

## EXPLANATORY MEMORANDUM

### THE EDUCATION (STUDENT SUPPORT) (NO. 2) REGULATIONS 2002 (AMENDMENT) (NO. 3) REGULATIONS 2004 No. 2041

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

#### 2. Description

This Statutory Instrument makes amendments to the Education (Student Support) (No. 2) Regulations 2002 (“the 2002 Regulations”) which provide for support for students taking designated higher education courses and for treatment of student loans in insolvency. The effect of the amendments is to:

- i. make it a condition of eligibility for a grant for fees in respect of a part-time course that a student undertakes the course in England and Wales;
- ii. prevent income contingent student loans being written off on discharge from bankruptcy, irrespective of when the loan was received.

#### 3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

#### 4. Legislative Background

This instrument is being made, in respect of part-time fee grant, in order to ensure that the policy intent set out in paragraph 7 is correctly reflected in the regulations. This instrument amends the 2002 Regulations which were made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998. These sections give the Secretary of State the power to make provision for grants and loans to students taking higher education courses.

In respect of bankruptcy, this instrument is made under new powers created by section 42 of the Higher Education Act 2004, which came into force on 1 July 2004. The instrument amends Regulation 39(1) of the 2002 Regulations to ensure that liability to repay income contingent loans is not written off on discharge from bankruptcy, irrespective of when the loan is received. This closes a loophole which allowed some income contingent repayment student loans to be written off on discharge from bankruptcy.

The 2002 Regulations have previously been amended by:

- the Education (Student Fees and Support) (Switzerland) Regulations 2003 (S.I. 2003/3280),
- the Education (Student Support) (No.2) Regulations 2002 (Amendment) Regulations 2003 (S.I.2003/1065),
- the Education (Student Support) (No.2) Regulations 2002 (Amendment) Regulations 2004 (S.I.2004/161),
- the Education (Student Support) (No.2) Regulations 2002 (Amendment) (No.2) Regulations 2004 (S.I.2004/1602).

## **5. Extent**

This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

The Minister for Higher Education, Alan Johnson has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of The Education (Student Support) (No.2) Regulations 2002 (Amendment) (No.3) Regulations 2004 are compatible with the Convention rights.

## **7. Policy background**

The amendment to regulation 27(3), makes it clear that the part-time fee grant would be available to English and Welsh domiciled and EU students undertaking courses in England and Wales. This includes students who are distance learning, provided that they are taking the course within England and Wales. English and Welsh domiciled students studying in England and Wales are also eligible for a £250 course grant and Disabled Students Allowances (DSAs). The support available to English and Welsh domiciled part-time students who are studying in Scotland and Northern Ireland is restricted to the course grant and DSAs.

Government policy is and always has been that student loans should not be written off on discharge from bankruptcy. The amendment to regulation 39(1) closes a loophole whereby liability to repay some income contingent student loans was written off on discharge from bankruptcy.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal.

## 9. **Contacts**

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Charles Stewart at the Department for Education and Skills Tel: 0207 925 5586 or e-mail: [charles.stewart@dfes.gsi.gov.uk](mailto:charles.stewart@dfes.gsi.gov.uk) can answer any queries regarding the instrument on bankruptcy.