

# HIGHER EDUCATION ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### Part 4 - Student Support

##### Effect of bankruptcy

61. In England and Wales, student loans are currently provided under regulations made under section 22 of the Teaching and Higher Education Act 1998. Previously, student loans were provided under arrangements made under the Education (Student Loans) Act 1990. Although loans can no longer be provided under the 1990 Act, some loans made under it are still outstanding.
62. In section 42, subsection (1) inserts a new paragraph (f) into section 22(3) of the 1998 Act. With this new paragraph, it will be possible for regulations under section 22 to include provision relating to the effect of bankruptcy on the liability to repay student loans provided under the 1998 Act. It is intended to use this power to ensure that the liability to repay student loans is not cancelled by the bankruptcy of the borrower. Regulations under section 22(3)(e) of the Teaching and Higher Education Act 1998 already provide that funds advanced under student loans cannot be taken by a student's trustee in bankruptcy to pay off other debts. By virtue of section 42(2), the new paragraph (f) will extend to Northern Ireland, as well as to England and Wales. Subsections (3) and (4) of section 42 make amendments of the Education (Student Loans) Act 1990 relating to the effect of bankruptcy.
63. The changes made by section 42 will not affect the position of any borrower whose bankruptcy commences before the section comes into effect.
64. By virtue of section 281 of the Insolvency Act 1986, when a bankrupt is discharged, he is released from all his bankruptcy debts. The amendment to section 22 of the 1998 Act, together with the regulations proposed to be made under section 22 as amended, and the amendment of the Education (Student Loans) Act 1990, will have the effect of excluding student loans from bankruptcy debt. It follows that student debt in relation to both types of loan will not be written off on discharge from bankruptcy.

##### Other amendments of Teaching and Higher Education Act 1998

65. [Section 43](#) makes two further amendments to section 22 of the Teaching and Higher Education Act 1998. Subsection (2) amends subsection (2)(i) of section 22. It provides that a loan payable to a student may be paid direct to the institution at which the student is studying. Where the loan is being provided to cover fees, rather than living costs etc., it may be desirable to pay it direct to the institution concerned. This is a key part of the machinery for students to defer payment of their fees by taking out income contingent loans on which no interest will be charged in real terms.
66. Subsection (3) amends section 22 of the Teaching and Higher Education Act 1998 by omitting subsection (7) of that section, thereby removing the requirement for affirmative resolution procedure in the case of regulations raising any grant in respect

of fees by more than the rate of inflation. In the 1998 Act, the maximum amount of the grant actually sets the fee itself, so this requirement was intended to prevent the fee being raised by more than inflation without an affirmative resolution. In this Act, the basic and higher amounts are set independently of the grant for fees, and affirmative resolution procedure is required for any above inflation increases of the fees. This means that it is no longer necessary to apply the affirmative resolution procedure to any grant in respect of fees in order to preserve the original intent. This change will mean that the level of grant for fees is treated in the same way as other amounts in the student support regulations.

### **Transfer of certain functions to National Assembly for Wales**

67. [Section 44](#) transfers to the National Assembly for Wales the majority of regulation-making powers in respect of student support contained in the 1998 Act. Certain functions are not transferred, for example those powers whose use is connected with taxation and bankruptcy, which are UK-wide matters. The Assembly intends in practice to make regulations affecting students who have a prescribed connection with Wales when they start their course, regardless of the location of the institution at which they are studying and of their place of residence after graduation.

### **Supply of information held by student support authority**

68. [Section 45](#) permits the Secretary of State to make regulations allowing student support authorities to supply information collected in connection with the operation of the student support scheme to prescribed persons, with the consent of the individuals in relation to whom information is to be supplied. The intention is to be able to simplify the interactions of citizens with other government or higher education organisations. The regulations will specify the conditions under which information may be supplied including what information may be supplied and the organisation to which it may be supplied. They may also specify further constraints such as restrictions on passing on information received and the manner in which consent must be obtained.
69. The effect of the provisions in relation to Wales is that the regulation-making powers can be effectively exercised by the Assembly only after the student support functions have been transferred to it. Prior to this, the Assembly will have no functions relating to the operation of the student support scheme and, accordingly, can hold no student support information (as defined in the section).