EXPLANATORY MEMORANDUM TO

THE STUDENT FEES (AMOUNTS) (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No. 432

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations amend the Student Fees (Amounts) (England) Regulations 2004 (S.I.2004/1932) ("the 2004 regulations") by increasing (in line with forecast inflation) the basic and higher amounts of tuition fees that may be charged to full-time undergraduates in respect of the 2011/12 academic year. They also make a technical amendment to the 2004 regulations.

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

None.

4. Legislative Context

4.1. Section 23 of the Higher Education Act 2004 ("the Act") imposes a duty on the Secretary of State to set a condition on the grant paid to the funding bodies for higher education and teacher training in England. The condition requires the funding bodies in turn to impose a condition on the grant they pay to English Higher Education Institutions ("HEIs") relating to the tuition fees to be paid by full-time undergraduates.

4.2. Section 24 of the Act sets out the requirements of the condition of grant. It stipulates that an HEI which has an access plan approved by the Director of Fair Access must not charge fees in excess of the limit approved in that plan, which must not be more than the higher amount. An HEI which does not have an access plan must not charge fees in excess of the basic amount. Section 24 also sets out the sanctions which should be imposed on any HEI that breaches the condition; and specifies that the basic and higher amounts should be prescribed in regulations.

4.3. Section 26 of the Act sets out the arrangements for making increases to the basic and higher amounts, and the arrangements for approving regulations under section 24. No regulations may be made by the negative procedure increasing the basic and higher amounts unless the Secretary of State is satisfied that the increase is no greater than required to maintain the value of the amounts in real terms.

4.4. This instrument is made in order to uprate the basic and higher amounts to those that will apply for the 2011/12 academic year, in line with forecast inflation. As this increase is no greater than required to maintain the real terms value of the amounts, it is subject to negative procedure. It also makes a minor technical change to the 2004 Regulations by removing an outdated definition of "academic year".

4.5 Regulations laid in December 2010 - the Higher Education (Basic Amount) (England) Regulations 2010 (S.I. 2010/3021) and the Higher Education (Higher Amount) (England) Regulations 2010 (S.I. 2010/3020) - provide for new basic and higher amounts to apply where the first academic year on a course begins on or after 1st September 2012. With effect from 1st September 2012, the basic and higher amounts regulations amend the 2004 Regulations so that they do not apply to such courses. The effect is that from 1st September 2012, the 2004 Regulations will set fees amounts only for courses that have begun before this date.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

The policy changes effected by these Regulations are set out below:

7.1. Increase to tuition fee amounts

HEIs in England which have an access plan approved by the Director of Fair Access are allowed to charge variable fees not exceeding the level approved in their access plan, which cannot exceed the higher amount. HEIs in England which do not have an access plan are only allowed to charge fees up to the level of the basic amount. The higher and basic amounts are set out in regulation 4 of the 2004 Regulations.

In the case of certain prescribed courses, HEIs are only allowed to charge a reduced, or half-rate higher or basic amount. These amounts and courses are set out in regulation 5 of the 2004 Regulations.

This instrument amends regulation 4 of the 2004 Regulations to increase the higher rate from £3,290 to £3,375 and the basic rate from £1,310 to £1,345 in respect of an academic year that begins on or after the coming into force date (1st August 2011). It also amends regulation 5 of the 2004 Regulations to increase the reduced higher and basic amounts that apply in respect of specific courses from £1,640 to £1,680 and from £650 to £665 respectively, also with effect from the coming into force date.

The increases to the basic and higher rates of tuition fee have been calculated with reference to the All Items Retail Prices Index Excluding Mortgage Interest Payments (RPI-X). This is the index of prices set by the Student Fees (Inflation Index) Regulations 2006 (SI. 2006 No. 507), and is the same measure of inflation that has been used to uprate the amounts of grants and loans for tuition costs that are available to undergraduate students for 2011/12.

The forecast RPI-X increase aims to provide the best available match with inflation in the period in question. The forecast used is the Office for Budget Responsibility August 2010 forecast of the rise in the RPI-X during the calendar years 2011 (2.95 per cent) and 2012 (2.58 per cent). The uprating factor to be applied to the basic and higher rates for the academic year 2011/12 will therefore be 2.7 per cent as the first

four months of the academic year (which begins on 1st September) fall within the calendar year 2011 and the remaining eight months fall within the calendar year 2012. Accordingly, the basic and higher tuition fee rates have been increased by 2.7 per cent. (Fee amounts figures are rounded down to the nearest £5).

7.2 Technical amendment to remove the definition of "academic year".

Regulation 3 of the 2004 Regulations includes a definition of "academic year" which cross-refers to the Education (Student Support)(No.2) Regulations 2002 (S.I. 2002/195). The definition is outdated as the 2002 regulations have been replaced (and is considered unnecessary given that the 2004 Act already contains a definition of the term). The amendment has no practical impact for the 2011/2012 academic year.

7.3 Consolidation

These Regulations serve to make the annual uprating changes to the 2004 Regulations as well as to implement a minor technical change. Therefore, there is no current intention to consolidate the relevant legislation.

8. Consultation Outcome

As the amendments being made are routine, and are expected, no consultation was considered necessary.

9. Guidance

Details of the new fee amounts for the 2011/12 Academic Year have been made available for the Higher Education sector in the Practitioner resources section of the Student Finance England website. The new rates have also been included in Departmental guidance for the Higher Education sector. The same information is available for students on the 'Directgov' website.

10. Impact

10.1. The impact on business, charities or voluntary bodies is nil.

10.2. The impact on the public sector is minimal.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & Review

These Regulations will ensure that, as part of a regular annual review, tuition fees are increased in line with forecast inflation for the 2011/12 Academic Year.

13. Contact

Liz Napier, at the Department for Business, Innovation and Skills, telephone number: 020 7215 6638 or email: liz.napier@bis.gsi.gov.uk can answer any queries regarding the instrument.