EXPLANATORY MEMORANDUM TO

THE HIGHER EDUCATION (BASIC AMOUNT) (ENGLAND) REGULATIONS 2010

2010 No. [Draft]

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

2. Purpose of the instrument

2.1 The Higher Education (Basic Amount) (England) Regulations 2010 ("the Basic Amount Regulations") set a limit of £6,000 on the charges universities which do not have approved access plans may make to full time undergraduates for tuition on courses beginning on or after 1st September 2012. They also set a set a limit of £3,000 that will apply in certain circumstances as set out in paragraph 7.6 below.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Higher Education Act 2004 ("the Act") provides that Higher Education Institutions (HEIs) can charge up to a 'basic amount' threshold or up to a 'higher amount' threshold for tuition charges in relation to full-time courses. HEIs wishing to charge up to the higher amount threshold are required to draw up an access agreement with the Office for Fair Access (OFFA), whose role is defined in the Act.

3.2 Section 26 of the Act provides that regulations increasing the basic amount in real terms are subject to affirmative resolution procedure. Section 26 also provides that regulations may not be made increasing the higher amount unless each House has passed a resolution that the amount be raised to a specified level from a specified date.

3.3 Different Parliamentary procedures apply, and therefore different regulations are used to increase the basic and higher amounts. The Basic Amount Regulations are laid today to allow scrutiny to take place and this Memorandum published alongside them includes, as an Annex, the proposed Higher Education (Higher Amount) (England) Regulations 2010 ("the Higher Amount Regulations").

3.4 Because the basic amount in the Regulations laid today exceeds the higher amount that has previously applied, the Secretary of State will seek affirmation of the Basic Amount Regulations only in the event that a resolution is debated and carried to increase the higher amounts to those specified in the Higher Amount Regulations annexed to this Memorandum.

4. Legislative Context

4.1 Section 23 of the Act places a duty on the Secretary of State to place a condition on the grant paid to the two funding bodies: the Higher Education Funding Council for England (HEFCE) and the Training and Development Agency for Schools. These funding bodies must impose a condition on the grant they pay to English HEIs that relates to the charges they make to full-time undergraduates for tuition.

4.2 Section 24 of the Act 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 does not charge in excess of the higher amount; and an HEI without an access plan does not charge in excess of the basic amount. The basic and higher amounts are defined as those prescribed in regulations made by the Secretary of State.

4.3 Section 26 of the Act sets out the arrangements for approving regulations made under section 24 (as described in paragraph 3.2 above), and provides that a resolution raising the higher amount may not be passed before 2nd January 2010.

4.4 The Student Fees (Amounts) Regulations 2004 ("the 2004 Regulations") apply to students starting their courses from 2006/07. They have been amended annually to increase the basic and higher amounts and will continue to apply to students continuing their full-time courses in 2012/13. Annual increases have not exceeded inflation and so the amendments have been made by regulations subject to negative resolution procedure.

5. Territorial Extent and Application

5.1 The Regulations apply to England.

6. European Convention on Human Rights

6.1 The Secretary of State for Business, Innovation and Skills, Vince Cable MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998: in my view the provisions of the Higher Education (Basic Amount) (England) Regulations 2010 and the Higher Education (Higher Amount) (England) Regulations 2010 are compatible with the convention rights.

7. Policy background

7.1 Under the powers in the Act, HEIs may make variable charges for tuition for full-time undergraduates, up to the basic and higher amounts identified, which, for 2010/11, are set at a level corresponding to the maximum level of loan support the Government makes available to full-time students to meet tuition costs under the Education (Student Support) Regulations 2009.

7.2 The Act brought about substantial changes to what HEIs could charge, although the basic and higher amounts were set at levels that continued to require a significant direct Government subsidy to HEI tuition costs. The Act prevented a real terms increase of the higher amount before 2nd January 2010, and Ministers made an additional commitment to Parliament that any such increase would be informed by a review of the new arrangements and their effects on students and HEIs.

7.3 An independent review was launched in November 2009 under the leadership of Lord Browne, and reported on 12 October 2010. It concluded that rather than the Government providing a block grant for teaching, the majority of funding should follow the student who has chosen and been admitted to study at an HEI, and that HEIs should not be limited in what they charge for tuition. Government should

provide upfront loans to cover the full cost of tuition and recover this from graduates when they are earning over £21,000.

7.4 The Government considers that following Lord Browne's conclusions, there is a responsibility to re-balance funding for Higher Education, with the graduate contributing more towards the cost of their education, whilst, at the same time, introducing a more progressive system of student support and repayment. The Government does not agree that there should be no limit on what an HEI can charge and so proposes to implement the new basic and higher amounts set out in these Regulations.

7.5 The Regulations raising the basic and higher amounts are the first elements in the reform package to be presented for Parliamentary approval. Without prejudice to their subsequent proper Parliamentary consideration, the Government believes it is appropriate to refer in this Memorandum to the other elements of the funding and finance package in the context of which the new basic and higher amounts are made.

7.6 We propose a basic threshold of £6,000 for tuition charges. Within this £6,000 threshold, it will be up to the HEI to decide what it charges, including whether it charges at different levels for different courses. A lower threshold of £3,000 will apply for the final year of a course completed after less than 15 weeks attendance, for a sandwich year where the period of attendance at the HEI during the academic year is less than 10 weeks and for an academic year undertaken in conjunction with an overseas institution where the period of attendance at the UK institution is less than 10 weeks.

7.7 We are also proposing to allow some universities to charge above £6,000 and up to £9,000 (or above £3,000 and up to £4,500 where a shorter tuition period in the circumstances set out in paragraph 7.6 above). The Higher Amount Regulations which are annexed to this memorandum, give effect to these higher limits. HEIs that wish to charge above £6,000 and up to £9,000 in tuition charges will be required to draw up an access agreement with OFFA, whose role is defined in the Act.

7.8 Access agreements will be expected to include activities such as outreach initiatives to attract more students to apply from under-represented groups, including those from disadvantaged backgrounds, and targeted scholarships and other financial support for poorer students. In approving an access agreement, OFFA will agree with HEIs a programme of defined progress each year against their access measures and benchmarks, and monitor the progress being made and the improvements still required to achieve a diverse student body. OFFA will hold HEIs accountable for meeting the terms of their access agreements including, where appropriate, imposing a sanction.

7.9 The Higher Amount Regulations also amend the 2004 Regulations so that the higher limit for tuition charges set in the 2004 Regulations does not apply to charges for tuition on courses beginning on or after 1st September 2012, and the Basic Amount Regulations make the same amendment for the basic amount in relation to the 2004 Regulations. Students who started their courses before 1st September 2012 who are continuing their courses in 2012/13 will continue to be subject to the basic and higher amounts set out in the 2004 Regulations, which will continue to be updated annually in line with inflation.

7.10 Lord Browne's report also recommended making part-time students eligible for upfront support for the costs of tuition. The Government intends to make support available to students studying at one third or more of the intensity of a full-time course, subject to limits which will be established by Regulations.

7.11 We are also proposing to introduce a more progressive repayment structure for new students starting their courses in 2012/13. Students should not have to pay for tuition upfront and so all eligible students will be able to access a non-means tested loan to cover tuition costs. We propose that no one will be expected to repay this loan until they are earning over £21,000. The repayment rate will be 9% of income above £21,000. All outstanding repayments will be written off after 30 years meaning low paid graduates will pay less than they do under the current system.

7.12 Graduates earning under £21,000 will pay interest at the determined retail prices index (RPI) on their loans. For graduates entering repayment, a real rate of interest will be introduced, starting at RPI for £21,000 and gradually increasing to reach a maximum of RPI plus 3% for those earning £41,000 and over. The Government is committed to the progressive nature of the repayment system, with graduates on higher incomes contributing more towards their education.

7.13 Primary legislation which will enable changes to the interest rate for students starting their courses from 2012/13 will be introduced during this Parliamentary session. Regulations specifying the details of loans and grants will be laid before Parliament in Summer 2011 and regulations on the repayment of loans will be brought forward later in 2011. We anticipate including any further changes to the Higher Education funding and student finance system that require primary legislation in a future Bill.

8. Consultation outcome

8.1 These Regulations are informed by Lord Browne's review which took evidence from students, teachers, academics, employers and regulators over a period of almost a year. The need to provide clarity for students and universities about the contributions they can expect to make and receive means that the timetable for laying the Regulations has been highly compressed, and this has prevented a separate external consultation exercise on the Government's proposals. We are planning a further consultation when the Government publishes its full package of proposed reforms to higher education in the New Year.

9. Guidance

9.1 The Government will confirm the new amounts in guidance published on the Student Finance England website. Information on new conditions to be placed on HEIs that wish to charge the higher amount will be available.

10. Impact

10.1 A Regulatory Impact Assessment has been completed for the Higher Education Reforms that include these changes to the basic and higher amounts, and is published with this Memorandum. A separate Equality Impact Assessment has also been carried out. The changes in these Regulations are the first steps in the legislative process by which the Government, with Parliament's approval, will implement these reforms. Their impact cannot be assessed in isolation, but as part of a formula re-balancing the contributions to the costs of higher education of the graduate and the general taxpayer.

10.2 The impact on the public sector is also indicated in the Regulatory Impact assessment.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Regulations will be kept under review.

13. Contact

Mark Williams at the Department for Business, Innovation and Skills Tel: 020-7215-1546, or email: mark.williams@bis.gsi.gov.uk can answer any queries regarding the instrument.

STATUTORY INSTRUMENTS

2010 No. XXXX

EDUCATION, ENGLAND

The Higher Education (Higher Amount) (England) Regulations 2010

Made - - - -	***
Coming into force - -	*1st September 2012*

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by sections 24(6) and 47 of the Higher Education Act 2004(**1**).

In accordance with section 26(2)(b)(ii) of the Act each House of Parliament has passed a resolution that, with effect from the 1st September 2012, the higher amount should be increased to £9,000, and to £4,500 in relation to specified courses in regulation 5.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Higher Education (Higher Amount) (England) Regulations 2010 and come into force on 1st September 2012.

(2) These Regulations apply in relation to England.

Interpretation

2. In these Regulations—

"the 2004 Act" means the Higher Education Act 2004;

"overseas institution" means an institution other than one in England, Wales, Scotland, Northern Ireland, the Channel Islands or the Isle of Man;

"sandwich course" has the meaning given in regulation 2(10) of the Education (Student Support) Regulations 2009(**2**).

Application of the new higher amount

3. The higher amounts prescribed in regulations 4 and 5 apply in relation to the qualifying fees payable by a qualifying person in connection with undertaking a qualifying course where the first academic year of that course begins on or after 1st September 2012.

Prescribed higher amount from 1st September 2012

4. Subject to regulation 5, for the purpose of section 24 of the 2004 Act the higher amount is £9,000.

Prescribed higher amount for specified courses from 1st September 2012

5. For the purpose of section 24 of the 2004 Act the higher amount is £4,500 in the following cases—

(**1**) 2004 c.8.
(**2**) S.I. 2009/1555, amended by S.I. 2010/2546.

(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 institution (disregarding intervening vacations) exceeds 30 weeks;

(c) in respect of a course provided in conjunction with an overseas institution, an academic year—

(i) during which any periods of full time study at the institution 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 institution in the United Kingdom (disregarding intervening vacations) exceeds 30 weeks.

Amendment to the Student Fees (Amounts) (England) Regulations 2004

6.—(1) The Student Fees (Amounts) (England) Regulations 2004(**3**) are amended as follows—

(2) After regulation 5 insert—

"**Application of regulations 4 and 5 from 1st September 2012**

6. The higher amounts in regulations 4 and 5 do not apply in relation to the qualifying fees payable by a qualifying person in connection with undertaking a qualifying course where the first academic year on that course begins on or after 1st September 2012.".

Name
Title
Date Department for Business, Innovation and Skills

(**3**) S.I. 2004/1932, as amended by S.I. 2009/3113.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 24 of the Higher Education Act 2004 enables the Secretary of State to impose a condition on grants to the Higher Education Funding Council for England and the Training and Development Agency for Schools requiring them to impose a condition on financial support given to the governing body of a relevant institution. This condition would require the governing body to secure that the fees payable for a qualifying course by a qualifying student do not exceed either the prescribed basic amount, or, where an institution has an approved plan in force, the amount specified in that plan which is not to exceed the prescribed higher amount.

These Regulations prescribe the higher amount where the first academic year of a relevant course begins on or after 1st September 2012. Regulation 4 sets out the amount which will ordinarily apply. For fees payable in respect of an academic year of courses specified in regulation 5, the higher amount set out in that regulation will apply. The Higher Education (Basic Amount) (England) Regulations 2010 prescribes the basic amounts.

Regulation 6 amends the Student Fees (Amounts) (England) Regulations 2004 ("the 2004 Regulations") by limiting the higher amounts prescribed in the 2004 Regulations to those cases where the first academic year on a relevant course begins before 1st September 2012.

A full impact assessment which includes the effects that this instrument will have on the costs of business and the voluntary sector is available from the website of the Department of Business, Innovation and Skills at: www.bis.gov.uk/impact-assessments.