EXECUTIVE NOTE

THE STUDENT FEES (SPECIFICATION) (SCOTLAND) ORDER 2011

SSI 2011/XX

Powers under which instrument is made

The Student Fees (Specification) (Scotland) Order 2011 ("the 2011 Order") is made in exercise of the powers conferred by section 9(6) and (7) of the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act").

Parliamentary Procedure

The 2011 Order is subject to affirmative procedure in the Scottish Parliament.

Summary of Policy Proposals

Our intention is to change, with effect from the academic year 2012/13, the way in which higher education tuition fees are applied to students who normally live in another part of the UK outside Scotland (referred to as "RUK domiciled students"). RUK domiciled students will be excluded from arrangements in terms of which the Scottish Ministers set tuition fee levels. This will leave institutions free to set their own tuition fee levels for this group, as they currently do for 'non-EU international students'. This will be achieved through:

- the 2011 Order;
- the Education (Fees) (Scotland) Regulations 2011 ("the 2011 Regulations"); and
- an associated condition attached to any grant paid by the Scottish Ministers to the Scottish Further and Higher Education Funding Council ("the SFC") in terms of section 9 of the 2005 Act.

The main policy drivers for these changes are:

- the need to respond to an increasing divergence in higher education tuition fee policy across the UK in order to maintain current cross-border flows of students;
- the need to protect places for students who normally live in Scotland ("Scotland domiciled students"); and

- changing the system to reduce the need to react to changes elsewhere in the UK in future.

We are making new arrangements for tuition fee levels in connection with higher education provided by any "fundable body" (within the meaning of section 6 of, and Schedule 2 to, the 2005 Act – Schedule 2 to the 2005 Act lists various educational institutions which provide courses of higher education). Broadly, the intention is that the new arrangements will apply to students commencing courses of higher education at fundable bodies in the 2012/13 academic year (or later academic years) but that the

existing arrangements will continue to apply to students who commenced courses at fundable bodies prior to the 2012/13 academic year but who are continuing their course in that academic year (or later academic years).

Existing arrangements which will continue

The Student Fees (Specification) (Scotland) Order 2006
The Education (Fees and Awards) (Scotland) Regulations 2007

The levels of higher education tuition fees to be charged by fundable bodies to full time students are currently set under the Student Fees (Specification) (Scotland) Order 2006 ("the 2006 Order"). The 2011 Order makes certain amendments to the 2006 Order which will remain fully in force and will continue to govern the level of higher education tuition fees for any full time student who is either a "deferred student", an "existing student" or a "new student" within the meaning of the 2006 Order. These terms cover any student who has already started a course of education on or before 31 July 2012. The 2006 Order will also govern the level of higher education tuition fees for a "new deferred student" within the meaning of the 2006 Order. That term covers any student who starts a course of education on or after 1 August 2012 having already agreed, between 1 August 2005 and 31 July 2011, to defer entry to their course. The term "new deferred student", however, excludes medical students who have a relevant connection with Scotland or are excepted students within the meaning of the 2011 Regulations – see further below. Such students will be subject to the new arrangements.

The 2006 Order is amended so as to make it clear that its application is excluded in the case of a "new student" who is a "post 2011/12 student" within the meaning of the 2011 Order (see further below).

The 2006 Order is amended to specify the annual tuition fees for the academic year 2012/13 for new deferred students as follows:

- for a full time new deferred student studying an honours or ordinary degree course as £1,820;

- for a full time new deferred student studying a medical degree course as £2,895

- for a full time new deferred student studying a Postgraduate Certificate of Education or Professional Graduate Diploma in Education course as £1,820; and

- for a full time new deferred student studying any other higher level course of education as £1,285.

These fees are the same amounts as the annual tuition fees for the academic year 2012/13 which are set by determination by the Scottish Ministers for the other categories of students to whom the 2006 Order applies. The 2006 Order is also amended to allow the Scottish Ministers to set fees for subsequent academic years (i.e. after 2012/13) for new deferred students by determination, rather than by Order,

only if either such fees are no greater than the 2012/13 fees or such fees are only higher than the 2012/13 fees in so far as is necessary to maintain the value of the fees in real terms. This provision mirrors a similar provision already contained in the 2006 Order for other categories of students to whom the 2006 Order applies.

The fees set under the 2006 Order apply to students who have a 'relevant connection with the United Kingdom and Islands' and to certain particular categories of 'excepted student', both within the meaning of the Education (Fees and Awards) (Scotland) Regulations 2007 ("the 2007 Regulations").

A student must meet a number of criteria in order to establish a 'relevant connection with the United Kingdom and Islands' including that the student must have been ordinarily resident in the United Kingdom and Islands for a period of three years immediately preceding 1st August, 1st January, 1st April or 1st July closest to the beginning of the first term of the student's course and that the student must be settled in the United Kingdom within the meaning of the Immigration Act 1971.

As provided for in terms of section 9(5) of the 2005 Act, in making grants to the SFC in terms of section 9 of the 2005 Act, the Scottish Ministers make it a condition of grant that the SFC, in turn, makes it a condition of any grant made by the SFC to any fundable body in terms of section 12 of the 2005 Act that the fundable body charge tuition fees at the level set by the Scottish Ministers in terms of the 2006 Order. It is intended that the Scottish Ministers will continue to make this a condition of the grant to the SFC.

For students who do not have a relevant connection with the United Kingdom and Islands and are not excepted students, both within the meaning of the 2007 Regulations (a group which comprises, in the main, students who may conveniently be referred to as 'non-EU international students'), the fundable bodies determine the level of tuition fee charged. Fundable bodies are free to charge students in that group tuition fees at the same level as those set by the Scottish Ministers for students having a relevant connection with the United Kingdom and Islands and excepted students within the meaning of the 2007 Regulations or at a higher level than the fees charged to such students.

<u>New arrangements</u>

The Student Fees (Specification) (Scotland) Order 2011
The Education (Fees) (Scotland) Regulations 2011

The 2011 Order sets tuition fees for full time courses of higher education and it applies to any full time student who is a "post 2011/12 student", that is a student who commences a course of education in the academic year 2012/13 (or later academic years) and who is not a "deferred student" or a "new deferred student" within the meaning of the 2006 Order.

The 2011 Order specifies the annual tuition fees for academic year 2012-13 as follows:

- for a full time post 2011/12 student studying an honours or ordinary degree course as £1,820;

- for a full time post 2011/12 student studying a Postgraduate Certificate of Education or Professional Graduate Diploma in Education course as £1,820; and

- for a full time post 2011/12 student studying any other higher level course of education as £1,285.

Under the 2011 Order there is no longer a different fee for medical students (as is the case under the 2006 Order).

The fees set under the 2011 Order apply to students who have a relevant connection with Scotland or are excepted students within the meaning of the 2011 Regulations.

The 2011 Regulations provide that a student must meet a number of criteria in order to establish a relevant connection with Scotland for the purposes of the 2011 Regulations. The student must:

(a) be ordinarily resident in Scotland on the relevant date (being the 1st August, 1st January, 1st April or 1st July closest to the beginning of the first term of the student's course);

(b) have been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and

(c) be settled in the United Kingdom within the meaning of the Immigration Act 1971 on the relevant date.

The 2011 Order also allows the Scottish Ministers to set fees for subsequent academic years (i.e. after 2012/13) by determination, rather than by Order, only if either such fees are no greater than the 2012/13 fees or such fees are only higher than the 2012/13 fees in so far as is necessary to maintain the value of the fees in real terms. In considering the value of fees in real terms Scottish Ministers may have regard to any retail price index. This provision mirrors a similar provision already contained in the 2006 Order.

As is currently done in relation to fees set under the 2006 Order and as provided for in terms of section 9(5) of the 2005 Act, it is intended that in making grants to the SFC in terms of section 9 of the 2005 Act, the Scottish Ministers will make it a condition of grant that the SFC, in turn, makes it a condition of any grant made by the SFC to any fundable body in terms of section 12 of the 2005 Act that the fundable body charge tuition fees at the level set by the Scottish Ministers in terms of the 2011 Order.

For students who do not have a relevant connection with Scotland and are not excepted students within the meaning of the 2011 Regulations, fundable bodies will

determine the level of tuition fee charged. As well as non-EU international students who already fall within this group under the current arrangements, this group will now include (unless they fall within any of the categories of excepted student in the 2011 Regulations) RUK domiciled students – i.e. students who normally live in a part of the UK other than Scotland and who do not therefore satisfy the requirement of ordinary residence in Scotland on the relevant date. Fundable bodies will be free to charge students in this group tuition fees at the same level as those set by the Scottish Ministers for students having a relevant connection with Scotland and excepted students within the meaning of the 2011 Regulations or at a higher level than the fees charged to such students.

The 2011 Order and 2011 Regulations will come into force on 1 August 2012.

The 2011 Order and 2011 Regulations do not affect student support. In particular eligible full-time undergraduate Scotland domiciled students will continue to have their tuition fees met by the Scottish Government through the Student Awards Agency for Scotland (SAAS).

Consultation

The 2011 Order has been amended from the previous version laid before Parliament in connection with the enhanced consultation required under section 9 of the 2005 Act. The consultation period ran from 29 June 2011 to 2 September 2011 The consultation was placed on the website of the Scottish Government. Additionally written representations were invited from the SFC, the National Union of Students Scotland and fundable bodies. The following bodies were also alerted to this consultation: Student Awards Agency for Scotland; Educational Institute of Scotland; University and College Union Scotland; Association of Managers of Student Services in Higher Education; Scotland's Colleges; Universities Scotland; Student Loans Company; Coalition of Higher Education Students in Scotland; and the British Medical Association Scotland Medical Students Committee. A full list of consultees is appended.

The responses to the consultation and the Scottish Minister's response to it can be found at

http://www.scotland.gov.uk/Publications/2011/09/29120818/0 and on the Publications page of the Scottish Government website at:

http://www.scotland.gov.uk/Publications/Recent

A summary statement which sets out all of the amendments made to the 2011 Order following the consultation is laid before the Parliament with the 2011 Order in accordance with section 9(14) of the 2005 Act.

Impact Assessments

An Equality Impact Assessment was completed for this Order.

Financial Effects

The 2011 Order and 2011 Regulations have no implications for increased financial liability on the Scottish Government or local government. Any savings to the Scottish Government resulting from the changes to tuition fee arrangements for which the 2011 Order and 2011 Regulations make provision will be re-invested in higher education in Scotland.

The 2011 Order and 2011 Regulations are not expected to present cost implications to business, charities or public bodies, in terms of increased costs of administering proposed changes. Therefore, no Regulatory Impact Assessment has been completed for the 2011 Order.

Scottish Government
Employability, Skills and Lifelong Learning Directorate
November 2011

ANNEX TO EXECUTIVE NOTE

THE STUDENT FEES (SPECIFICATION) (SCOTLAND) ORDER 2011

(SSI/2011/xx)

List of Consultees

Advisory Centre for Education (ACE)
Allied Health Professions Federation
Association of Colleges
Association of Directors of Education
Association of Directors of Social Work
Association of Graduate Careers Advisory Service
Association of Graduate Recruiters
Association of Teachers and Lecturers
Association of Managers of Student Services in Higher Education (AMOSSHE)
Beattie Resource for Inclusiveness in Technology and Education (BRITE)
Board for Academic Medicine
British Academy
British Accreditation Council
British Association of Art Therapists (BAAT)
British Council
British Diabetic Association (BDA)
British Medical Association (BMA)
British Youth Council
Capability Scotland
Chartered Society of Physiotherapy
CLD Standards Council
Coalition of Higher Education Students in Scotland (CHESS)
Colleges
College of Paramedics (CoP)
Committee of Education, Lifelong Learning & Culture, Scottish Parliament
Committee of Equal Opportunities, Scottish Parliament
Community Service Volunteers (CSV)
Confederation of Business Industry (CBI)
CoSLA
Department for Business, Innovation and Skills
Disability Action
Dyslexia Scotland
Education Institute Scotland
Education Law Association
Education Law Unit
Education and Library Boards, Northern Ireland
Education Scotland
Enquire
Estyn
Equality & Human Rights Commission
Equality Network
Federation of Small Businesses
General Dental Council

Government Departments, Northern Ireland
Governors Wales
Heath Boards
Higher Education Academy
Highlands and Islands Enterprise
Independent Living Fund
Institute of Directors (IoD)
Law Society of England and Wales
Law Society of Scotland
Linking Education and Disability Scotland (Lead)
Mental Welfare Commission for Scotland
National Centre for Independent Living (NCIL)
National Union of Students
National Union of Students Scotland
Royal College of Speech and Language Therapists (RCSLT)
Royal Society of Edinburgh
Russell Group
Scotland's Colleges
Scottish Association of Mental Health
Scottish Autism Service Network
Scottish Chairmen Committee (CSC)
Chambers of Commerce
Scottish Chambers of Commerce
Scottish Council for Development and Industry (SCDI)
Scottish Council for Research in Education
Scottish Dental Practice Committee
Scottish Financial Enterprise
Scottish Funding Council
Scottish Interfaith Council
Scottish Local Authorities
Scottish MEPs
Scottish Parent Teacher Council
Scottish Science Advisory Council
Scottish Society for Autism Advisory and Consultancy Service
Scottish Qualifications Authority (SQA)
Scottish Youth Parliament
Sector Skills Alliance Scotland
Skills Development Scotland (SDS)
Society and College of Radiographers (SCoR)
Society of Chiropodists and Podiatrists (SCP)
STUC
Student Awards Agency for Scotland (SAAS)
Student Loans Company
Student Unions
Scottish Universities International Group (SUIG)
Supporting Professional Admissions
International Student Advisors in Scotland (STRATOS)
The National Union of Students / Union of Students in Ireland (NUS-USI)
Ofsted
Open University (OU)

Universities
Universities Scotland
University and College Union (UCU)
University and College Application Service (UCAS)
Quality Assurance Agency (QAA)
UKCISA
UKNARIC
UNISON
Volunteer Development Scotland
Welsh Assembly Government
Workforce Plus
YoungScot
Youthlink Scotland
1994 Group