

Draft Regulations laid before Parliament under section 119(2)(i) of the Higher Education and Research Act 2017, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

EDUCATION, ENGLAND

**The Higher Education (Fee Limits and Fee
Limit Condition) (England) Regulations 2018**

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 10(4)(b), 10(6) and 119(5)(a) of, and paragraphs 2(5), 2(11), 3(4) and 3(10) of Schedule 2 to, the Higher Education and Research Act 2017(1), makes the following Regulations.

In accordance with section 119(2)(i) of that Act, and the Secretary of State having been satisfied that these are not Regulations to which paragraph 5(2)(b) of Schedule 2 to that Act applies, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and application

1. These Regulations may be cited as the Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018 and come into force on the day after the day on which they are made.
2. These Regulations apply to English higher education providers(2).

Interpretation

3. In these Regulations—

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins, according to whether that academic year begins on or after 1st January and before 1st April, on or after 1st April and before 1st July, on or after 1st July and before 1st August or on or after 1st August and on or before 31st December, respectively;

“the Act” means the Higher Education and Research Act 2017;

(1) 2017 c. 29. See the definitions of “prescribed” in section 10(9) of, and paragraphs 2(13) and 3(12) of Schedule 2 to, the Act. These provide that, for the purposes of section 10(4)(b) of, and paragraphs 2(5), 2(11), 3(4) and 3(10) of Schedule 2 to, the Act, “prescribed” means prescribed by regulations made by the Secretary of State.

(2) See the definition of “English higher education provider” in section 83(1) of the Act.

“Erasmus year” has the same meaning as in regulation 2(1) of the Student Support Regulations;
“overseas provider” means a provider other than one in the United Kingdom, the Channel Islands or the Isle of Man;

“sandwich course” has the same meaning as in regulation 2(10) of the Student Support Regulations;

“the Student Support Regulations” means the Education (Student Support) Regulations 2011(3).

Higher, basic and floor amounts: general

4.—(1) In these Regulations—

- (a) regulations 5 to 7 and 11 prescribe higher amounts for the purposes of paragraph 2(2)(a) of Schedule 2 to the Act;
- (b) regulations 8 to 11 prescribe basic amounts for the purposes of paragraph 3(2)(a) of that Schedule;
- (c) regulations 5 to 11 prescribe floor amounts, in respect of the higher or basic amounts to which they relate, for the purposes of paragraphs 2 and 3 of that Schedule;
- (d) the amounts prescribed by regulations 5 to 10 do not apply in a case to which regulation 11 applies.

(2) The amounts prescribed by these Regulations apply in respect of an academic year of a course where that academic year begins on or after 1st August 2019, whether or not the course began before that date.

Higher and floor amounts from 1st August 2019: general

5. Except as otherwise provided in regulations 6, 7 and 11—

- (a) the higher amount is £9,250;
- (b) the floor amount in respect of that higher amount is £9,000.

Higher and floor amounts for specified cases from 1st August 2019

6.—(1) In respect of the final academic year of any course, if that academic year is normally required to be completed after less than 15 weeks’ attendance—

- (a) the higher amount is £4,625;
- (b) the floor amount in respect of that higher amount is £4,500.

(2) The higher amount and the floor amount in paragraph (3) are prescribed in respect of an academic year of a sandwich course—

- (a) during which any periods of full-time study are in aggregate less than 10 weeks; or
- (b) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the provider (disregarding intervening vacations) exceeds 30 weeks.

(3) Further to paragraph (2)—

- (a) the higher amount is £1,850;
- (b) the floor amount in respect of that higher amount is £1,800.

(3) S.I. 2011/1986, as amended by S.I. 2012/1653, 2013/235, 2013/630, 2013/1728, 2013/3106, 2014/1766, 2014/2103, 2014/2765, 2015/1951, 2016/211, 2016/270, 2016/584, 2017/52, 2017/114, 2017/204, 2018/136, 2018/137, 2018/434, 2018/443, 2018/472 and 2018/559.

(4) In respect of an Erasmus year—

- (a) the higher amount is £1,385;
- (b) the floor amount in respect of that higher amount is £1,350.

(5) The higher amount and the floor amount in paragraph (6) are prescribed in respect of an academic year of a course (which is not an Erasmus year) provided in conjunction with an overseas provider—

- (a) during which any periods of full-time study at the provider in the United Kingdom are in aggregate less than 10 weeks; or
- (b) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the provider in the United Kingdom (disregarding intervening vacations) exceeds 30 weeks.

(6) Further to paragraph (5)—

- (a) the higher amount is £1,385;
- (b) the floor amount in respect of that higher amount is £1,350.

Higher and floor amounts for part-time courses from 1st August 2019

7. For any part-time course—

- (a) the higher amount is £6,935;
- (b) the floor amount in respect of that higher amount is £6,750.

Basic and floor amounts from 1st August 2019

8. Except as otherwise provided in regulations 9 to 11—

- (a) the basic amount is £6,165;
- (b) the floor amount in respect of that basic amount is £6,000.

Basic and floor amounts for specified cases from 1st August 2019

9.—(1) In respect of the final academic year of any course, if that academic year is normally required to be completed after less than 15 weeks' attendance—

- (a) the basic amount is £3,080;
- (b) the floor amount in respect of that basic amount is £3,000.

(2) The basic amount and the floor amount in paragraph (3) are prescribed in respect of an academic year of a sandwich course—

- (a) during which any periods of full-time study are in aggregate less than 10 weeks; or
- (b) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the provider (disregarding intervening vacations) exceeds 30 weeks.

(3) Further to paragraph (2)—

- (a) the basic amount is £1,230;
- (b) the floor amount in respect of that basic amount is £1,200.

(4) In respect of an Erasmus year—

- (a) the basic amount is £920;

(b) the floor amount in respect of that basic amount is £900.

(5) The basic amount and the floor amount in paragraph (6) are prescribed in respect of an academic year of a course (which is not an Erasmus year) provided in conjunction with an overseas provider—

(a) during which any periods of full-time study at the provider in the United Kingdom are in aggregate less than 10 weeks; or

(b) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the provider in the United Kingdom (disregarding intervening vacations) exceeds 30 weeks.

(6) Further to paragraph (5)—

(a) the basic amount is £920;

(b) the floor amount in respect of that basic amount is £900.

Basic and floor amounts for part-time courses from 1st August 2019

10. For any part-time course—

(a) the basic amount is £4,625;

(b) the floor amount in respect of that basic amount is £4,500.

Higher, basic and floor amounts from 1st August 2019: courses starting before 1 September 2012, transferring students and end-on students

11.—(1) This regulation applies if—

(a) the course began before 1st September 2012;

(b) the student is an end-on student; or

(c) the student has transferred from a full-time course which began before 1st September 2012 to another full-time course beginning on or after 1st September 2012 and the student's status as a person eligible for support has been transferred from the earlier course to the later course under Regulations made under section 22 of the Teaching and Higher Education Act 1998⁽⁴⁾.

(2) Except in a specified case—

(a) the higher amount and the floor amount in respect of that higher amount are both £3,465;

(b) the basic amount and the floor amount in respect of that basic amount are both £1,380.

(3) In a specified case—

(a) the higher amount and the floor amount in respect of that higher amount are both £1,725;

(b) the basic amount and the floor amount in respect of that basic amount are both £680.

(4) In this regulation—

“end-on student” means a student who is undertaking a full-time honours degree course beginning on or after 1st September 2012 which, disregarding any intervening vacation, a student begins to attend immediately after ceasing to attend a full-time course which is mentioned in paragraph 2, 3 or 4 of Schedule 2 to the Student Support Regulations or a full-time foundation degree or ordinary degree course, which started before 1st September 2012, having achieved a qualification;

“specified case” means—

(4) 1998 c. 30.

- (a) the final academic year of a course where that academic year is normally required to be completed after less than 15 weeks' attendance;
- (b) in respect of a sandwich course, an academic year—
 - (i) during which any periods of full-time study are in aggregate less than 10 weeks; or
 - (ii) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the provider (disregarding intervening vacations) exceeds 30 weeks;
- (c) in respect of a course provided in conjunction with an overseas provider, an academic year—
 - (i) during which any periods of full-time study at the provider in the United Kingdom are in aggregate less than 10 weeks; or
 - (ii) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the provider in the United Kingdom (disregarding intervening vacations) exceeds 30 weeks.

Amendments to the Higher Education (Fee Limit Condition) (England) Regulations 2017

12. The Higher Education (Fee Limit Condition) (England) Regulations 2017(5) are amended as follows.

13. After regulation 1, insert—

“**1A.** These Regulations apply to English higher education providers.”;

14. In regulation 2 (interpretation)—

(a) after the definition of “academic year”, insert—

“(ba) “allied health profession subject” means chiropody, a dental profession subject, dietetics, dietetics and nutrition, occupational therapy, orthoptics, orthotics and prosthetics, physiotherapy, podiatry, radiography, radiotherapy or speech and language therapy;

(bb) “dental profession subject” means dental hygiene, dental therapy and dental hygiene or dental therapy;

(bc) “pre-registration course” means an education and training programme leading to a qualification, the standard of which is not higher than a first degree course and which qualification is a condition of inclusion in the register (or, as the case may be, the relevant part or parts of the register) maintained by—

(i) the Health and Care Professions Council, for operating department practice and allied health profession subjects other than dental profession subjects;

(ii) the Nursing and Midwifery Council, for midwifery or nursing;

(iii) the General Dental Council, for dental profession subjects;

(iv) the Health and Care Professions Council and the Nursing and Midwifery Council, for nursing and social work;”.

15. In regulation 5(3) (qualifying person: exceptions), for sub-paragraph (d) substitute—

“(d) a qualification is not an equivalent or lower qualification where—

- (i) it relates to a pre-registration course in an allied health profession subject, midwifery, nursing, nursing and social work or operating department practice;
 - (ii) that course commenced on or after 1st August 2017 (or in the case of a course in a dental profession subject, commences on or after 1st August 2018); and
 - (iii) the qualification falls within sub-paragraph (da);
- (da) a qualification falls within this sub-paragraph if—
- (i) it leads to an ordinary or an honours degree;
 - (ii) in respect of a course in a dental profession subject, it leads to an ordinary degree, an honours degree, a diploma or a foundation degree; or
 - (iii) in respect of a course in operating department practice, it leads to an ordinary degree, an honours degree or a diploma;”.

16. In regulation 6(2)(b) (qualifying person: effect of event during academic year), after “becomes”, insert “a person granted stateless leave or”.

17. In regulation 7, after paragraph 1, insert—

“(1A) Paragraph (2) applies only where the first academic year (as defined in regulation 2(b)) of a course begins on or after 1st September 2019.”.

18. In the Schedule—

- (a) in paragraph 1(1) (interpretation: general), after the definition of ““overseas territories””, insert—
 - ““parent” means a parent, guardian or any other person having parental responsibility for a child, and “child” is to be construed accordingly;
 - “person granted stateless leave” means a person who—
 - (a) has extant leave to remain as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971); and
 - (b) has been ordinarily resident in the United Kingdom and the Islands throughout the period since the person was granted such leave;”;
- (b) in paragraph 2(5) (interpretation: ordinarily resident) omit paragraph (a);
- (c) in paragraph 3(1) (persons who are settled in the United Kingdom), before the first reference to “academic year” insert “first”;
- (d) after paragraph 5, insert—

“Persons granted stateless leave and their family members

5A.—(1) A person granted stateless leave who—

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the three-year period preceding that date.

(2) A person—

- (a) who—
 - (i) is the spouse or civil partner of a person granted stateless leave; and

- (ii) on the leave application date, was the spouse or civil partner of the person granted stateless leave;
 - (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
 - (c) who has been ordinarily resident in the United Kingdom and the Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (3) A person—
- (a) who—
 - (i) is the child of a person granted stateless leave or the child of the spouse or civil partner of a person granted stateless leave; and
 - (ii) on the leave application date, was the child of the person granted stateless leave or the child of a person who, on the leave application date, was the spouse or civil partner of the person granted stateless leave;
 - (b) who was under 18 years of age on the leave application date;
 - (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
 - (d) who has been ordinarily resident in the United Kingdom and the Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (4) In this paragraph, “leave application date” means the date on which the person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971).”;
- (e) in paragraph 10(3) (EU nationals), for the phrase “resident territory”, substitute “relevant territory”.

Date

Name
Minister of State
Department for Education

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 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.