

Higher Education & Research Bill

Policy Statement: The Teaching Excellence Framework (TEF) Fee and Loan Caps

What is the delegated power?

Schedule 2 contains provision for determining fee caps. In particular it enables varying levels of fee to be charged within two fixed bands: one for those with an access and participation plan and one for those without. Where an institution's fee level sits within the appropriate band will depend on its rating under the Teaching Excellence Framework.

The schedule contains a number of core features (particularly the key procedural safeguards) from the fee caps provisions put in place in 2004, with the difference that it now expressly links fee uplifts to performance, by reference to the Teaching Excellence Framework (TEF). It contains three delegated powers:

- i) **Basic and higher amounts:** Schedule 2 adapts a delegated power in existing legislation by enabling the setting of the following maximum fee caps for Higher education providers:
 - a. the "higher amount" (paragraph 2(5));
 - b. the "floor amount" to the higher amount (paragraph 2(9));
 - c. the "basic amount" (paragraph 3(4)); and
 - d. the "floor amount" to the basic amount (paragraph 3(8)).

As with existing legislation, it includes powers to enable SoS to vary the fee caps (adding in this newer version the ability to set and vary the "floor" level) by regulations. These regulations will be subject to the negative resolution procedure, provided that the fee caps do not more than keep pace with inflation (paragraphs 2(11) and 3(10)). In terms of Parliamentary scrutiny this means that parliament may raise a debate on the content of regulations if it wishes, albeit this will not be automatically required by the Bill each and every time a set of regulations is made.

- ii) **Sub level amounts:** A new power under paragraphs (2)(6) and 3(5) enables SoS to administratively set sub-level amounts between (but not above or below) the basic and floor amount and between the higher and floor amounts. It is this power that allows the SoS to set differential fees according to TEF results. This does not require the making of any regulations.
- iii) **Measure of inflation:** The power to stipulate within the fee cap regulations, which measure of inflation is used. We intend to use RPIX. RPIX is a fair measure to use

as it excludes mortgage interest payments, which most students will not be making. It is also consistent with the measure used since 2006/07 which is set out in Regulations.

Clause 82 contains a third related power to set **grant, loan and alternative payment caps**. It modifies the existing delegated power (in section 22 of the Teaching and Higher Education Act 1998), for the Secretary of State to set by regulations the maximum amount of student support so that those regulations can make provision prescribing such maximum amount by reference to matters determined or published by the Secretary of State or other persons. The idea here is that the loan amounts can be linked to ratings made and published by the OfS as part of TEF.

This policy statement sets out why the delegated powers are necessary and their intended use.

Why is the power necessary?

Higher, basic and floor amounts

Allowing inflation-linked fee caps to be fixed by regulations mirrors the procedure and level of parliamentary scrutiny established for the current fee caps regime put in place by the Higher Education Act 2004. This has routinely been used in the past to raise fees in line with inflation. Regulations to increase the tuition fee caps can only be made if:

- the higher and basic amounts are not increasing by more than a specified level of inflation (RPI-X), by way of negative procedure; or
- for the higher amount, if the increase is above inflation, a resolution (including the draft regulations) has been approved by both Houses of Parliament, approving that increase; or
- for the basic amount, if the increase is above inflation, by way of affirmative procedure

These important safeguards underline that this power delivers the current legislative position of enabling below inflation increases (i.e. flat fees in real terms) through negative procedure regulations. Similarly, should the upper or lower limits be increased by more than inflation it would require regulations subject to the affirmative procedure which automatically requires debate and a vote in both Houses of Parliament.

Sub level amounts

Having capped the maximum fees using precisely the same procedure and safeguards as current legislation a new power allows the Secretary of State to administratively (i.e. without legislation) to set sub level amounts between the higher or basic and floor amounts. These sub-level amounts will be linked to the different levels of TEF rating with

the result that a different level of fee will be assigned to each level of TEF rating. Because each sub-level amount will always by necessity be below any inflation-linked cap but above the basic and floor amounts that will continue to be set out in regulations, we do not consider that a separate legislative procedure is required to set it.

In allowing the Secretary of State to set fee caps by reference to TEF ratings, it prevents the need to update each provider's fee cap according to where they sit in TEF in legislation every time there's a change in their TEF rating. Requiring legislation for every change in TEF rating would undermine the effectiveness of the rating system, making it cumbersome and potentially introducing delays and uncertainty to providers and students.

Power to set grant and loan caps

Section 22 (power to give financial support for students) of the Teaching and Higher Education Act 1998 permits regulations to be made by the Secretary of State prescribing, in relation to any grant or loan (and, as amended under the Bill, alternative payment), the maximum amount available to any person for any prescribed purpose for that year.

The power in clause 82 serves to modify that power, by allowing those amounts to be set by reference to information published or determined outside of the regulations. This includes any list(s), published by the OfS, of providers and the TEF ratings awarded to them. Without this provision, we may need (for example) to list all the providers individually that have been awarded TEF and specifically set out the actual amount of their relevant fee loan caps. This provision will therefore enable student support caps to be set much more simply and with less risk of error, and the resulting regulations will still be subject to existing levels of Parliamentary scrutiny.

Previous relevant legislation

The Teaching and Higher Education Act 1998

How will the power work?

The White Paper, *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice* (May 2016), reiterated the Government's manifesto commitment to introduce a Teaching Excellence Framework (TEF). The TEF will provide clear information to students about where the best provision and outcomes can be found and drive up the standard of teaching across the sector. It will ensure better outcomes for all students, including those from disadvantaged backgrounds.

As we set out in the White Paper, the reputational advantage that will accrue to providers achieving the highest TEF ratings will be substantial, particularly given this Government's removal of student number controls. But we think that teaching excellence should be recognised by allowing the best providers to maintain their tuition fees in line with inflation.

For the first time we are linking the funding of teaching in higher education to quality, not simply quantity.

In relation to TEF the Higher Education and Research Bill therefore provides delegated powers to set the maximum fee caps for providers, which will reflect the rating they attain under TEF if they choose to participate.

A provider that applies for the TEF in Year Two (affecting fees in academic year 2018/19) onwards will attain one of three possible levels of excellence: **Bronze, Silver or Gold**. These ratings are not, and will, not be set in statute, rather they will be set and administered by the body with responsibility for the operation of TEF (HEFCE initially, and OfS once established). In TEF Year Two (academic year 2018/19), which is not subject to the HERB, there will be no sub-level. In that year, all providers that achieve a Bronze TEF rating or above, will be eligible for the full inflationary uplift.

From Year Three of TEF (affecting fees in academic year 2019/20) onwards, we have set out in the White Paper that we will, subject to the results of the lessons-learned exercise, introduce a differentiated fee cap and loan cap increases. Reflecting our wish to focus incentives where teaching is of higher quality, providers with a rating of Bronze will be eligible for 50% of the inflationary uplift, while providers with a rating of Silver or Gold will be eligible for 100% of the inflationary uplift.

From TEF Year Three onwards, the 100% increase will be delivered through fee regulations made under Schedule 2 of the HERB, which will set values for the higher amount fee cap (for providers with an access and participation plan) and the basic amount (for providers without an access and participation plan). This mirrors current practice with regard to the setting of fee caps.

The 50% increase will be delivered by the Secretary of State administratively setting sub-level amounts at that value under paragraphs 2(6) and 3(5) of Schedule 2. These will apply to providers with and without an access and participation plan, respectively.

We intend that the floor amounts will remain as at present (£9,000 for those with an access and participation plan and £6,000 for those without) and will apply to providers that choose not to, or are ineligible to, participate in TEF. We will operate a history-blind system, meaning that a provider's fee/loan cap is solely dependent on their current TEF level. This means coasting institutions will not be able to 'bank' increases gained if they performed better on the TEF in previous years, and new or improving providers will not be disadvantaged by being unable to catch up.

At present we anticipate making regulations to set fee limits on an annual basis, reflecting changes in inflation.

The effect on fee caps for the different TEF awards for TEF Year Three onwards are therefore intended to be as follows:

	TEF Award	Term used in the Bill	Effect on fee cap
Where the provider has an access and participation plan	Gold or Silver	“Higher amount” (paragraph 2(a) of Schedule 2)	Full inflationary increase
	Bronze	“Sub-level amount” (paragraph 2(b) of Schedule 2)	50% inflationary increase
	Provider does not participate in TEF	“Floor amount”	Fixed at £9,000
Where the provider has no access and participation plan	Gold or Silver	“Basic amount” (paragraph 3(a) of Schedule 2)	Full inflationary increase
	Bronze	“Sub-level amount” (paragraph 3(b) of Schedule 2)	50% inflationary increase
	Provider does not participate in TEF	“Floor amount”	Fixed at £6,000

Grant and Loan Caps: Amendment to the Teaching and Higher Education Act 1998

The amendment provided by clause 82 would enable the Secretary of State when making regulations under section 22(2)(b) of the Teaching and Higher Education Act 1998 in respect of higher education courses, to make provision prescribing maximum amounts of loans, alternative payments and grants by reference to matters determined or published by the Secretary of State or other persons.

The intention is that regulations under section 22(2)(b) of the Teaching and Higher Education Act 1998 setting the maximum amount of loan or alternative payment will do so by reference to the list published by the OfS under clause 11 (of the registered higher education providers that have a fee limit, and the respective fee limit) and the sub-level

amounts determined by the Secretary of State under schedule 2, according to their TEF rating if applicable. The alternative would require the regulations to list all individual providers and the loan or alternative payment cap that applies.

As at present, the Government's policy remains that where a higher education provider is subject to a fee limit, students will be able to access financial support up to that level (i.e. the loan or grant cap will increase in line with the provider's TEF rating, where applicable). Where a provider is not subject to a fee limit, the students will continue to have access to financial support of up to £6,000, as at present.