

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (TREATMENT OF POSTGRADUATE MASTER'S DEGREE LOANS AND SPECIAL SUPPORT LOANS) (AMENDMENT) REGULATIONS 2016

2016 No. 743

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends social security regulations to ensure that a proportion of a new loan available to those undertaking courses of postgraduate Master's degree study from the 2016/17 academic year is properly taken into account as student income in claims for: Income Support; Jobseeker's Allowance (income-based); Housing Benefit; Employment and Support Allowance (income-related); and Universal Credit.
- 2.2 This instrument also amends social security regulations to ensure that the Special Support Loan, available to new students undertaking Higher Education courses from the 2016/17 academic year, is not taken into account when calculating a student's income in determining their entitlement to: Income Support; Jobseeker's Allowance (income-based); Housing Benefit; and Employment and Support Allowance (income-related).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

Postgraduate Master's Degree Loan

- 4.1 The Education (Postgraduate Master's Degree Loan) Regulations 2016 (S.I.2016/606)¹ introduce a new loan to be available from the start of the 2016/17 academic year to those starting postgraduate Master's degree courses.
- 4.2 There are existing provisions in the Income Support (General) Regulations 1987 (S.I.1987/1967)², the Jobseeker's Allowance Regulations 1996 (S.I.1996/207)³, the

¹ http://www.legislation.gov.uk/uksi/2016/606/pdfs/uksi_20160606_en.pdf

² http://www.legislation.gov.uk/uksi/1987/1967/pdfs/uksi_19871967_290216_en.pdf

³ <http://www.legislation.gov.uk/uksi/1996/207/contents/made>

Housing Benefit Regulations 2006 (S.I.2006/213)⁴, the Employment and Support Allowance Regulations 2008 (S.I.2008/794)⁵ and the Universal Credit Regulations 2013 (S.I.2013/376)⁶ governing the treatment of student loans to undergraduates who claim those benefits. Because these new loans supporting postgraduate Master's degree study are not student loans as defined in those Regulations, it is necessary to make equivalent provision for these new loans in those Regulations.

- 4.3 Although it may not allow sufficient time for Parliamentary scrutiny, the Regulations relating to the treatment of postgraduate Master's degree loans when calculating benefit entitlement need to come into force for the 2016/2017 academic year from August as students can receive such a loan from August 2016.

Special Support Loans

- 4.4 The Education (Student Support) Regulations 2011 (S.I.2011/1986) were amended in 2015⁷ to introduce the Special Support Loan which replaced the Special Support Grant for new students starting courses from the start of the 2016/17 academic year.
- 4.5 There are existing provisions in the Income Support (General) Regulations 1987 (S.I.1987/1967)⁸, the Jobseekers Allowance Regulations 1996 (S.I.1996/207)⁹, the Housing Benefit Regulations 2006 (S.I.2006/213)¹⁰ and the Employment and Support Allowance Regulations 2008 (S.I.2008/794)¹¹ governing the treatment of student loans and grants to undergraduates who claim those benefits.
- 4.6 From the start of the 2016/2017 academic year, new students who would previously have been entitled to a Special Support Grant intended to meet the cost of books, equipment, travel expenses and childcare costs, will instead be entitled to a Special Support Loan. While it is possible to disregard the Special Support Grant under existing regulations when calculating claimant entitlement to the relevant benefits, it is necessary to amend the existing regulations in order to disregard the Special Support Loan when calculating claimant entitlement to those benefits.
- 4.7 As some students can receive the Special Support Loan from August 2016, the regulations to disregard the Special Support Loan as income when calculating benefit entitlement need to come into force for the 2016/17 academic year from August to enable the disregard to take effect. As such there may be insufficient time for scrutiny by Parliamentary Committees before the instrument comes into force.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 The regulations introducing the postgraduate Master's degree loans apply only in relation to England. However, the rules for the treatment of those loans in these

⁴ http://www.legislation.gov.uk/uksi/2006/213/pdfs/ukxi_20060213_en.pdf

⁵ http://www.legislation.gov.uk/uksi/2008/794/pdfs/ukxi_20080794_290216_en.pdf

⁶ <http://www.legislation.gov.uk/uksi/2013/376>

⁷ http://www.legislation.gov.uk/uksi/2015/1951/pdfs/ukxi_20151951_en.pdf

⁸ http://www.legislation.gov.uk/uksi/1987/1967/pdfs/ukxi_19871967_290216_en.pdf

⁹ <http://www.legislation.gov.uk/uksi/1996/207/contents/made>

¹⁰ http://www.legislation.gov.uk/uksi/2006/213/pdfs/ukxi_20060213_en.pdf

¹¹ http://www.legislation.gov.uk/uksi/2008/794/pdfs/ukxi_20080794_290216_en.pdf

Regulations will apply equally to a benefit claimant elsewhere in Great Britain if they are eligible for such a loan.

- 5.4 The regulations introducing the Special Support Loan also only apply in relation to England. These Regulations will apply equally to a student who is eligible for a Special Support Loan but who studies and is entitled to benefit elsewhere in Great Britain.
- 5.5 Subject to the agreement of the Northern Ireland Assembly, the Department for Communities in Northern Ireland will produce corresponding legislation for Northern Ireland with regard to the treatment of the postgraduate Master's degree loan and Student Support Loans.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Treatment of students in assessing claims for benefit

- 7.1 Generally people in full-time education are not entitled to means-tested benefits. However, there are exceptions, for example, where a student¹² is responsible for a child or has a disability in accordance with the definitions in the applicable benefits regulations. The exceptions apply in circumstances where the student requires specific additional support which currently they can only get through the benefit system - for example support for children.
- 7.2 Where a person in education is eligible for a means-tested benefit, DWP deducts any student loans or grants as income when assessing the benefit award (subject to disregards for student loan or grant income for certain specified purposes). This applies where the loans or grants are intended for day-to-day living costs and ensures support for day-to-day living is not duplicated through provisions in benefits.
- 7.3 For benefit purposes, a person is to be treated as having a student loan or grant in any case where they are eligible for a student loan or grant and could obtain the loan or grant by taking reasonable steps to do so.
- 7.4 In assessing the benefit award, the amount of a loan or grant intended to meet tuition costs is ignored.
- 7.5 The intention of these Regulations is to maintain, as far as possible, these principles in relation to the new loans being introduced for the next academic year, as Government policy in this area. Has not substantially changed.

A new loan supporting postgraduate Master's degree study

- 7.6 Primary financial support for students is available through a system of loans or grants designed for their needs. The Chancellor announced in his Autumn Statement 2015 that he intended to introduce a new loan for students wishing to study for a

¹² A person, other than a person in receipt of a training allowance, who is attending or undertaking a course of study at an educational establishment

postgraduate Master's degree. The Department for Business, Innovation and Skills (BIS) have since introduced the necessary legislation¹³. A loan of up to £10,000 will be available from the start of the 2016/17 academic year for either full-time (1 year) or part-time (2 year) courses. The new loan is not available to existing postgraduate Master's students.

- 7.7 The way in which DWP will treat this new loan in assessing claims for benefit mirrors the general approach on how undergraduate students eligible for financial support are treated currently when claiming benefit, including couples where one, or both, is a student. Assuming those receiving or eligible to receive the new postgraduate Master's degree loan are students within the definitions in the various social security regulation, the relevant student income and work conditionality rules in those benefits will apply according to whether the student is studying part-time or full-time.
- 7.8 The changes introduced by these Regulations will meet the desired policy aim of ensuring that (i) only a proportion of the postgraduate Master's degree loan is taken into account in assessing the benefit payable to both full-time and part-time postgraduate Master's students and (ii) work-related requirements will be imposed in Universal Credit on part-time postgraduate Master's degree students entitled to such a loan.
- 7.9 Given small numbers eligible for the postgraduate Master's degree loan and social security benefits it is hard to estimate exactly how many students will be affected, but an early indication is that it could be fewer than 20,000 per year.

The proportion of the postgraduate Master's degree loan treated as student income

- 7.10 The new postgraduate Master's degree loan is not expressed to be exclusively either for tuition fees or maintenance costs. It will be paid directly to the student to cover either tuition or maintenance or both costs at the student's discretion. These Regulations provide as to how the loan should be properly treated in relation to claims for social security benefits.
- 7.11 For benefit award purposes, DWP effectively needs to assess what proportion of the loan is for maintenance costs. Disregarding the loan in full would lead to double provision of maintenance costs where tuition fees were less than the full loan amount. It would also create a disparity between the treatment of student loans for undergraduates on the one hand and postgraduate Master's degree loans on the other, to the extent that those loans are put towards maintenance costs. In order to treat the loan in a manner exactly consistent with the current treatment of undergraduate student loan funding, DWP would need to disregard the actual cost of tuition and take into account the balance of the loan as a maintenance cost on an individual basis. However assessing that actual amount on a case by case basis would be impractical and arguably unjustified given the student has autonomy to decide how their loan is spent.
- 7.12 The average annual tuition fees for a full-time Master's degree course have been assessed at around £7,000. Thus, bearing in mind that the maximum postgraduate Master's degree loan is £10,000, taking into account the remaining £3,000 as income is consistent with the current policy position which applies to undergraduates, for whom student income is available for daily living costs is also taken into account and a loan or grant for tuition costs is ignored.

¹³ http://www.legislation.gov.uk/ukxi/2016/606/pdfs/ukxi_20160606_en.pdf

- 7.13 This formula provides a solution that can be applied in all cases and treats students fairly while controlling costs to the tax-payer.
- 7.14 These Regulations therefore treat 30% of the maximum loan as being for maintenance purposes. This part of the loan will thus be treated as student income in the assessment of benefit awards. This formula has been agreed with BIS who are responsible for the policy on funding for full-time education/post graduate study.
- 7.15 For benefit purposes, the postgraduate Master's degree student will be treated as having this amount, regardless of whether they actually take up the loan. This reflects the position in the current social security regulations where an undergraduate student is to be treated as having a maintenance loan or grant in any case where they are eligible for it and could obtain the loan or grant by taking reasonable steps to do so.

The link between receipt of student income and lifting of a work-related requirement

- 7.16 Everyone who receives Universal Credit is placed in one of five conditionality groups based on their circumstances and work capability. The group a person is in will determine what is expected of them during their claim. Expectations range from no work-related requirements, to being expected to look for and be available for work of up to 35 hours a week.
- 7.17 For those students on Universal Credit the exemption from work-related requirement is linked to their entitlement to student income in the form of a maintenance loan. Currently, maintenance loans are available only for full-time study. The provisions in these Regulations ensure that entitlement to the postgraduate Master's loan, which is for either full-time (1 year) or part-time (2 year) courses, will not trigger the exemption from work-related requirements in Universal Credit for part-time courses. Part-time students entitled to benefit are expected to meet any work-related requirement.
- 7.18 Retaining work-related requirements for part-time postgraduate Master's degree students is consistent with existing policy for undergraduate students and is proportionate given the need to maintain confidence in the welfare system, and to provide an incentive to claimants to eventually return to work. Working age benefits are primarily intended to support those who are seeking work or are unable to work. Other sources of finance are available for full-time students and it is feasible for someone to study part-time whilst fulfilling other commitments.
- 7.19 Currently, postgraduate Master's degree students do not have access to student income to trigger the exemption in Universal Credit. However full-time study whilst claiming Universal Credit is currently feasible for a small number entitled to the benefit and in a no-work or low intensity conditionality group.
- 7.20 Other means-tested benefits – Income Support, Jobseeker's Allowance, and Employment and Support Allowance – do not have an equivalent link between receipt of student income and the lifting of a work-related requirement. There is no work-related requirement for receipt of Housing Benefit.

Special Support Loans

- 7.21 Students eligible for: Employment and Support Allowance (income-related); Housing Benefit; Income Support; and Jobseeker's Allowance (income-based), who started their course before the start of the 2016/17 academic year, may be eligible for a

Special Support Grant to help with the extra costs they incur for books, equipment, travel expenses and childcare.

- 7.22 It was announced by the Chancellor in July 2015 that all student grants were to become loans. This included the Special Support Grant which was to become a Special Support Loan for eligible new students starting a course in the 2016/17 academic year onwards.
- 7.23 Student grants and loans are taken into account as student income when calculating means-tested benefits (other than Universal Credit). The Special Support Grant is however disregarded when calculating income for benefit entitlement as it is intended to meet the costs described in paragraph 7.21. There is no equivalent disregard in the above mentioned benefits [see paragraph 7.21] for student loan or other income intended to cover the same costs. As such the Special Support Loan cannot be disregarded under current regulations.
- 7.24 It is necessary to amend existing social security regulations in order to disregard the Special Support Loan when calculating claimant entitlement, to ensure that claimants who are entitled to a Special Support Loan are treated in the same way as those who are entitled to a Special Support Grant.
- 7.25 Currently, Special Support Grants are disregarded. The aim of the policy is for the replacement Special Support Loan to also be disregarded. This also ensures that recipients of the relevant benefits are treated the same as students in receipt of Universal Credit.

Consolidation

- 7.26 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the DWP website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available here.

8. Consultation outcome

Postgraduate Master’s degree loans

- 8.1 Given that the Regulations carry forward existing principles for treatment of students claiming benefit, a formal consultation was not undertaken. The proposals on treatment of the postgraduate Master’s degree loan in assessing claims for benefit largely mirror how students claiming benefit are treated currently, including couples where one, or both, is a student. Although affected claimants may receive less benefit than they otherwise would as a result of the proposed treatment of the new postgraduate Master’s degree loans, they will not receive less financial support overall from the Government if they take up the loan to which they are entitled. In addition, those claimants will benefit from the disregard in place when student income is deducted when calculating benefit awards. They will have to repay the loan but only when their income is over the threshold for repayments. This is in line with the system of primary financial support available to students generally.
- 8.2 However, consultation was undertaken with the Local Authority Associations in relation to the changes to the Housing Benefit Regulations. No concerns were raised with DWP.

- 8.3 DWP presented the draft Regulations in relation to postgraduate Master's degree loans to the Social Security Advisory Committee on 22 June. The Committee has confirmed that it does not wish to take these Regulations on formal reference. It has though written to officials to record concerns on the parallel treatment of a different type of loan. This Explanatory Memorandum sets out why it is fair and proportionate, and DWP will respond to the Social Security Advisory Committee in due course. Both letters will be published on the Social Security Advisory Committee website. The Committee confirmed that its concerns were mitigated at least in part by the assurance given at the meeting that, should it come to light that the policy is not working as intended or in ways that impacted unreasonably upon claimants, DWP would review the legislation.

Special Support Loans

- 8.4 A formal consultation was not undertaken because the proposals on the treatment of the Special Support Loan in assessing claims for benefit mirror the current process for students in receipt of the Special Support Grant in assessing claims for benefit. The changes are also beneficial to claimants as they will have a disregard in place in respect of the Special Support Loan which is currently there for continuing students who are entitled to the Special Support Grant and students claiming Universal Credit.
- 8.5 The Local Authority Associations agreed that formal consultation need not be undertaken in respect of the required amendments to Housing Benefit as the changes will mirror, for the Special Support Loan, the existing disregard for the Special Support Grant.
- 8.6 DWP presented the draft Regulations in relation to Special Support Loans to the Social Security Advisory Committee by post on 30 June. The Committee have confirmed that they do not wish to take the Regulations on formal reference.

9. Guidance

- 9.1 Guidance is under development to support advisers and decision makers. The Advice for Decision Making and the Decision Makers Guide are published on the DWP website and will be updated prior to the coming into force of the Regulations.
- 9.2 Guidance for Local Authority staff regarding these changes will be issued in a bulletin ahead of the regulations coming into force and will be available on GOV.UK.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector will involve changes in guidance to DWP staff. The treatment of the postgraduate Master's degree loan does not have an impact on benefits other than those stipulated. Changes in respect of the Special Support Loan ensure that claimants entitled to it are treated in the same way as claimants entitled to the Special Support Grant it replaces.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Government is committed to monitoring the policy to provide loans to postgraduate Master's degree students and will review it within three years against its objectives, including value-for-money.

13. Contact

- 13.1 Pamela Chambers at DWP Telephone: 0207 449 5086 or email: Pamela.chambers@dwp.gsi.gov.uk can answer any queries regarding the instrument.