

# **Consultation on the Draft Student Fees (Specification) (Scotland) Order 2011**

## **Consultation report**

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## **Consultation report**

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## **Acknowledgements**

Our thanks go to the individuals and organisations who submitted responses to the Scottish Government's consultation on the Draft Student Fees (Specification) (Scotland) Order 2011. Every response has been considered.

Higher Education and Learner Support  
Employability, Skills and Lifelong Learning Directorate  
November 2011

## Background

The Scottish Government undertook a consultation on the Draft Student Fees (Specification) (Scotland) Order 2011 which proposes new arrangements for setting higher education tuition fees for students who come from other parts of the UK (RUK) to study at a Scottish university. It proposes that the Scottish Government puts in place secondary legislation to enable Scottish universities to set their own fees for students who usually live in England, Wales or Northern Ireland<sup>1</sup> from academic year 2012-13.

This legislation is proposed in response to the changes to higher education tuition fee policy taking place in other parts of the UK. It is designed to maintain the current level of cross border flow of students within the UK and thereby protect the interests of Scottish domiciled students.

The consultation exercise took place between 29 June 2011 and 2 September 2011. It sought views on:

- whether we need to respond to the changes in tuition fee policy taking place elsewhere in the UK;
- whether respondents agreed with the suggested approach of deregulating fees for RUK domiciled students;
- how respondents would ensure that Scottish universities do not become the “cheap option” for RUK domiciled students, if they did not agree with our suggested approach; and
- whether respondents agreed that the differential fee for medicine should be removed.

It also sought views on our Interim Equality Impact Assessment (EQIA).

The consultation document can be found on the Scottish Government website at:

<http://www.scotland.gov.uk/Publications/2011/06/27091056/0>

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<sup>1</sup> In this document the term ‘RUK domiciled students’ will be used to refer to students who usually live in England, Wales or Northern Ireland. The term ‘Scottish domiciled students’ will be used to refer to students who usually live in Scotland.

## Responses to the consultation

There were 44 responses to the consultation. The names of the individuals and organisations that responded and agreed to be named can be found at Annex A. All the consultation responses, where permission was given to publish them, can be found on the Scottish Government website at:

<http://www.scotland.gov.uk/Publications/2011/10/28141857/0>

An analysis of the respondents is given in the table below.

| Type of respondent   | Number of responses |
|----------------------|---------------------|
| Individual           | 7                   |
| University           | 15                  |
| Students association | 9                   |
| Other organisation   | 13                  |
| <b>Total</b>         | <b>44</b>           |

In addition to the written responses, we held meetings with:

- NUS Scotland
- St Andrews University Students' Association
- University and College Union
- Scottish Refugee Council
- Scottish Women's Convention
- Black and Ethnic Minorities Infrastructure in Scotland.

An analysis of the responses to each question is given below. A table summarising the responses to the Yes/No questions can be found in Annex B.

### Responses to question 1

Question 1 asked if respondents agreed that we need to respond to the changes in tuition fee policy taking place elsewhere in the UK.

Of the 36 respondents who replied directly to this question, only two considered that there was no need to take any such action. One respondent, an individual, did not consider tuition fee policy in England, Wales and Northern Ireland to be relevant to Scotland. The other, Glasgow University Students' Representative Council, suggested there should be a moratorium until 2012-13, in order that we might assess the actual impact on demand for places at Scottish universities from RUK domiciled students.

### Responses to question 2

Question 2 asked if respondents agreed with the suggested approach of deregulating fees for RUK domiciled students, thereby allowing Scottish universities the flexibility to offer those students courses on an equal basis, in terms of overall tuition fee costs, with universities in other parts of the UK. It also asked respondents who did not agree with the proposal for their views on

how they would ensure that Scottish universities do not become the “cheap option” for RUK domiciled students.

Of the 34 respondents who replied directly to this question, 21 were in favour of the deregulating fees for RUK domiciled students; 13 were not. This question gave rise to a number of comments, particularly from those who were not supportive of the proposal.

Around a quarter of the respondents were concerned about Scottish higher education becoming too expensive, leading to a reduction in demand from RUK domiciled students. The Scottish Trades Union Congress (STUC) and the Higher Education Academy (HEA) were also concerned about an adverse impact on students from Northern Ireland, and to a lesser extent Wales, given that liability for tuition fees was being set at a lower level there than in England.

Some were opposed in principle to tuition fees and/or to the marketisation of higher education, with a number of respondents, such as University and College Union (UCU), suggesting the fees for RUK domiciled students should be set by the Scottish Government rather than by individual universities.

There were also a number of comments on the potential impact on widening access. Six respondents opposed to the proposal called for the equivalent of access agreements or for mandatory bursaries for RUK domiciled students from underrepresented groups.

Other points raised included:

- the need to avoid incentives for Scottish universities to “chase” RUK domiciled students to the detriment of Scottish domiciled students;
- the need to continue to support high cost subjects such as medicine and veterinary courses ; and
- the need to avoid students falling into limbo between student support systems across the UK under the new domicile test .

### **Reponses to question 3**

Question 3 asked if respondents agreed that the differential fee for medicine should be removed.

Of the 29 respondents who replied directly to this question, 23 were in favour of removing the differential fee for medicine; six were not.

This question did not give rise to many comments.



## **Responses to question 4**

Question 4 provided respondents with an opportunity to offer comments on the draft Order and associated documentation.

There were a number of recurring points made in the responses, many of which had already been made in response to question 2. The main points raised concerned:

- the need for greater clarity around domicile;
- recognition of the need to take action to protect the interests of Scottish domiciled students ;
- the potential for Scottish universities to become more expensive;
- calls for a lower cap than £9,000, to reflect the difference in the average length of degrees between Scotland and England ;
- a suggestion that setting separate quotas for Scottish and non-UK EU domiciled and RUK domiciled students might meet the policy objective;
- protecting the more expensive subjects such as medicine;
- the impact on underrepresented groups, including Black and Ethnic Minority students (BME); and
- potential oversubscription of RUK domiciled students to the detriment of Scottish domiciled students.

Additionally there was a call from the STUC for more information on how the additional revenue will benefit the sector as a whole.

## **Responses to questions on the Interim EQIA**

Question 5 asked respondents if they considered that there was any additional evidence in relation to adverse impact on any of the equality groups that we have not recognised or considered.

Of the 29 respondents who answered this question directly, 18 considered that we should consider additional evidence and other points in relation to the EQIA; eleven did not.

Specifically, the Equality Challenge Unit suggested we should give further consideration to the potential impact on black and ethnic minority groups. The University of Strathclyde Students Association highlighted the need to give further consideration to the impact on care leavers and students with dependents. The STUC raised a concern about pregnancy and maternity in this context. UCU suggested we should consider the composition of student populations at individual universities.

Question 6 asked respondents for views on alternative options, which we could adopt to mitigate any potential for adverse impact.

This question did not give rise many comments. Those that were made generally repeated points made in response to other questions in the consultation.

Question 7 asked respondents if they agreed with our findings in the EQIA.

Of the 27 respondents who answered this question directly, 23 agreed with the findings in the interim EQIA; four did not. This question did not give rise to many comments, in addition to those offered in response to question 5.

### **Responses to question 8**

Two-thirds of the respondents took the opportunity to respond to this final, open, question. In the main, the comments related to points made in response to other questions in the consultation, although notably, there were a number of comments supporting the proposal.

Five respondents were explicit about their support for allowing Scottish universities the flexibility to set their own fees for RUK domiciled students

There was also broad support for the Scottish Government's intention that all Scottish universities should benefit from the proposed arrangements. More specifically, the HEA and the University of the West of Scotland called for the increased income to be reinvested for the benefit of learning and teaching and a further three respondents called for the units of teaching resource to be increased for Scots/non-UK EU students.

There were also five explicit calls for continuing financial support for the high cost subjects.

On widening access, there were a number of calls for mechanisms to be put in place to ensure Scottish higher education remains accessible to students from diverse backgrounds. At the same time, many of the Scottish institutions that responded reaffirmed their intention to provide bursaries for RUK domiciled students.

There was a specific call from NUS Scotland for HNC and HND courses to be exempt from the proposed arrangements, and for reassurance that Scottish universities will not apply differential admissions criteria to Scottish and RUK domiciled students.

## **The Scottish Government's response to the consultation**

Having reflected on the responses to the consultation, Scottish Ministers intend to proceed with their plans to bring forward secondary legislation to enable Scottish universities to set their own fees for students who usually live in England, Wales or Northern Ireland from academic year 2012-13.

The consultation has demonstrated there is widespread recognition of the need to take action to protect opportunities for Scottish domiciled students, in response to the changes in tuition fee policy taking place elsewhere in the UK, notably in England. It also showed there was support for the specific proposal under consideration.

Scottish Ministers are not persuaded by the calls from some to reduce the cap below £9,000 or set a standard fee for all Scottish universities based on a standard four-year degree. There are a number of reasons for this. Scottish universities are diverse in character and provide a wide range of courses of varying lengths. This needs to be encouraged.

Moreover, there is continuing uncertainty about how students and institutions in England will respond to its new fee regime over the longer-term. We believe it would be unnecessarily restrictive to set a standard fee for all RUK domiciled students looking to study at a Scottish institution, given the continuing uncertainty in England. But, we will look at applications and acceptances to Scottish universities by RUK domiciled students in the New Year and if, under the current funding arrangements, some institutions appear to be benefitting disproportionately from the new regime (and therefore frustrate Scottish Ministers' wish that the benefit of the income received should be felt by the whole sector) Scottish Ministers will provide further guidance to the Scottish Funding Council.

We therefore support the view put forward in the response from Universities Scotland that the proposed *"arrangements will assist in creating an environment that is sufficiently flexible to enable Scottish universities to continue to attract manageable numbers of rest of UK student and compete fairly with English peers in a complex market."*

*"... Given this complex set of variables it would not be credible for the government to set a single fee for Scotland as has been done previously. Instead it is vital that Scottish universities be free to set their own fees. Providing institutions with this flexibility will mean institutions can set fees for 2012-13 with reference to historic patterns of demand and competitor behaviour, as well as enabling them to respond to future patterns of demand which are difficult to predict at this point in time."*

On the calls for the Scottish Government to be prescriptive about access agreements and bursaries for RUK domiciled students, Scottish Ministers are pleased to see the wide ranging and generous bursary packages that Scottish universities have agreed to provide RUK domiciled students. They do not therefore consider there is any need for such prescription. More broadly

however, in the context of the post-16 reform programme, Scottish Ministers have already announced their intention to legislate to set achievable but ambitious goals for access to higher education for the poorest students. This will apply to all students studying at Scottish universities, not just those from other parts of the UK.

More specifically, Scottish Ministers accept the need to provide greater clarity on how we will define 'relevant connection with Scotland' in the context of eligibility for fees set under the draft Order. In the Education (Fees) (Scotland) Regulations 2011 we have defined "relevant connection with Scotland" as being ordinarily resident in Scotland on the relevant date; having been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and being settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date<sup>2</sup>.

On ensuring the financial benefits are realised across the sector, enhancing learning and teaching and the continuing need to support high cost subjects, the Ministerial Letter of Guidance to the SFC issued on 21 September makes clear that the SFC should restore the unit of resource for teaching to the level equivalent to academic year 2010-11. It also makes clear that the Council should protect those subjects where changes to RUK fees do not adequately reflect the costs of provision. And, as signalled above, it indicates that the Cabinet Secretary for Education and Lifelong Learning might provide the SFC with supplementary guidance in relation to the financial impact of the new RUK fee arrangements, once this process has been completed.

Scottish Ministers are not inclined to fetter the scope for colleges to raise income from RUK domiciled students studying HNCs/HNDs, by excluding them from the proposed arrangements.

We accept there was a need to broaden the evidence base underpinning our EQIA. This has been done.

Lastly, the new approach to tuition fees for RUK domiciled students is designed to maintain the current level of cross-border flows. We will therefore use data from the Higher Education Statistics Agency (HESA) to monitor the effect of the policy on an annual basis.

Higher Education and Learner Support  
Employability, Skills and Lifelong Learning Directorate  
November 2011

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<sup>2</sup> The words "ordinarily resident" have been interpreted by the courts as referring to the place where a person is habitually or normally resident, apart from temporary absences. Regulation 5 of, and Schedule 2 to, the 2011 Regulations make further provision for determining whether, for the purposes of those Regulations, a person is to be treated as being, or having been, ordinarily resident in a place at, or for, a particular time.

**List of respondents**

Individuals

Anonymous  
Anonymous  
Lukic Aleksandar  
Joan McDowell  
Alasdair Seale  
Steven Smith  
Kelly Waterson

Universities

Aston University Birmingham  
Edinburgh Napier University  
Glasgow Caledonian University  
Newcastle University  
Queen Margaret University  
Robert Gordon University  
Royal Conservatoire of Scotland  
University of Aberdeen  
University of Bristol  
University of Edinburgh  
University of Glasgow  
University of St Andrews  
University of Stirling  
University of Surrey  
University of the West of Scotland

Students associations

Dundee University Students Association  
Edinburgh University Students Association  
Glasgow University Students Representative Council  
Heriot Watt University Student Union  
NUS Scotland  
St Andrews University Students Association  
Students Association of the University of the West of Scotland  
University of Abertay Dundee Students Association  
University of Strathclyde Students Union

Other organisations

ATL Scotland  
BMA Scotland  
Cemvo Scotland  
Equality Challenger Unit

Higher Education Academy  
Perth College UHI  
Scottish Youth Parliament  
Society & College of Radiographers  
Stow College  
STUC  
UCAS  
University & College Union Scotland  
Universities Scotland

## ANNEX B

**Table of responses to Yes/No questions**

|  |                      | Do you agree that we need to respond | Do you agree with the suggested approach | Do you agree that the differential fee for medicine should be removed? | Any additional evidence required or points to consider | Do you agree with our findings in the EQIA? |
|--|----------------------|--------------------------------------|--|--|--|---|
|  | <b>Reference No.</b> | Q1                                   | Q2                                       | Q3   | Q5   | Q7  |
| <b>Respondent</b>                                  |                      |                                      |  |  |  |   |
| Joan McDowell                                      | 001/2011             | Y                                    | Y  | Y  | Y  | N   |
| Queen Margaret University                          | 002/2011             | Y                                    | Y  | Y  | Y  | Y   |
| University of Surrey                               | 003/2011             | Y                                    | Y  | Y  | N  | Y   |
| Kelly Waterson                                     | 004/2011             | Y                                    |  | Y  | N  | Y   |
| Aleksandar Lukic                                   | 005/2011             | Y                                    | N  | N  |  |   |
| Newcastle University                               | 006/2011             | Y                                    | Y  | Y  | N  | Y   |
| University of Bristol                              | 007/2011             | Y                                    | Y  | Y  | N  | Y   |
| The Society and College of Radiographers           | 008/2011             | Y                                    | Y  | Y  | N  | Y   |
| Anonymous  | 009/2011             |                                      |  |  |  |   |
| Equality Challenge Unit                            | 010/2011             | Y                                    | N  |  | Y  | Y   |
| Edinburgh University Student's Association         | 011/2011             |                                      |  |  |  |   |
| CEMVO  | 012/2011             |                                      |  |  |  |   |
| Anonymous  | 013/2011             |                                      |  |  |  |   |
| Alastair Seale                                     | 014/2011             | N                                    | N  |  | Y  |   |
| University of Edinburgh                            | 015/2011             | Y                                    | Y  | Y  | N  | Y   |
| Dundee University Students' Association            | 016/2011             | Y                                    | N  | N  | Y  | Y   |
| University of the West of Scotland                 | 017/2011             | Y                                    | Y  | Y  | Y  | Y   |
| Aston University                                   | 018/2011             | Y                                    | Y  | Y  | N  | Y   |
| Higher Education Academy                           | 019/2011             | Y                                    | Y  | N  | Y  | Y   |
| Heriot Watt University Student Union               | 020/2011             | Y                                    | N  |  | Y  |   |
| Edinburgh Napier University                        | 021/2011             | Y                                    | Y  | Y  | N  | Y   |
| Glasgow University Students Representative Council | 022/2011             | N                                    | N  | Y  |  |   |
| Universities Scotland                              | 023/2011             | Y                                    | Y  | Y  | N  | Y   |
| University of Strathclyde Students' Association    | 024/2011             | Y                                    | N  | N  | Y  | N   |
| NUS Scotland                                       | 025/2011             |                                      |  |  |  |   |
| RGU  | 026/2011             | Y                                    | Y  | Y  | N  | Y   |
| Royal Conservatoire of Scotland                    | 027/2011             | Y                                    |  |  |  |   |

|  |          | Do you agree that we need to respond | Do you agree with the suggested approach | Do you agree that the differential fee for medicine should be removed? | Any additional evidence required or points to consider | Do you agree with our findings in the EQIA? |
|--|----------|--------------------------------------|--|--|--|---|
| University of Glasgow                              | 028/2011 | Y                                    | Y  | Y  | N  | Y   |
| University of Aberdeen                             | 029/2011 | Y                                    | Y  | Y  | N  | Y   |
| Stow College                                       | 030/2011 | Y                                    | Y  | N  | N  | Y   |
| University & College Union Scotland                | 031/2011 | Y                                    | N  |  |  |   |
| Scottish Youth Parliament                          | 032/2011 |                                      |  |  |  |   |
| St Andrews Students' Association                   | 033/2011 | Y                                    | N  | Y  | N  |   |
| STUC   | 034/2011 | Y                                    | N  | N  | Y  | N   |
| University of St Andrews                           | 035/2011 | Y                                    | Y  | Y  | N  | Y   |
| Glasgow Caledonian University                      | 036/2011 | Y                                    | Y  | Y  | N  | Y   |
| Students' Association UWS                          | 037/2011 | Y                                    | N  | Y  |  |   |
| ATL Scotland                                       | 038/2011 | Y                                    | N  |  | Y  | N   |
| University of Abertay Dundee Students' Association | 039/2011 | Y                                    | N  |  |  |   |
| BMA Scotland                                       | 040/2011 |                                      |  | Y  |  |   |
| Perth College UHI                                  | 041/2011 | Y                                    | Y  | Y  | N  | Y   |
| Steven Smith                                       | 042/2011 | Y                                    | Y  | Y  |  |   |
| UCAS   | 043/2011 |                                      |  |  |  | Y   |
| University of Stirling                             | 044/2011 | Y                                    | Y  |  | N  | Y   |
|  |          |                                      |  |  |  |   |
| <b>Total YES</b>                                   |          | <b>34</b>                            | <b>21</b>                                | <b>23</b>  | <b>11</b>  | <b>23</b>                                   |
| <b>Total NO</b>                                    |          | <b>2</b>                             | <b>13</b>                                | <b>6</b>   | <b>18</b>  | <b>4</b>                                    |
|  |          |                                      |  |  |  |   |





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