

**EXPLANATORY MEMORANDUM TO
THE STUDENT FEES (QUALIFYING COURSES AND PERSONS) (ENGLAND)
(AMENDMENT) REGULATIONS 2008**

2008 No. 1640

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

2. Description

2.1 These Regulations make amendments to the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (“the 2007 Regulations”) to ensure that a person is not a qualifying person for the purposes of the Higher Education Act 2004 if the qualifying course leads to an equivalent or lower qualification (“ELQ”) as defined in the Education (Student Support) (No.2) Regulations 2008. A person will not be a qualifying person if they hold a higher education qualification from an institution within or outside the UK which is of an academic level equivalent to or higher than a qualification to which the qualifying course leads. Consequently, tuition fees for all students studying for a second or subsequent higher education qualification which is equivalent to or lower than one they already hold will be unregulated, wherever such previous qualifications were obtained. This is already the case for a student who has a previous qualification from a UK institution.

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

3.1 There are several references to the Student Support Regulations throughout the 2007 Regulations. Those who refer to these Regulations will be used to dealing with the Student Support Regulations and the 2007 Regulations in conjunction with each other.

4. Legislative Background

4.1 The 2007 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 2004 Act apply to.

4.2 Section 24 of the 2004 Act sets out the way these controls work in relation to whether the higher amount of tuition fee (£3,145 for academic year 2008/09) or the basic amount of tuition fee (£1,255 for 2008/09) should apply in relation to qualifying persons on qualifying courses, or whether the fees are unregulated.

4.3 Regulation 5 of the 2007 Regulations ‘Prescribed description of a qualifying person’ describes who is a qualifying person for the purposes of section 24. Paragraph (2) states that a person will not be a qualifying person if they have an honours degree from an institution within the UK which is publicly funded. These Regulations amend regulation 5 by replacing the UK honours degree exception with the broader ELQ exception. Previous higher education qualifications obtained outside the UK will be treated in the same way as those obtained inside the UK as regards the regulation of tuition fees.

4.4 The equivalent or lower qualification exclusion does not apply where the qualifying course is a foundation degree.

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 2007 Regulations set out the qualifying courses and persons to which the higher education fee controls apply. These Regulations amend the 2007 Regulations to take into account previous higher education qualifications a student has gained from institutions within or outside the UK.

7.2 The purpose of the amending Regulations is to give an incentive to institutions to recruit more adults without higher level skills in order to support the needs of business and to meet the challenges of the 21st Century.

Consultation and Guidance

7.3 The background to the overall policy on equivalent and lower level qualifications was set out in the Secretary of State’s letter of 7 September 2007 to the Higher Education Funding Council for England. That letter asked the Council to conduct a consultation on the details, which was carried out. It also stated that institutions would retain their existing rights to charge unregulated tuition fees for most ELQ students. These changes extend those rights to previous higher education qualifications obtained within or outside the UK.

7.4 DIUS will liaise with the Funding Council to ensure that all institutions receive advice and guidance on the changes.

8. Impact

9.1 An Impact Assessment has not been prepared specifically for these Regulations. However, the Government has recently provided an overarching Impact Assessment on the overall ELQ policy for the Innovation, Universities, Science and Skills Committee, copies of which are available on request from the Department. That makes it clear that the policy will, over time, help increase the overall proportion of the workforce with higher level qualifications and, in so doing, benefit business, charities and voluntary bodies as well as public sector bodies.

9.2 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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