EXPLANATORY MEMORANDUM TO

THE HIGHER EDUCATION (REGISTRATION FEES) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 304

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 makes provision under section 70 of the Higher Education and Research Act 2017 (HERA) in relation to the fees which the Office for Students (OfS) charges higher education providers for their registration in the register established by the OfS under section 3 of that Act. These regulations reduce the registration fees charged by the OfS to registered higher education providers by approximately 3% in real terms for the academic year 2021/22. These are the second regulations laid under section 70 of HERA, the first being the Higher Education (Registration Fees) (England) Regulations 2019[1] (the 2019 Regulations) which these regulations amend.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 1 of HERA established the OfS as the new regulator for English higher education providers. Section 3 of HERA required the OfS to establish and maintain a register of English higher education providers and required or enabled the OfS to apply registration conditions to them in accordance with sections 4 to 14. Section

[1] https://www.legislation.gov.uk/uksi/2019/543/contents/made

70(1) of HERA provides that the OfS may charge an institution a fee for its initial registration in the register and/or its ongoing registration for each period of twelve months in accordance with regulations made by the Secretary of State. Section 70(2) and (3) specify the matters which may be included in such regulations. By virtue of section 70(4), such regulations may only be made with the consent of the Treasury. Section 72(1) of HERA provides that the OfS must pay its fee income to the Secretary of State except to the extent that the Secretary of State, with the consent of the Treasury, directs otherwise. "Fee income" is defined by section 72(2) to include sums received by way of fees charged under section 70, as well as costs recovered. Under section 72(3), "other fee related income" (which is defined by section 72(4) as sums received by way of penalties or interest) cannot be retained by the OfS and must be paid to the Secretary of State.

6.2 These regulations reduce the registration fees payable by registered higher education providers by amending the 2019 Regulations. Any further changes to the registration fees will require further amendments to the 2019 Regulations and the Department next plans to amend those regulations next year.

7. Policy background

What is being done and why?

7.1 Prior to the creation of the OfS, higher education providers in England were regulated by the Higher Education Funding Council for England, the Office for Fair Access, and (in respect of 'alternative providers') the Department for Education. The government funded all these bodies.

7.2 Following its establishment on 1 January 2018, the OfS was initially fully funded by the government for a transitional period. Such government funding meant that the cost of regulating the sector was borne by the taxpayer. Following the coming into force of the 2019 Regulations, registration fees for higher education were introduced and the cost of regulation was moved onto registered higher education providers from 1 August 2019, when the new regulatory regime became fully operational. These regulations reduce those registration fees.

7.3 On 10 September 2020[2], with agreement from the OfS, the government announced a reduction in OfS registration fees by 10% in real terms over two years, in recognition of the fact that higher education providers are operating in a difficult financial environment. This reduction in fees is intended to remove some of the current financial burden on providers in the difficult circumstances of the COVID-19 pandemic. The OfS had proposed delivering a 5% real terms reduction for two years in a row as the best way to introduce the fee reduction. However, as deflation rates for financial year 2021-22 are unusually low, the OfS and the Minister of State for Universities have agreed to a 3% real terms reduction to fees from 1 August 2021. These regulations will implement that commitment. A further reduction of the remaining 7% in real terms is planned for the 2022/23 academic year.

[2] https://www.gov.uk/government/publications/reducing-bureaucratic-burdens-higher-education/reducing-bureaucratic-burdens-on-research-innovation-and-higher-education

7.4 The principle that the bodies being regulated should fund the cost of their regulation is a government policy and follows good practice as set out in *Managing Public Money*[3].

7.5 The registration fees prescribed in this instrument continue to be set in relation to the size of a provider by reference to the number of full-time equivalent students (see table below in 7.6). These new regulations will reduce each fee from the figure which appears in column 3 in that table to the figure which appears in column 4. This fee structure fulfils the policy aim for fees to be proportionate to provider size. Any providers who join the OfS register between the date on which these regulations come into force and 1 August 2021 will pay a pro-rated amount of fees in accordance with regulation 2 of the 2019 Regulations for the period between joining the register and 31 July 2021, and will then, pay fees on the basis of these regulations, from 1 August 2021.

7.6

Column 1 Fee band	*Column 2* Number of full-time equivalent students	*Column 3* Fee for AY 2020/21	*Column 4* New fee for AY 2021/22
A	No more than 25	£12,300	£11,900
B	More than 25 but no more than 50	£15,350	£14,850
C	More than 50 and no more than 75	£19,200	£18,600
D	More than 75 but no more than 100	£24,050	£23,300
E	More than 100 but no more than 300	£30,100	£29,150
F	More than 300 but no more than 500	£37,750	£36,550
G	More than 500 but no more than 1,000	£47,350	£45,850
H	More than 1,000 but no more than 1,500	£59,400	£57,550
I	More than 1,500 but no more than 2,500	£74,600	£72,250
J	More than 2,500 but no more than 5,000	£93,750	£90,800
K	More than 5,000 but no more than 10,000	£117,900	£114,200
L	More than 10,000 but no more than 20,000	£148,350	£143,750
M	More than 20,000	£186,800	£181,000

Mitigation of Impacts.

7.7 These Regulations do not affect the protections for new institutions built into the 2019 Regulations, which will continue to allow for the OfS to charge reduced fees to new institutions. The department will provide funding to the OfS in 2021-22 to cover the costs of this. Ongoing government support is subject to future spending reviews. This support will continue to be targeted at institutions with 1000 or fewer FTE students, as the registration fees would have the greatest impact on such smaller institutions.

7.8 These regulations will not affect the exemption for new and very small providers in the 2019 Regulations.

7.9 Support for very small institutions by a micro-entity exemption is covered in section 13 below.

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money__MPM__2018.pdf. Other regulators where the cost of regulation is at least partly borne by the bodies regulated include Ofsted, Ofcom, and Ofgem.

7.10 The 2019 Regulations will continue to allow the OfS flexibility to collect fees in instalments, thereby easing the burden on institutions.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 These regulations are not suitable for consolidation with any other instrument.

10. Consultation outcome

10.1 No consultation was required or carried out for the laying of these regulations.

10.2 An announcement[4] that the OfS registration fees would be reduced by 10% in real terms over two years was made in September 2020 and no objections were raised by the sector.

11. Guidance

11.1 Guidance will be issued by the OfS by 21 May 2021 which will outline the process and timeline for payment of annual registration fees by providers, as well as the new fees payable.

12. Impact

12.1 There is no, or no significant, impact on businesses, charities or voluntary bodies.

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 it has a low level of impact which falls below the threshold for producing one.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the 2019 Regulations, which this instrument amends, continue to contain a "micro-entity exemption". The 2019 Regulations will continue to protect the very smallest higher education providers from the impact of introducing fees by providing a 100% exemption. An institution will continue to qualify for this exemption if they meet the criteria for a micro-entity under section 384A of the Companies Act 2006 and have 300 or fewer FTE students.[5] Government funding for this exemption beyond 2021/22 will be subject to future spending reviews.

13.3 The basis for the final decision on what action to take to assist small businesses was based on the original consultation in relation to the 2019 Regulations.

[4] https://www.gov.uk/government/publications/reducing-bureaucratic-burdens-higher-education/reducing-bureaucratic-burdens-on-research-innovation-and-higher-education
[5] http://www.legislation.gov.uk/ukpga/2006/46/contents

14. Monitoring & review

14.1 The OfS's general fee model will be reviewed after two years of operational experience, during academic year 2021/22. Any further update to the registration fees will require an update to the 2019 Regulations.

14.2 The instrument does not include a statutory review clause because the relevant requirements of the Small Business, Enterprise and Employment Act 2015 do not apply to provisions imposing fees.[6]

15. Contact

15.1 Joseph Staniforth at the Department for Education. Telephone: 07717 736538 or email: Joseph.Staniforth@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jack Thomlinson, Deputy Director for Higher Education Regulation and Quality, 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.

[6] http://www.legislation.gov.uk/ukpga/2015/26/section/22