

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT HIGHER EDUCATION (FEE LIMITS AND  
STUDENT SUPPORT) (ENGLAND) (CORONAVIRUS)  
REGULATIONS 2020

*Wednesday 1 July 2020*

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**Sunday 5 July 2020**

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**The Committee consisted of the following Members:**

*Chair:* DAVID MUNDELL

- |  |   |
|--|---|
| † Blunt, Crispin ( <i>Reigate</i> ) (Con)                          | † Morden, Jessica ( <i>Newport East</i> ) (Lab)                             |
| † Bowie, Andrew ( <i>West Aberdeenshire and Kincardine</i> ) (Con) | † Nici, Lia ( <i>Great Grimsby</i> ) (Con)                                  |
| Cruddas, Jon ( <i>Dagenham and Rainham</i> ) (Lab)                 | † Russell, Dean ( <i>Watford</i> ) (Con)                                    |
| Cryer, John ( <i>Leyton and Wanstead</i> ) (Lab)                   | † Smith, Greg ( <i>Buckingham</i> ) (Con)                                   |
| † Davies, Gareth ( <i>Grantham and Stamford</i> ) (Con)            | Stringer, Graham ( <i>Blackley and Broughton</i> ) (Lab)                    |
| † Donelan, Michelle ( <i>Minister for Universities</i> )           | † Tomlinson, Michael ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| † Hardy, Emma ( <i>Kingston upon Hull West and Hessle</i> ) (Lab)  | Twigg, Derek ( <i>Halton</i> ) (Lab)  |
| Harman, Ms Harriet ( <i>Camberwell and Peckham</i> ) (Lab)         | Vickers, Matt ( <i>Stockton South</i> ) (Con)                               |
| † Mann, Scott ( <i>North Cornwall</i> ) (Con)                      | Peter Stam, <i>Committee Clerk</i>  |
|  | † <b>attended the Committee</b>   |

# Fifth Delegated Legislation Committee

Wednesday 1 July 2020

[DAVID MUNDELL *in the Chair*]

## Draft Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020

2 pm

**The Minister for Universities (Michelle Donelan):** I beg to move,

That the Committee has considered the draft Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020.

On 4 May 2020, the Secretary of State for Education announced a package of stabilisation measures for the higher education sector in response to the covid-19 pandemic, one of which was the introduction of temporary student number controls. Higher education providers in England and institutions in the devolved nations have been allocated individual SNCs—a set number of students that we believe constitutes a fair maximum share of student recruitment for the academic year 2020-21.

If a provider in England recruits beyond its SNC this coming year, the regulations provide for a reduction in the maximum tuition fees that it can charge for the academic year 2021-22, the percentage of which depends on the extent to which it has exceeded the SNC. If an institution is in a devolved nation and recruits English-domiciled students in excess of its SNC in the coming year, the maximum tuition fee loan amounts for the new entrants only will be reduced by the same percentages in the academic year 2021-22. The SNC reflects the maximum number of students that the Government consider reasonable for providers, based on the provider's predicted growth or the national average for those with that forecast, plus an extra 5%, which will still generously allow for providers to grow.

The regulations will set out in law what the restrictions in the maximum tuition fee and tuition fee loan amounts will be. They simply allow the Government to redress the imbalance where a provider has gained extra taxpayer-funded income through aggressive recruitment practices this year. Such recruitment practices have threatened to destabilise the sector, and mean that some providers are at risk of collapse. The change in recruitment practices has the potential to be to the detriment of students who have been encouraged to accept an offer from a provider that may not best suit their needs.

It is right that the Government control the taxpayer-funded student loans system in this way. This is about the effective and appropriate distribution of public money during a time of unexpected financial crisis. Providers recruiting additional students aggressively secure the tuition fee income attached to them, and consequently disproportionately increase the public funding flowing to them through the taxpayer-funded student loans system.

The Government's policy position is that it is reasonable to conclude that, where a provider has chosen to exceed its SNC, it has taken more than its fair share of taxpayer funding. The Government and the taxpayer should be

able to redress that imbalance in the following academic year. The Government have chosen to address this issue through the fee system, as it is where we best have the ability to control the flow of public funds to higher education. These short-term measures are necessary as a targeted response to the unprecedented circumstances caused by the covid-19 pandemic. The regulations will be in place for only one academic year.

I recognise the concerns of colleagues across the devolved Administrations, who say that the UK Government are interfering in a devolved matter. I have to make it very clear that that is not the case. The funding of English-domiciled students is not a devolved matter. It is right and fair that the policy should apply as consistently as possible wherever they are studying in the UK.

Student number controls for institutions in the devolved nations apply only to English-domiciled students, whose tuition fees will be supported through Student Finance England. Providers in the devolved nations will continue to be free to set their own fees, as they do now. The UK Government simply determine the level of student finance available to support English-domiciled students. That is not encroaching on devolution; in fact, it respects it, while ensuring that the higher education system is stable, ensuring that students have a positive experience and that public money is spent in the most effective way possible as we seek to recover and rebuild following the covid-19 pandemic.

2.4 pm

**Emma Hardy** (Kingston upon Hull West and Hessle) (Lab): Briefly, I thank the higher education sector for its incredible work throughout the covid-19 pandemic on research, providing students for the frontline and creating personal protective equipment, while rapidly switching to online provision, supporting students and meeting the greatly increased demands on hardship funds and welfare services. It has done an incredible job.

The expected fall in the number of international students has led to a predicted loss of up to £2.5 billion, and the Office for Budget Responsibility identified higher education as the sector most likely to take the hardest hit from the crisis. That led to calls for some form of student recruitment controls from English universities alarmed at the news of a dramatic increase in the number of unconditional offers being given out by a handful of institutions.

The calls for a cap were formalised in the Universities UK sector-wide support proposals "Achieving stability in higher education sector following Covid-19". Labour supports the principle of the cap. Indeed, evidence was emerging that aggressive recruitment was beginning to occur. However, we have concerns about the implementation and criteria for setting the cap in the regulations, so we seek reassurances and clarification from the Minister on a number of points.

The UUK proposals were for English universities only; there had been no call from anyone in the sector for an extension of the cap on English domiciled students to Welsh, Scottish or Northern Irish universities. Will the Minister outline what actions the UK Government are taking to prevent further changes to student number controls being imposed on Welsh and Scottish universities without adequate consultation? What discussions occurred before the laying of these regulations?

The calculation of student number controls is not equitable across the nations. In the case of English institutions, the data used for setting the SNC—we are all fine with that acronym—come from the higher education students early statistics survey for 2019-20, and the base growth rate for each university was derived from forecasts submitted by English providers to the Office for National Statistics as part of their annual financial returns. However, such individual forecasts were not available for Welsh, Scottish or Northern Irish institutions. Instead, their base growth rate was set at 1.5% across the board, with the figure derived from an average of the HESES19 data provided to the Office for Students by English universities. I know of no justification for using data for English universities to set limits for those from Wales, Scotland and Northern Ireland apart from no other data being available. Will the Minister clarify whether any attempts have been made to establish direct equivalence or to make adjustments that might be necessary?

This year, covid-19 delayed student recruitment activity across the sector, so UCAS extended the usual May offer deadlines so that students and institutions alike had a little more time to respond. There are concerns that, having not waited for the UCAS deadline—the point at which universities make offer decisions and applicants make choices—the safeguard algorithm for the SNC has created an unfair admissions process for students who might take longer to make their decisions. Statistically, such students are disproportionately from widening participation backgrounds. Will the Minister reassure us that her Department will analyse the impact of the SNC on students from widening participation backgrounds and take any mitigating steps needed?

The proposed penalties for exceeding the SNC for institutions are incremental reductions in the maximum allowed fee level on all entrants in the following year. An over-recruitment of English domiciled students of between 0% and 6% results in a 3% reduction, over-recruitment by 6% to 12% results in a 9% reduction, and over-recruitment by more than 12% results in a 15% reduction in the maximum fee level in England or the loan amount in Scotland, Wales and Northern Ireland for 2021-22.

The draft explanatory memorandum accompanying the legislation states:

“An Impact Assessment has not been prepared for this instrument because, while the fee reductions are judged to have a financial impact on those higher education providers that exceed their SNC, the direct effects of the instrument will last for less than 12 months.”

That is a little surprising. Will the Minister explain what consideration has been given on the effects of SNC on student growth in 2021? The proposed sanction of a cut in maximum fees makes the affected institution a cheaper option for students in 2021, and it should be remembered that the cost of additional students is affected by scale—that is to say, the cost of 100 students is not necessarily twice that of 50 students; there are economies of scale to be made. In fact, recent analysis showed that certain institutions could deliberately over-recruit this year and still come out of the process ahead financially. Those in the study who potentially stand to gain by breaking the cap are large providers with sizeable international recruitment in a normal year who have experienced year-on-year growth in English domiciled recruitment in the past few years. Can the Minister give a detailed justification for

choosing this method of tuition fee reduction as a sanction for exceeding the SNC? What understanding does she have of the effect of the proposed sanctions, and how can she ensure that the right levels are fixed to act as an effective deterrent?

Although this is beyond the scope of the SI and is not mentioned in the draft explanatory memorandum, it should be noted that the OFS has had the power to levy sanctions on institutions not acting in the best interest of the sector since it was formed. What conversations has the Minister had with the OFS to ensure the proposed deterrent works, if she is allowed to reveal them?

The original calls for SNCs came from English universities only, so I would like to hear from the Minister a meaningful justification for their extension to Wales, Scotland and Northern Ireland. I note with concern the possible unintended consequences of the SNCs as applied, damaging the opportunities of children from disadvantaged backgrounds through their effect on widening participation, and would like the Minister to assure us that those unintended consequences will be analysed and mitigations made. Similarly, I note the possible opportunities for some institutions to game the SNCs to their advantage, to the detriment of others, and invite the Minister to explain how she will ensure that this does not happen. The SNCs called for by the sector were to be temporary and limited to this year only, so I ask the Minister to reiterate that this will remain the case.

2.11 pm

**Michelle Donelan:** I am grateful to the hon. Member for Kingston upon Hull West and Hessle for her contribution. I echo the sentiment she has expressed regarding the work that universities and the further education sector have done over the past few months to cope with the coronavirus pandemic, and the support they have given to both students and staff. I will try to address some of the questions that were raised.

The first question was about consultation with devolved Administrations. My right hon. Friend the Secretary of State for Education and I have had regular meetings with Ministers from all devolved Administrations about higher education issues. Those discussions included the development of student number control policies, and my officials have kept in regular contact with their counterparts, with weekly meetings and discussions. I will continue to work closely with the devolved Administrations on strengthening and stabilising the higher education system following the coronavirus pandemic. It is important to stress that we needed a policy that would be fair across the UK and would work in practice.

The hon. Lady pointed out discrepancies in way in which the figures are calculated. For an English institution, they are based on that institution's projected figures if they have been submitted; otherwise, the sector average will be used. For the DAs, we went for the sector average plus an additional 5% to make the policy workable, because these are not the figures of their total student population but of their projected English-domiciled students, so it is a harder figure for them to have already submitted.

The hon. Lady also mentioned the impact on those students who come from disadvantaged backgrounds and may be accepting late offers. It is important to note that these SNCs are extremely generous in their allocations:

*[Michelle Donelan]*

they are not only based on the sector average or the individual institution's predicted growth, but have a buffer of 5%. In addition, institutions in England can apply for at least 5,000 places for nursing and allied healthcare professional courses, and there is a 5,000-place allocation that they can bid into across the UK for specific courses. I believe that the ramifications of the fee structure we have outlined are proportionate.

I stress again that this is a temporary policy designed to help mitigate the challenges that the higher education sector faces because of the coronavirus pandemic. Its fundamental goal is to stabilise that sector and protect the interests of students. As we all know, the pandemic has been extremely disruptive to every sector of society,

and as Minister of State for Universities, Science, Research and Innovation, I will continue to do everything I can to maintain the health of the higher education sector. The introduction of temporary SNCs, together with these regulations, is part of the Government's actions to tackle this issue and ensure stability. These necessary steps will help to ensure that we can stabilise the sector, provide value for money for the taxpayer, and above all maintain freedom of choice and a positive higher education experience for all our students.

I commend the regulations to the Committee.

*Question put and agreed to.*

2.14 pm

*Committee rose.*



