EXPLANATORY MEMORANDUM TO

THE HIGHER EDUCATION (FEE LIMITS AND STUDENT SUPPORT) (ENGLAND) (CORONAVIRUS) (REVOCATION) REGULATIONS 2020

2020 No. XXXX

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 revokes the Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020 (S.I 2020/853) ("the Original Regulations"), which amend legislation in relation to England which prescribes tuition fee limits and tuition fee loan amounts. The Original Regulations provided for lower fee limits and tuition fee loan amounts in academic year 2021/22 for those higher education providers and institutions that recruit more students than their individual student number control ("SNC") in academic year 2020/21. The SNC was a number of students notified to providers by the Secretary of State, recruitment beyond which risked causing financial instability.

2.2 As a consequence of the 2020 A level results, more students than expected will enter higher education in academic year 2020/21. The Secretary of State for Education announced on 17th August 2020[1] that the SNC policy would be withdrawn and the Original Regulations, subject to Parliamentary approval, would be revoked. These Regulations give effect to that commitment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument 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, and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

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[1] https://www.gov.uk/government/news/gcse-and-a-level-students-to-receive-centre-assessment-grades

3.5 The Department has reached this view because it considers that the purpose of the instrument relates to education, which is within the devolved legislative competence of each of the three devolved legislatures. The instrument does not relate to a reserved matter in 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 instrument does not relate to an excepted or reserved matter in Schedule 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 instrument does not relate to a reserved matter in Schedule 7A to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Minister of State for Universities has made the following statement regarding Human Rights:

"In my view the provisions of the Higher Education (Fee Limits and Student Support) (England) (Coronavirus) (Revocation) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 10 of the Higher Education and Research Act 2017 ("HERA") provides that the Office for Students ("OfS"), the higher education regulator in England, must ensure that the ongoing registration conditions applicable to registered providers of a prescribed description include a fee limit condition, which applies to qualifying courses attended by qualifying persons. The Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189) set out those providers, courses and persons which are subject to a fee limit condition. The Secretary of State may prescribe the fee limits themselves by regulations under Schedule 2 to HERA. He has done so through the Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018 (S.I. 2018/903), and those Regulations were amended by the Original Regulations.

6.2 The Education (Student Support) Regulations 2011 (S.I. 2011/1986) ("Student Support Regulations) provide for support under the Teaching and Higher Education Act 1998 for eligible students attending or undertaking designated courses in the United Kingdom. The support provided for under those Regulations includes loans for tuition fees. The Original Regulations amended those Regulations.

7. Policy background

What is being done and why?

7.1 This instrument is being made to revoke the Original Regulations.

7.2 The Original Regulations provide that, where an English higher education provider has recruited first year students starting courses in excess of a level notified to that provider by the Secretary of State in respect of an academic year commencing on or after 1st August 2020 and before 1st August 2021, reduced tuition fee limits will apply to full-time undergraduate courses applicable in an academic year commencing on or after 1st August 2021 and before 1st August 2022. The Original Regulations also provide that maximum tuition fee loan amounts available to English-domiciled students starting full-time courses at institutions in Scotland, Northern Ireland and Wales are also reduced in the same circumstances. The purpose of the Original Regulations was to allow for the possibility that a provider recruits more students in academic year 2020/21 than their individual SNC, addressing the consequences of this for the stability and sustainability of the higher education sector by reducing the sums available to the provider through the student finance system in the subsequent academic year. Further detail is set out in the explanatory memorandum to the Original Regulations: https://www.legislation.gov.uk/uksi/2020/853/memorandum/contents.

7.3 Separately, the coronavirus (COVID-19) outbreak caused a change in approach regarding the assessment of A level grades, the qualification most typically used by higher education providers to make judgements about the admission of England-domiciled applicants. In the absence of traditional examinations following the outbreak, centre assessment grades ("CAGs") put forward by schools and colleges were standardised using a statistical model, to award students' 'calculated grades'. Concerns about this process led to a decision that students should receive either their CAGs or their calculated grades, whichever were the higher. The result of this decision was that many more students than expected met the conditions of their university offer. This happened part way through the university admissions process, when the majority of university places had already been filled in reliance on students' calculated grades. The combination of these two factors meant that, rather than being undersubscribed, as feared, many higher education providers were oversubscribed compared to previous years.

7.4 Given the higher student numbers than had been anticipated, many higher education providers would have exceeded the SNC level that had been notified to them by the Secretary of State and therefore would be subject to reduced tuition fee limits (and tuition fee loans amounts for institutions in Scotland, Northern Ireland and Wales) for academic year 2021/22. Accordingly, to ensure that providers were not discouraged by the application of the SNCs from accepting all the students who met their offer conditions, the Secretary of State announced that the SNCs would be withdrawn and that the Original Regulations would be revoked, subject to Parliamentary approval.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This is not applicable.

10. Consultation outcome

10.1 There was no consultation on this instrument. However, the announcement by the Secretary of State of the intention to revoke the Original Regulations was made on gov.uk and was widely welcomed by the sector.

11. Guidance

11.1 Guidance published on gov.uk on how the SNCs were applied has been provisionally withdrawn, subject to the revocation of the Original Regulations. This guidance will be fully withdrawn when this instrument is made.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies. There is no, or no significant impact, on higher education providers, as the revocation of the Original Regulations maintains the position that has applied to date.

12.2 There is no, or no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the revocation of the Original Regulations maintains the position that has applied to date.

13. Regulating small business

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

14. Monitoring & review

14.1 This instrument provides for the revocation of the Original Regulations, so there is no requirement for ongoing monitoring and review.

15. Contact

15.1 Miles Simpson at the Department for Education, email: miles.simpson@education.gov.uk, telephone: 07388 372579 can be contacted with any queries regarding the instrument.

15.2 Clare Macdonald, Deputy Director for Future Student Finance and Funding at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Michelle Donelan, Minister of State for Universities at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.