

## **Lifelong Learning (Higher Education Fee Limits) Bill**

### **Memorandum from the Department for Education to the Delegated Powers and Regulatory Reform Committee**

#### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of Lifelong Learning (Higher Education Fee Limits) Bill (“the Bill”). The Bill was introduced in the House of Commons. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

#### **B. PURPOSE AND EFFECT OF THE BILL**

2. The Bill establishes a new method for calculating tuition fee limits applicable to higher education courses. This method will be more suitable for the study of modules and short courses than the current system, which is set out in sections 10, 11, 31 of, and Schedule 2 to the Higher Education and Research Act 2017 (HERA). The basic structure of the fee limit is currently set out in those primary provisions, but which courses are qualifying courses for fee limit purposes and the fee limit amounts are set out in regulations (the Higher Education (Fee Limit Condition) (England) Regulations 2017 and the Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018). A brief explanation of the current system can be found at paragraphs 5 and 6 below.

3. The effect of the Bill is to create a new concept of “course year” replacing that of an “academic year” in the above provisions of HERA and to establish a “per credit” method of setting fee limits. Primarily, this appears in amendments to Schedule 2 to HERA (see clause 1, subsection (4) – new paragraphs 1D and 1E of Schedule 2), where the fundamental principle of this new system (namely the fee limit is the prescribed per credit rate multiplied by the number of credits in a course or module) is explicitly articulated on the face of the Bill. Sitting under that fundamental formula are certain delegated powers which are intended to flesh out the detail of how the overall fee limit will be calculated, including powers to prescribe which courses are deemed to be credit bearing and which not; what the financial rates per credit are for different types of course related activity; what the maximum number of chargeable credits within a course year is for different types of course and allowing the Secretary of State to make reference in regulations to matters determined or published by the Secretary of State.

4. This is part of an ongoing, wider reform of the student finance (meaning essentially student loans) system within higher education (to which also see sections 15 and 16 of the Skills and Post-16 Education Act 2022). These reforms will involve new funding for modular and flexible study from 2025 and corresponding more appropriate fee limits applicable to such study under this Bill. Fee limits and the student loans system are heavily interlinked – for example regulation 7 of the Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189) provides that a course is a qualifying course for fee limit purposes if it is designated

for the purpose of section 22 of the Teaching and Higher Education Act 1998. Designation (for student loan funding) under that Act is entirely set out in a complex set of regulations<sup>1</sup>, which are amended on an annual basis, and the amount of loans available reflects the prescribed fee limits for fee capped courses. Regulations under this Bill will need to keep pace with the student support regulations and be able to respond to change swiftly. Hence the need for delegated powers. Regulations under these delegated powers are not intended to be laid until mid-2024, and will not apply until at least August 2025.

### C. DELEGATED POWERS

- **Clause 1, subsection (4) (new paragraph 1 of Schedule 2).** Sub-paragraph (2) of new paragraph 1 generally introduces the two methods of setting fee limits: the “credit-based method” and the “fixed method”. Sub-paragraph (3) then contains a power to enable the Secretary of State to determine by regulations whether the credit-based method of setting fee limits applies or whether the “fixed method” applies. The fixed method is similar to that operated currently, whereby the fee limit specified will be a fixed annual financial amount per course year rather than being dependent on a number of credits. This is because some courses do not operate on the basis of credits and do not lend themselves to the credit-based system. These delegated powers will follow the affirmative resolution procedure as regulations under the existing Schedule 2 do.
- **Clause 1, subsection (4) (new paragraph 1B of Schedule 2)** requires the Secretary of State to make regulations about the circumstances in which credits are deemed to be attached to a course year of a particular course (sub-paragraph (1)), and sub-paragraph (2) provides examples of the sort of provision which may be made under sub-paragraph (1). The Secretary of State may need, for example, to denote a particular measure of learning time applicable to a credit in order to make the credit-based method of setting fee limits fully standardised, or to impose process requirements so that higher education providers have to notify persons such as the Student Loans Company of the number of credits which are attached to a particular course year of a course. Sub-paragraph (3) allows credits to be deemed to be attached to different types of activity within a course year (which could for example be applied to a work placement as opposed to a period of taught learning).
- **Clause 1, subsection (4) (new paragraph 1C of Schedule 2)** relates to the prescription in regulations of maxima and default numbers of credits within a course year. As explained above, the overall tuition fee limit will be the product of the number of credits within a course year multiplied by a prescribed per-credit limit but the Secretary of State will need to apply certain maxima to prevent the potential for fee inflation caused by the attachment of an excessive number of credits to a course year. Sub-paragraph (1) requires the prescription of both a maximum number of

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<sup>1</sup> [The Education \(Student Support\) Regulations 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

credits and a default number of credits. The former will apply to course years of courses which have credits attached to them and the latter will apply to course years of courses which do not but where a typical number of credits for those course types could be assigned by the Secretary of State to enable fee limit calculation. Sub-paragraphs (2) to (4) require the same in relation to different descriptions of activity within a course year (for example a work placement or a period of overseas study).

- **Clause 1, subsection (4) (new paragraphs 1D and 1E of Schedule 2)** do not contain any new delegated powers but are explained here for completeness as they contain the central principle behind the fee limit calculation and make reference to other delegated powers. New paragraph 1D states that the fee limit is, where credits are attached to a course year, the number of credits attached (subject to a maximum) multiplied by a prescribed per credit rate, with similar formula applying where credits are attached to different descriptions of course activity (via regulations under new paragraph 1B(3)). New paragraph 1E does the same in relation to circumstances where no credits are attached to a course year, in which case the references are to a default number of credits rather than a maximum.

- **Clause 1, subsection (4) (new paragraph 1F of Schedule 2)** allows regulations to provide for credit transfer cases, for example where a student accumulates credits during year 1 of a course at one higher education provider, and uses them to transfer into year 2 of a course at another provider). It is intended that regulations under this paragraph will provide for a reduction in the maximum or default numbers of credits where a student transfers to a course having already accrued credits.

- **Clause 1, subsection (4) (new paragraph 1G of Schedule 2)** allows, in relation to regulations made under new paragraphs 1B, 1C or 1F, reference to matters determined or published by the Secretary of State or another person. Parts of the higher education sector operate on the basis of a maximum number of credits for different types of courses which the Secretary of State will wish to collate and publish, for example on the '.Gov' website and which the Secretary of State will then intend to refer to in regulations.

- **Clause 1, subsection (4) (new paragraph 1I of Schedule 2)** does not contain any new delegated powers but it explicitly brings the per credit limit (under the credit based method) and the fixed limit under the fixed method within the ambit of the amounts which are not to be exceeded in existing paragraphs 2 and 3 of Schedule 2 (for higher education providers with and without an Access and Participation Plan respectively). Sub-paragraph (5) of new paragraph 1I makes explicit the fact that section 119(5)(a) of HERA allows different per credit limits to be set in relation to credit differentiated activity (see further below).

- **Clause 1, subsections (5) and (6)** relate to fee limits for providers with an access and participation plan. This clause makes minor consequential amendments to paragraph 2 of Schedule 2 of the Higher Education and Research Act 2017, to ensure that higher and sub-level fee limit amounts

(i.e. those which apply where higher education providers do or do not have a high level quality rating under section 25 of HERA respectively) can continue to be set under the new per-credit system, as well as under a per course year system.

- **Clause 1, subsections (7) and (8)** make similar amendments, but in relation to fee limits for providers without an access and participation plan. This clause makes minor amendments to paragraph 3 of Schedule 2 to HERA, to ensure that basic and sub-level fee limit amounts can continue to be set under the new per-credit system, as well as under a per course year system.
- **Clause 2, subsection (2)(c)** inserts a new section 10(7A) to HERA, limiting in one respect the effect of the existing section 10(7) which otherwise requires that qualifying courses may not be prescribed for the purposes of the application of fee limits in such a way as to discriminate between courses at the same or a comparable level on the basis of area of study. New section 10(7A) disapplies that prohibition so as to allow certain courses or modules not to be designated for student loan funding (under regulations under section 22 of the Teaching and Higher Education Act 1998) and to therefore exempt them from the fee limit regime, where this is considered appropriate.
- **Clause 2, subsection (7)** amends paragraph 5 of Schedule 2 and relates to the parliamentary procedure for setting fee limit amounts in regulations. This clause adds the new sub-paragraph 5(4) into Schedule 2 to HERA to make clear that when Parliament passes a resolution agreeing to an increase in the higher fee limit amount under paragraph 2, the increase may have effect from the start of a course year rather than an academic year.

**Clause 1, subsection (4) (new paragraph 1 of Schedule 2) – *New method for determining the fee limit***

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Affirmative

Context and Purpose

5. Tuition fee limits are currently imposed as a condition of a higher education provider's registration with the Office for Students under section 10 of HERA. The actual financial limits are prescribed under enabling powers contained in Schedule 2 to HERA, with higher amounts of fees being chargeable by providers which have an approved Access and Participation Plan (paragraph 2 of Schedule 2) and lower

amounts being chargeable by providers which do not (paragraph 3 of Schedule 2). Further fee differentiation is enabled under these paragraphs in respect of providers which have been awarded a high-level quality rating under section 25 of HERA, and those which have not. The actual limits are prescribed in the Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018 (2018/903).

6. Currently, fee limits must be imposed by reference to and in relation to an academic year. However, such a system is not appropriate for the kind of flexible learning which the Government wishes to encourage in the future through its announced “Lifelong Loan Entitlement”, such as the study of modules and short courses at various points throughout a person’s life. These frequently do not coincide with a full academic year. The Government instead wishes to introduce a tuition fee limit system based on the number of academic credits which a course or module contains, and the amendments to HERA put forward in this Bill serve to achieve that. The use of academic credits as a means of measuring learning time is already in widespread use within the sector, and largely on a standardised basis.

7. Clause 1, subsection 4 (new sub-paragraph 1(2) of Schedule 2) introduces a new credit-based method of calculating fee limits, whilst retaining a fixed method (for courses which do not easily lend themselves to the credit-based system) which will still be premised on the prescription of a fixed annual financial amount. New paragraph 1(3) allows the Secretary of State to determine by regulations which method applies to any particular type of course.

#### Justification for taking the power

8. The Secretary of State wishes to encourage a wide range of additional forms of study under the Lifelong Loan Entitlement, including modules and short courses of varying types and lengths, not necessarily aligning with a full course year. These will need to be fee capped in the most appropriate way depending on how easy it is to apply a standard number of credits to them. Currently, the courses which are subject to fee limits in the first place are set out in regulations and therefore the Department considers it appropriate for the fee limit method applicable to each to be set out in regulations. Additionally, the Department does not believe it possible now, given that it expects new modules and other forms of flexible study to be developed and to proliferate in future, to state in primary legislation the courses or circumstances where the credit-based method will be most appropriate and where the fixed method will be. Further, new courses will continue to appear on an ongoing basis and therefore which fee limit method applies to them will continue to be an appropriate matter for regulations. The fact that the credit-based method may be deemed appropriate for many existing courses in the future in no way impacts on their delivery or funding. The credit-based method has been designed to apply to existing courses and to enable the same levels of fee limits and student finance to apply as now.

#### Justification for the procedure

9. These regulations will be subject to the affirmative resolution procedure as existing regulations made under Schedule 2 of HERA are (see s119(2)(i)). This is considered appropriate given the importance of higher education fee levels to both students and providers, and the fact that those levels are an important determinant

of access to higher education and the amount of debt students may accrue. In general, regulations made under section 10 of HERA, which prescribe the courses and providers which are subject to fee limits ab initio are made under the negative resolution procedure, but regulations which actually prescribe or provide for the determination of financial limits under Schedule 2 are subject to the affirmative resolution procedure.

**Clause 1 subsection (4) (new paragraph 1B of Schedule 2) – Attachment of credits under the credit-based method**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Affirmative

Context and Purpose

10. The delegated power under new paragraph 1B(1) requires the Secretary of State to make provision by regulations about the circumstances in which each relevant course year is deemed to have credits attached to it, under the credit-based method and new paragraph 1B(2) provides two examples of the sort of circumstances which may be prescribed. The use of credits is widespread and largely standard within the higher education sector, though not invariably so and the Secretary of State will need, in order to create a consistent fee limit system, to prescribe that courses or modules are deemed to have credits attached to them only if one credit denotes a certain number of hours of learning time, or if other particular characteristics apply to the attachment of credits. The Secretary of State will also need to impose process requirements to facilitate the smooth operation of the new method, for example by prescribing that courses and modules are deemed to have credits attached only if those responsible for the administration of the system, including the Student Loans Company, have been given certain information, such as the number of credits which are attached to a course year in relation to different course types. New paragraph 1B(3) also enables credits to be deemed to be attached differently according to different descriptions of activity within a course year, such as to a work placement element of a course or an overseas period of learning.

Justification for taking the power

11. As stated, as new forms of flexible study, short course provision and modular learning are developed, the fee limit regulations will need to respond in quick time, picking out the particular characteristics of a course (eg are providers awarding credits too lightly?) which would justify a course year of it being deemed as credit bearing or not. They will also need to set out detailed and potentially changing processes in order for the system to work – for example the administrative authorities such as the Student Loans Company and students will need to know at set times before the application window for student loans opens whether the credit-based

method or the fixed method applies and therefore what the fee limit is. The student fee loan limits set out in S.I. 2011/1986 (see for example regulation 23) are also dependent on the prescribed fee limits (maximum fee loans mirror the applicable fee limits and so a change to the former needs to be reflected in the latter). Both can be subject to change from year to year, meaning that both regulations relating to the credit bearing nature of courses and relating to the loans available to fund them must be amended in tandem. As the intention is to pick out higher education providers' existing use of credits and any future development of it in regulations, the Department's view is that these matters of changing detail are appropriate for inclusion in affirmative resolution regulations.

#### Justification for the procedure

12. Regulations made under the delegated powers amended by these provisions will continue to be made under the affirmative resolution procedure, as all regulations under Schedule 2 are.

#### **Clause 1, subsection 4 (new paragraph 1C of Schedule 2) – Maxima and default numbers of credits within the credit based method.**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Affirmative

#### Context and Purpose

13. New paragraphs 1D and 1E of Schedule 2 provide respectively that the fee limit is determined by multiplying the number of credits attached to a course year (subject to a prescribed maximum number of credits) or a prescribed default number of credits by a prescribed per credit rate. New paragraph 1C of Schedule 2 provides the enabling powers to prescribe the maxima and default numbers of credits applicable to a course year. A maximum number of credits will be prescribed in relation to a course year which are regarded to have attached credits under regulations made under new paragraph 1B, whereas a default number of credits will be prescribed to course years of courses which are not credit bearing, because although they are of a type which would typically have a standard number of credits attached, the provider has not in fact attached any credits to them. Sub-paragraphs (2) to (4) provide the same enabling powers to prescribe maxima and default numbers of credits with a course year where credits are deemed to be attached to different descriptions of activity to be undertaken within a course year (i.e. where regulations under new paragraph 1B(3) apply).

#### Justification for taking the power

14. The Government does not want to dictate to providers how they are to use or attach credits in relation to their courses, so there needs to be a maximum laid down, otherwise there would be no effective cap on fees at all. The Government also does not want to oblige providers to use credits at all where they do not wish

to, so there needs to be a default laid down to make sure that there is always an applicable limit. Both powers are about getting to the actual amount of the limit, which is something done under regulations as it stands. The credit-based method of fee limits contains a number of specific variables such as which courses will be deemed to have credits attached, which courses will have maxima applied to their course years and which will have a default number of credits applied, what the maxima and default numbers are in relation to different course types and what the per credit limits are. The Department's view is that these are matters which are appropriate for inclusion in affirmative resolution regulations because of the number of different courses and modules of course which currently exist and which are anticipated to multiply over time.

#### Justification for the procedure

15. These regulations will also be subject to the affirmative resolution procedure, as are current regulations prescribing fee limits.

#### **Clause 1, subsection (4) (new paragraphs 1D and 1E of Schedule 2) – The fee limit where credits are and are not attached under the credit-based method.**

*Power conferred on:* N/A

*Power exercised by:* N/A

*Parliamentary Procedure:* N/A

#### Context and purpose

16. New paragraphs 1D and 1E of Schedule 2 contain the central basis of the fee limit calculation. For a credit bearing course, the fee limit is based on the number of credits actually attached to a piece of learning by a provider (subject to a course year maximum number of credits) multiplied by a prescribed per-credit financial limit. For a non-credit bearing course, the fee limit is based on a prescribed "default" number of credits applicable to each course year by a prescribed per-credit financial limit. Respectively, new paragraphs 1D(2) and (3) and 1E(2) make this provision where credits are not deemed attached to different descriptions of activity within a course year (see new paragraph 1B(3)) – and new paragraphs 1D(4) and (5) and 1E(3) do the same where the course year does include credit differentiated activity. New sub-paragraph 1D(6) applies a slightly different version of the formula for modules of courses because no maximum or default numbers of credits will be prescribed for them (see new 1C(5)) New paragraphs 1D and 1E do not in themselves contain any new delegated powers but they do signal (at 1D(7) and 1E(4)) the fact that the per credit limit is to be brought within the ambit of the existing delegated powers to prescribe fee limits in paragraphs 2 and 3 of Schedule 2, via new paragraph 1I of Schedule 2.

#### Justification for taking the power

17. As stated, new paragraphs 1D and 1E do not in themselves create new delegated powers and the fundamental calculation connected with the credit-based method is set out on the face of these provisions, but new sub-paragraphs 1D(7) and 1E(4) do touch on the setting of per credit limits under paragraphs 2 and 3 of Schedule 2. The Department's view is that the setting of these numerical/financial amounts which could easily be subject to change from year to year according to Government policy, are appropriate matters for inclusion in affirmative resolution regulations (as they are now).

#### Justification for the procedure

18. See above.

#### **Clause 1, subsection (4) (new paragraph 1F of Schedule 2) – Adjustments for transfer cases under the credit-based method.**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Affirmative

#### Context and purpose

19. New paragraph 1F of Schedule 2 allows the Secretary of State by regulations to reduce the chargeable or the default number of credits in "transfer cases", namely in circumstances where a student is exempted from a requirement to undertake part of a course because of activity undertaken other than as part of the course. In practice this will be where a student has accumulated sufficient credits elsewhere or on a different course so as to be relieved of any requirement to undertake all of a course's credits. The current fee limits regulations do not contain any provision for transfer cases, but this is a form of study which the Government wishes to encourage.

#### Justification for taking the power

20. Transfer cases could encompass a multiplicity of different forms and permutations of credit accumulation and exemption. The Department's view is that it is appropriate for the numerical reductions to be contained in regulations for this reason.

#### Justification for the procedure

21. These regulations will also follow the affirmative resolution procedure.

## **Clause 1, subsection (4) (new paragraph 1G of Schedule 2) – Regulations and interpretation.**

*Power conferred on:* N/A

*Power exercised by:* N/A

*Parliamentary Procedure:* N/A

### Context and purpose

22. Whilst primarily a paragraph concerning regulations and interpretation, new paragraph 1G(2) provides that regulations under new paragraphs 1B, 1C or 1F may refer to matters determined or published by the Secretary of State or other persons (whether before or after regulations are made). The purpose is to enable the Secretary of State to refer to concepts and numerical amounts in operation in the sector and published in various places including on the .Gov website.

### Justification for taking the power

23. There is a proliferation of existing credit-based frameworks (including different frameworks in different devolved administrations and in operation in continental Europe). There is also guidance and numerical allocations/published practices in operation in the sector which come into being from time to time, which change and which are replaced, to which the Secretary of State will wish to refer without having to replicate the content verbatim in regulations. It will also be clearer to the sector to refer to documents which they are already familiar with (for example the list of maximum credits published by Ofqual). Such powers are not new in the area of higher education regulation, nor in student finance. Section 119(5)(d) of HERA already allows regulations under that Act to include provision framed by reference to matters determined or published by the Office for Students (although in this context it would not only be the Office for Students' publications to which the Department would want regulations to refer) and section 22(2A) of the Teaching and Higher Education Act 1998 allows regulations prescribing maximum loan amounts to refer to matters determined or published by the Secretary of State or other persons. The Department considers this power to constitute a moderate extension to existing sub-delegatory powers.

### Justification for the procedure

24. Regulations under new paragraphs 1B, 1C or 1F must also use the affirmative resolution procedure.

**Clause 1, subsection (4) (new paragraph 1I of Schedule 2) – Determination of the per credit and fixed limits.**

*Power conferred on:* N/A

*Power exercised by:* N/A

*Parliamentary Procedure:* N/A

Context and purpose

25. New paragraph 1I(1) of Schedule 2 does not contain any new delegated powers but, as signalled by new paragraphs 1D(7) and 1E(4), it explicitly brings the concepts of the per credit limit and the fixed limit within the ambit of the existing delegated powers to prescribe amounts which fee limits are not permitted to exceed in paragraphs 2 (for providers with an Access and Participation Plan) and 3 (for providers without an Access and Participation Plan) of Schedule 2. Clause 1, subsections (5) to (8) then make minor consequential amendments as a result of this, primarily importing the concept of “course year” into the existing delegated powers in paragraphs 2 and 3 of Schedule 2.

26. Sub-paragraph (5) of new paragraph 1I makes explicit the fact that the existing power in s119(5)(a) of HERA, for regulations to make different provision for different purposes, cases or areas includes the power to prescribe different per credit limits for credit differentiated activity (eg a work placement, a period of overseas study) which will be necessary as the “home” institution’s input to a student’s learning is much reduced during these periods.

Justification for the power

27. It is submitted that the prescription of financial amounts (including per credit limits) which may vary according to different circumstances is well within the sort of provision which is appropriate for inclusion in regulations. Current financial limits, including different amounts for (for example) those with and without an access and participation plan, full-time and part-time courses, sandwich years, final years and overseas years are already set out in regulations under Schedule 2.

Justification for the procedure

28. All regulations under Schedule 2 must follow the affirmative resolution procedure.

**Clause 2, subsection (2)(c) – Discrimination as to courses at the same level prescribed as qualifying courses for the purpose of fee limits.**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative/affirmative

### Context and purpose

29. Subsection (2)(c) of clause 2 disapplies the prohibition on prescribing certain courses as “qualifying courses” for the purpose of the prima facie application of fee limits under section 10(7) of HERA, where other courses at the same or a comparable level are and where this is connected with the subject of the course. The prohibition is disapplied so far as the reason for any differential treatment is based on whether a course is designated for student finance (essentially student loan funding) under regulations made under section 22 of the Teaching and Higher Education Act 1998. Currently there is and in future there will continue to be a link between those courses and modules which attract student loans funding out of public funds and those courses which are fee capped (see regulation 7 of the Higher Education (Fee Limit Condition) (England) Regulations 2017 (2017/1189)). However, although there are likely to be new types of course and module which will be funded by the Secretary of State through student loans, it is unlikely that this will extend to all and any of them that are on offer. The purpose of this provision is to enable the Secretary of State not to prescribe all modules of courses for student finance where this is appropriate and for that to mean that they are not then subject to the fee limit regime, without offending the existing section 10(7) of HERA.

### Justification for taking the power

30. The Lifelong Loan Entitlement, which this Lifelong Learning (Higher Education Fee Limits) Bill is intended to support, is intended to make flexible study, that is the study of modules and short courses periodically over a person’s life, much more prevalent. We expect providers to respond to this by designing and delivering many new potentially fundable (through student fee loans) flexible courses and modules, and in general the Government wishes to retain the link between courses which attract student loans and those which are subject to fee limits. However, not all modules will be suitable for loans in the future and the Department’s intent is that only those modules that are eligible for loans should be fee-capped. Therefore, we need the power to apply the fee-cap more flexibly by reference to loan eligibility as it will apply to new modular or short course provision. It is not possible to state in primary legislation which courses or modules will not be eligible for loan funding given the ever developing and evolving design of courses by higher education providers.

### Justification for procedure

31. Regulations under section 10 of HERA, i.e. all regulations which determine the providers, students and courses which are subject to fee limits at all, follow the

negative resolution procedure currently and this has by definition been approved by Parliament. It is considered that it would be disruptive (and it is submitted there is no obvious need) to extract one part of section 10 and to make it subject to the affirmative procedure when the rest of the delegated powers under section 10 follow the negative resolution procedure.

### **Clause 2, subsection (7) – Parliamentary Procedure for setting fee limits by regulations.**

#### Context and purpose

*Power conferred on:* N/A

*Power exercised by:* N/A

*Parliamentary Procedure:* N/A

#### Context and purpose

32. Clause 2 subsection (7) inserts new sub-paragraph (4) into paragraph 5 of Schedule 2 to HERA 2017. Particularly, paragraph 5(2) of Schedule 2 prohibits the Secretary of State from making regulations which increase the higher fee limit amount under paragraph 2 of Schedule 2 by more than an amount which will maintain its value in real terms, unless a specific resolution has been passed by each House of Parliament. This amendment is also consequential to the new concept of ‘course year’ introduced by the amendments to sections 10, 31 and new paragraphs 1A and 1B. The amendment makes clear that where any such resolution is made, the increase in the higher amount may have effect for the duration of a course year beginning on or after the date specified in the resolution.

#### Justification for taking the power

33. No new delegated powers are created through this amendment. It makes a consequential amendment to existing delegated powers.

#### Justification for the procedure

34. See above.

**Department for Education  
12 June 2023**