

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (STUDENT SUPPORT) (REVOCATION, AMENDMENT AND**  
**SAVING PROVISION) REGULATIONS 2018**

**2018 No. 434**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018 (S.I. 2018/434) (“these Regulations”) revoke the Education (Student Support) (Amendment) Regulations 2018 (S.I. 2018/136) and amend the Education (Student Support) Regulations 2011 (S.I. 2011/1986). This is subject to a saving provision for students who have already made an application for support in respect of pre-registration courses in dental profession subjects or postgraduate pre-registration courses, and whose applications have been received by the Secretary of State by the time these Regulations come into force.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Education (Student Support) (Amendment) Regulations 2018 were made on 5 February 2018 and laid before Parliament on 6 February 2018. Those regulations came into force on 27 February 2018. The instrument was subject to the negative resolution procedure and subject to annulment in pursuance of a resolution of either House of Parliament if prayed against within 40 days after laying. The 40 day praying period for this instrument expires on 28 March 2018.
- 3.2 A prayer motion to annul the Regulations was tabled by the Opposition in the House of Commons on 8 February 2018. Notice for a regret motion tabled by the Opposition in the House of Lords was made on 27 February 2018.
- 3.3 It is a matter of Parliamentary convention that where a reasonable request for a debate has been made, time should be allowed for debate. It was not possible for the Government to accommodate time within the instrument’s praying period. On 26 March 2018, during a Point of Order, the Speaker indicated that “it is possible for the Government to withdraw a particular statutory instrument while wishing to preserve the intention to give effect to the policy contained therein, and to table another statutory instrument” (HC Deb (2018) 638, c548).
- 3.4 This instrument therefore comes into force less than 21 days after it is laid as part of arrangements made to give effect to the request from the Official Opposition for a debate in Government time. Another statutory instrument will be laid on 28 March preserving the original policy intention of S.I. 2018/136. This will re-start the 40 day praying period to enable a debate, as requested, to be facilitated on the changes to the loan system as they originally appeared in S.I. 2018/136.

### *Other matters of interest to the House of Commons*

- 3.5 This entire instrument applies only to England.
- 3.6 The instrument applies only to England because it applies only to the provision of student support for higher education students domiciled in England. The instrument does not have minor or consequential effects outside England.
- 3.7 In the view of the Department, for the purposes of House of Commons Standing Order No.83P the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.8 The Department has reached this view because it considers that the primary purpose of the instrument relates to education which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of the Act); the primary purpose of the subject matter of the instrument is within paragraph 5 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

## **4. Legislative Context**

- 4.1 This instrument revokes the Education (Student Support) (Amendment) Regulations 2018 and amends the Education (Student Support) Regulations 2011 (the “Student Support Regulations”). The Student Support Regulations are made under section 22 of the Teaching and Higher Education Act 1998, which provides for the Secretary of State to make regulations to provide financial support for students in Higher Education. Amendments to the Student Support Regulations are made annually by the Secretary of State to provide support to eligible students in connection with their undertaking designated higher education courses.
- 4.2 The Education (Student Support) (Amendment) Regulations 2018 contained provisions relating to student support for eligible students starting postgraduate pre-registration courses in nursing, midwifery, and the allied health professions from 1 August 2018 onwards, and eligible students starting undergraduate pre-registration courses in dental profession subjects from 1 August 2018 onwards. These Regulations revoke the Education (Student Support) (Amendment) Regulations 2018. Another statutory instrument will be laid on 28 March preserving the original policy intention of S.I. 2018/136.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

## **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*

7.1 There is no policy change involved in the revocation of these regulations. We are making this instrument as part of arrangements made by the Government to give effect to the request from the Official Opposition for a debate in Government time. Another statutory instrument will be laid on 28 March which will reinstate with near-immediate effect, the original policy intention of S.I. 2018/136. This will re-start the 40 day praying period to enable a debate, as requested, to be facilitated on the changes to the loan system as they originally appeared in S.I. 2018/136.

7.2 In order to protect students who are currently in the process of applying within the student loan system, the Education (Student Support) (Amendment) Regulations 2018 shall continue to have effect (despite the revocation), in relation to a person who, before the date on which these Regulations come into force, has submitted an application for support in relation to a postgraduate pre-registration course or a dental profession course and that application has been received.

7.3 We are handling this revocation with the Student Loans Company, who have been consulted and plans have been put in place. There will be a gap of 24 hours between these Regulations coming into force and the regulations to be laid on 28 March. However, arrangements are in place to ensure that there will be no adverse operational impact for students who wish to apply for loan support in relation to a postgraduate pre-registration course or an undergraduate dental profession course.

### *Consolidation*

7.4 The Department is currently considering the feasibility of consolidating the relevant legislation.

## **8. Consultation outcome**

8.1 There is no statutory requirement to consult on this instrument: however we spoke to the Department of Health and Social Care and the Student Loans Company (SLC) to understand the impact and feasibility of laying this instrument and they agreed with this approach.

## **9. Guidance**

9.1 As another statutory instrument will be laid on 28 March which will reinstate with near-immediate effect, the original policy intention of S.I. 2018/136, the original guidance will apply equally to students applying under the instrument to be laid on 28 March. We will however update the .GOV.UK website to reflect the instrument laid on 28 March. The Student Loans Company will provide information to any individual applicants for student support who make enquiries directly.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is as follows: for eligible students starting (i) postgraduate pre-registration courses in nursing, midwifery and the allied health professions or (ii) undergraduate pre-registration courses in dental profession subjects in 2018/19, not providing the standard student finance arrangements and not returning to bursaries will leave Higher Education providers with the risk that students can no longer afford or choose not to study with them. This could have a negative impact on the sustainability of respective courses in Higher Education providers. However, another statutory instrument will be laid on 28 March preserving the original policy intention of S.I. 2018/136 to allow eligible students access to the standard student finance arrangements.
- 10.2 The impact on the public sector is minimal.
- 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 We commit to monitoring and reviewing the impact of these Regulations.

## **13. Contact**

- 13.1 Kate Svedang at the Department for Education, telephone: 07391 018341 or email: [kate.svedang@education.gov.uk](mailto:kate.svedang@education.gov.uk) can answer any queries regarding the instrument.