
EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 10 of the Higher Education and Research Act 2017 (c. 29) (“HERA”) requires the Office for Students to ensure that the ongoing registration conditions of each registered higher education provider of a description prescribed by regulations made by the Secretary of State must include a fee limit condition. Such a condition requires the governing body of a provider to secure that “regulated course fees” do not exceed a fee limit. Schedule 2 to the Act sets out how fee limits are determined. The “regulated course fees” to which fee limits apply are fees which are paid by a “qualifying person” where that person undertakes a “qualifying course”.

Under section 3(1) of HERA, the Office for Students must establish and maintain a register of English higher education providers (providers whose activities are carried on, or principally carried on, in England (see section 83(1) of HERA)). These Regulations therefore apply to students resident in England, Wales, Scotland and Northern Ireland who are studying a higher education course at an English higher education provider. The description of registered higher education providers, and qualifying courses are prescribed in the Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189) (“the 2017 Regulations”).

Paragraph 2 of Schedule 2 to HERA permits the Secretary of State to prescribe (i) the higher amount – being the regulated course fee limit applicable where the provider has an approved access and participation plan in force, and where the provider has been awarded a high level quality rating in accordance with arrangements made under section 25 of HERA, and (ii) the floor amount – being a level of regulated course fee above which providers may charge if they have an approved access and participation plan but have not been awarded a high level quality rating (but the amount they charge must not exceed any sub-level amount determined by the Secretary of State under Schedule 2, paragraph 2(6)). An “approved access and participation plan” means a plan that is approved by the Office for Students under section 29 of HERA.

Paragraph 3 of Schedule 2 to HERA permits the Secretary of State to prescribe (i) the basic amount – being the course fee limit applicable where the provider does not have an approved access and participation plan in force but does have a high level quality rating, and (ii) the floor amount – being a level of regulated course fee above which providers which do not have an approved access and participation plan in force, and which do not have a high level quality rating may charge (but the amount they charge must not exceed any sub-level amount determined by the Secretary of State under Schedule 2, paragraph 3(5)).

These Regulations provide that the higher amounts in respect of different courses and cases are those listed in regulations 5 to 7 and 11. They provide that the basic amounts in respect of different courses and cases are those listed in regulations 8 to 11. They provide that the floor amounts in respect of the relevant higher and basic amounts are those listed in regulations 5 to 11.

Regulation 4 provides that the amounts prescribed in regulations 5 to 11 apply in respect of an academic year of a course which begins on or after 1st August 2019, whether or not the course began before that date. Maximum fees for the 2018/19 academic year are set out in the Student Fees (Amounts) (England) Regulations 2004 (S.I. 2004/1932), the Higher Education (Basic Amount) (England) Regulations 2016 (S.I. 2016/1205) and the Higher Education (Higher Amount) (England) Regulations 2016 (S.I. 2016/1206), made in exercise of powers under the Higher Education Act 2004 (c. 8).

Regulation 11 prescribes higher, basic and floor amounts in respect of three particular groups of students: those who began a current course before 1st September 2012, those who transferred on to a current full-time course from a full-time course which began before 1st September 2012, and those who are defined as “end-on students”. These students must fall into one of the categories

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of qualifying persons listed in the Schedule to the 2017 Regulations, in order for the amounts specified in regulation 11 to apply.

Regulations 12 to 18 of these Regulations amend the 2017 Regulations. The amendment at regulation 13 of these Regulations is to make clear that the 2017 Regulations apply only to English higher education providers. Regulations 14 and 15 bring within the definition of a qualifying course certain full-time healthcare courses which lead to qualifications of an equivalent or lower level to a qualification which a student already holds. The effect of this is to allow course fee limits to be applied to such courses. Regulations 16 and 18 introduce a new category of qualifying persons (persons granted stateless leave and their family members) into the list of qualifying persons in the Schedule to the 2017 Regulations. This allows such persons to benefit from course fee limits. Regulation 17 makes provision so that a course is a qualifying course within regulation 7 of the 2017 Regulations, even if at the time the qualifying person received an offer of a place on that course the provider was not within the 'Approved (fee cap)' part of the register, but only if the first academic year of that course begins before 1st September 2019.

An impact assessment has not been produced for this instrument as the fee limits which currently exist have not been increased. There is consequently no additional impact on the costs of business, charities or the voluntary sector.

An Explanatory Memorandum is published alongside the Regulations on www.legislation.gov.uk .

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