible-providers>

- 7.1.3 This TEF award will carry financial incentives, as detailed below, for 2017/18 which it is intended will last for one year only. For all new students and eligible continuing students who started their full-time or part-time courses on or after 1 September 2012 and are undertaking courses at publicly funded higher education institutions that have achieved a TEF rating of Meets Expectations, 'basic amount' and 'higher amount' tuition fee caps will be increased by forecast inflation (2.8%) in 2017/18. Basic amount and higher amount tuition fee caps for publicly funded higher education institutions that have not achieved a TEF rating of Meets Expectations will remain at 2016/17 levels in 2017/18.
- 7.1.4 The Basic Amount Regulations provide that the maximum tuition fee for publicly funded higher education institutions that have achieved a TEF rating of Meets Expectations will be £6,165 for full-time courses in 2017/18 where the basic amount is permitted. The Higher Amount Regulations provide that the maximum tuition fee cap for publicly funded institutions that have achieved a TEF rating of Meets Expectations will be £9,250 for full-time courses in 2017/18 where the higher amount is permitted. Basic amount and higher amount tuition fee caps for publicly funded higher education institutions that have not achieved a TEF rating of Meets Expectations will remain at £6,000 and £9,000 respectively in 2017/18.
- 7.1.5 Lower basic and higher amount tuition fee caps apply for the final year of a full-time course which is normally required to be completed after less than 15 weeks attendance, for a sandwich work placement year where the periods of full-time study are less than 10 weeks, for a 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.
- 7.1.6 For the final year of a full-time course which is normally required to be completed after less than 15 weeks attendance, public funded higher education institutions can charge up to 50% of the maximum fee caps. The Basic Amount Regulations provide that the maximum tuition fee for the final year of a course where publicly funded higher education institutions have achieved a TEF rating of Meets Expectations will be £3,080 in 2017/18, where the basic amount is permitted. The Higher Amount Regulations provide that the maximum tuition fee for the final year of a course where publicly funded higher education institutions have achieved a TEF rating of Meets Expectations will be £4,625 in 2017/18, where the higher amount is permitted. Final year basic amount and higher amount tuition fee caps for publicly funded higher education institutions that have not achieved a TEF rating of Meets Expectations will remain at £3,000 and £4,500 respectively in 2017/18.
- 7.1.7 For a sandwich work placement year where the periods of full-time study are less than 10 weeks, publicly funded higher education institutions can charge up to 20% of the maximum fee caps. The Basic Amount Regulations provide that the maximum tuition fee for a sandwich work placement year where publicly funded higher education institutions have achieved a TEF rating of Meets Expectations will be £1,230 in 2017/18, where the basic amount is permitted. The Higher Amount Regulations provide that the maximum tuition fee for a sandwich work placement year where publicly funded higher education institutions have achieved a TEF rating of Meets Expectations will be £1,850 in 2017/18, where the higher amount is permitted.

Sandwich work placement year basic amount and higher amount tuition fee caps for publicly funded higher education institutions that have not achieved a TEF rating of Meets Expectations will remain at £1,200 and £1,800 respectively in 2017/18.

- 7.1.8 For an overseas study year where the periods of study at the UK provider are less than 10 weeks or an Erasmus study or work placement year, publicly funded higher education institutions can charge up to 15% of the maximum fee caps. The Basic Amount Regulations provide that the maximum tuition fee for overseas study and Erasmus years where publicly funded higher education institutions have achieved a TEF rating of Meets Expectations will be £920 in 2017/18, where the basic amount is permitted. The Higher Amount Regulations provide that the maximum tuition fee for overseas study and Erasmus years where publicly funded higher education institutions have achieved a TEF rating of Meets Expectations will be £1,385 in 2017/18, where the higher amount is permitted. Erasmus year and overseas study year basic amount and higher amount tuition fee caps for publicly funded higher education institutions that have not achieved a TEF rating of Meets Expectations will remain at £900 and £1,350 respectively in 2017/18.
- 7.1.9 The Basic Amount Regulations provide that the maximum tuition fee for publicly funded higher education institutions that have achieved a TEF rating of Meets Expectations will be £4,625 for part-time courses in 2017/18, where the basic amount is permitted. The Higher Amount Regulations provide that the maximum tuition fee for publicly funded institutions that have achieved a TEF rating of Meets Expectations will be £6,935 for part-time courses in 2017/18, where the higher amount is permitted. Part-time basic amount and higher amount tuition fee caps for publicly funded higher education institutions that have not achieved a TEF rating of Meets Expectations will remain at £4,500 and £6,750 respectively in 2017/18.
- 7.1.10 The Basic Amount Regulations and Higher Amount Regulations each feature a schedule listing the publicly funded higher education institutions that have achieved a TEF rating of Meets Expectations. This makes clear which institutions are eligible to charge fees for the 2017/18 academic year at the new higher maxima.
- 7.1.11 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. 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.

7.2 Changes to the inflation index regulations that apply to increases to maximum fees

- 7.2.1 Under the Inflation Index Regulations, the index of prices that the Secretary of State is required by the 2004 Higher Education Act to have regard to when considering increases to maximum tuition fees is the All Items Retail Prices Index Excluding Mortgage Interest Repayments (RPIX) published by the Office for National Statistics (ONS). However, RPIX figures are no longer published by the ONS. They are instead published by the Office for Budget Responsibility (OBR) in their Economic and Fiscal Outlook.
- 7.2.2 The Student Fees (Inflation Index) (Amendment) Regulations 2016 make a technical amendment to the Inflation Index Regulations to replace references to the ONS with those to the OBR and update references to regulations covering maximum fees. These changes will ensure that the Inflation Index Regulations align with current practice. They will apply from the date that the Student Fees (Inflation Index) (Amendment) Regulations 2016 come into force.

Consolidation

- 7.3 The Department has drafted new Basic Amount and Higher Amount Regulations that apply in respect of an academic year starting on or after 1 August 2017.

8. Consultation outcome

- 8.1 There is no statutory requirement to consult on these Regulations. However, the former Department for Business, Innovation and Skills (BIS) published a consultation as part of the Green Paper on higher education ‘Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice’ in November 2015 on the GOV.UK website. This included proposals to allow higher education institutions offering high quality teaching to charge higher tuition fees. The consultation informed the Government White Paper on higher education, ‘Success as a Knowledge Economy: Teaching Excellence, Social Mobility & Student Choice’ which was published in May 2016. Alongside the White Paper, the Government published a technical consultation on Year Two of TEF to ensure the higher education sector has the opportunity to shape the detailed proposals.
- 8.2 As part of a quality review process in Autumn 2016, the draft Basic Amount and Higher Amount Regulations were sent to stakeholders in the Higher Education sector such as the Student Loans Company (SLC), the Higher Education Funding Council for England (HEFCE) and OFFA to check that the regulations met policy intent.
- 8.3 An Equality Analysis (EA) covering detailed changes to maximum fee caps for 2017/18 and their impact on protected and disadvantaged groups of students is being published on 15 December 2016 on the GOV.UK website with the laying of these Regulations. BIS published an initial EA as part of their November 2015 consultation which covered the impact of TEF and increases to maximum fees on protected and disadvantaged groups of students. A further EA for the Higher Education and Research Bill covering the impact of changes to tuition fees and TEF was published by BIS on the GOV.UK website in May 2016.

9. Guidance

- 9.1 The Minister of State announced proposed changes to maximum fees in detail in a Written Ministerial Statement (WMS) to Parliament on 21 July 2016.
- 9.2 Information setting out these changes was made available for universities, colleges and other higher education stakeholders on Student Finance England's (SFE) practitioners' website when the WMS was laid before Parliament. Further information on changes to maximum fees for 2017/18 will be published for students on GOV.UK and SFE websites.
- 9.3 Guidance materials are being produced by SFE for students intending to apply for financial support for full-time and part-time courses in 2017/18 and these will be available in both hard copy and electronic formats.

10. Impact

- 10.1 The Higher Education sector is expected to experience an average annual benefit of £1.3bn from the Introduction of the Teaching Excellence Framework and its link to undergraduate student tuition fees from 2017/18. The cost to higher education institutions is assessed to be zero for TEF Year One. This is because no institution application was required for TEF Year One and Higher Education institutions were automatically eligible for a 'Meets Expectation' award if they had a valid QA review (as defined in Annex A of the White Paper).
- 10.2 Initial estimates from the SLC indicate that the potential costs of administering the TEF will be £1.1m in 2016/17.
- 10.3 An Impact Assessment has not been prepared for this instrument but a full Impact Assessment assessing the introduction of The Teaching Excellence Framework was published in June 2016 and can be found on .GOV.UK³.

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, the Higher Amount Regulations and the Inflation Index Regulations will be kept under review and in particular we will be monitoring the views of stakeholders on changes to Fee Caps and the TEF. 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.

13. Contact

- 13.1 Mark Williams at the Department for Education, telephone: 020 7215 1546 or email: mark.williams@bis.gsi.gov.uk can answer any queries regarding the instrument.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528005/bis-16-295-he-research-bill-detailed-impact-assessment.pdf