EXPLANATORY MEMORANDUM TO THE

STUDENT FEES (QUALIFYING COURSES AND PERSONS) REGULATIONS 2006

2006 No. 482

1. This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations provide for the courses and students to whom the fee controls of the Higher Education Act 2004 should apply for the academic year 2006/07.

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

3.1 None.

4. Legislative Background

4.1 These Regulations are made under sections 24(6) and 47 of the Higher Education Act 2004, and set out the persons and courses that the fee controls in sections 24 and 25 of the HE Act 2004 apply to. They revoke the Education (Fees at Higher Education Institutions) Regulations 1999 which previously provided for the courses and the students to whom the fee controls of the Teaching and Higher Education Act 1998 would apply.

4.2 Section 23 of the Higher Education Act 2004 imposes a duty on the Secretary of State for Education & Skills to set a condition of grant paid to the two funding bodies for Higher Education in England: the Higher Education Funding Council for England and the Training and Development Agency (formerly the Teacher Training Agency). The condition must require the funding bodies to in turn set a condition on the grant they pay to English Higher Education Institutions (HEIs) relating to the fees to be paid by full time undergraduates (and part-time and postgraduate trainee teachers).

4.3 Section 24 sets out the way these conditions work in relation to whether the higher amount of tuition fee (£3,000 for 06/07) or the basic amount of tuition fee (£1,200 for 06/07) should apply in relation to qualifying persons on qualifying courses. Section 25 of the HE Act 2004 sets out the transitional arrangements where HEIs cannot charge more than the basic amount to qualifying persons on qualifying courses who meet the requirements of that section.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Teaching and Higher Education Act 1998 (THE Act 1998), established a mechanism to prohibit Higher Education Institutions (HEIs) in England from charging more than a prescribed amount of fee (£1,175 - 05/06 academic year) to most home and EU undergraduate students studying on courses that attracted student support. However, an HEI could charge a higher unregulated fee to certain categories of students if they chose to do so. This category included "overseas" students, that is, students other than UK and EC nationals, or home and EC students who were ineligible for student support under the Education (Student Support) Regulations in force at the time, and students who were ineligible for fee support because of their attendance on a previous course. The persons and courses the fee controls of the THE Act 1998 applied to were set out in the Education (Fees at Higher Education Institutions) Regulations 1999.

7.2. The Higher Education Act 2004 introduces variable fees of up to £3,000 (the higher amount) for students starting courses in 2006/07 academic year where their HEI has an approved access agreement in force. It also sets out the conditions where HEIs cannot charge more than £1,200 (the basic amount). Students who are not defined as qualifying persons, or who are but are not studying on qualifying courses, are not subject to regulated fees and can be charged a fee above either of these caps. These regulations define these persons and courses, and in doing so mainly continue the policy set out in the Education (Fees at Higher Education Institutions) Regulations 1999 which are now revoked.

7.3 The fee controls of the HE Act 2004 will, in the majority of cases, apply to students who are eligible for student support and who are studying on courses designated for student support under the Education (Student Support) Regulations 2006 (SI 2006/119). For this reason, these regulations, like the regulations they revoke, are drafted by reference to the Student Support Regulations.

7.4 Students who already hold a UK honours degree will be subject to unregulated fees under these regulations. This is a more limited category of students who will be disqualified from fee control by reason of previous study than the one used in the previous regulations, but it maintains a link between attendance on a previous course and fee regulation.

7.5 Students who are granted leave to remain in the UK have to meet a residency requirement in order to be deemed eligible for student support. Under the Education (Qualifying Courses and Persons) Regulations 2006 they do not have to meet the residency requirement to be subject to the fee controls of the HE Act 2004.

7.6 To come within the fee controls of the HE Act 2004, a student has to fall within Schedule 1 of the Student Support Regulations (which defines an eligible student) on the first day of an academic year applicable to their course. These regulations disapply the requirement in Schedule 1 that an EC national or his family member must have that status on the first day of the first academic year of the course in order to qualify for fee control. For the purposes of these regulations an EC national or his family member must have that status on the first day of an academic year.

7.7 Students who received an offer of a place on an HE course by 1 August 2005 and take up that or a similar course within the 2006/07 academic year, and are qualifying persons under these regulations cannot be charged more than the basic amount of fee (£1,200). These regulations make an additional condition that the institution has to have been publicly funded at the time the offer was made for the course.

7.8 A student who qualifies for fees capped at the basic amount under section 25 of the HE Act 2004 (a transitional provision) will continue to have fees capped at this amount if they go immediately on to study certain degree courses (defined as end-on courses under the Student Support Regulations 2006). Likewise, these transitional arrangements will also apply in respect of students who study two separate courses that are defined as being one single course under the Student Support Regulations 2006, where the first part of the course started before 2006/07 or in 2006/07 (if they took a gap year). This covers courses such as medical degrees where the student can opt to undertake another degree course part way through the medical degree. It also applies where a student takes one degree as part of a professional qualification (e.g. architecture) and then goes on to take another other degree that is required in order to achieve the final qualification.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this statutory instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal.

8.3 A full Regulatory Impact Assessment for the Higher Education Act 2004 was produced and can be viewed at http://www.dfes.gov.uk/ria/index.cfm?action=assessments.archive

9. Contact

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