

EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) REGULATIONS 2006

2006 No. 119

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**
 - 2.1 These Regulations provide for support for students taking designated higher education courses in respect of an academic year beginning on or after 1 September 2006.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 These Regulations are made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998 as amended which gives the Secretary of State the power to make provision for grants and loans to eligible students in connection with their undertaking of designated higher education courses and further education courses.
 - 4.2 The Student Support Regulations are laid annually. These Regulations set out the student support arrangements for 2006/07. They uprate grants for tuition fees for those students who are still eligible for such grants, student loans and some grants for living costs in line with inflation. They also introduce a number of policy changes, the most significant of which are set out in more detail in paragraph 7.
5. **Extent**
 - 5.1 This instrument applies to England. A provision on the treatment of student loans in bankruptcy also applies to Wales and extends to Northern Ireland.

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

The intention is:

7.1 To define the package of financial support available to students for the 2006/07 academic year.

The 2006 Student Support Regulations define students as either 'old system' or 'new system' students. This status will determine what package of support will be available to them.

Old system students are:

- eligible students who started their course before 1st September 2006.
- certain categories of eligible students who start their course in 2006/07 or later.

Old system students will be eligible to apply for the pre 2006/07 package of support, including:

- Fee remission grant of up to £1,200 a year.
- Higher Education Grant (starters in 2004/05 or subsequent years).

They will also be able to apply for:

- a student loan for fees to cover the full amount of fees up to £1,200 or to cover any contribution towards tuition fees they are assessed to pay.

New system students are:

- eligible students who start their current course on or after 1st September 2006.
- are not old system students.

New system students will be eligible to apply for the new package of support introduced for 2006/07 which includes:

- Student loan for tuition fees of up to £3,000
- Maintenance Grant of up to £2,700

- Special Support Grant of up to £2,700

Supplementary grants and maintenance loans will be available to both old and new system students who satisfy the qualifying conditions.

7.2 To introduce student loans for tuition fees

All higher education institutions (HEIs) in England that wish to charge fees above the standard level (£1,200) in 2006/07, must submit an access agreement to the Office for Fair Access (OFFA), setting out how they will safeguard and promote fair access, in particular for students from low income backgrounds. Those universities whose access agreements have been approved by OFFA will be able to vary fees from £0 up to a maximum of £3,000 per year for full time courses for new students (or up to £1,500 for certain categories of new students). Students continuing on their courses and gap year students will have fees limited at £1,200. The amount charged may vary between courses as well as between universities. The maximum fee will be capped at £3,000 a year (apart from adjustments to take account of inflation) until 2010 at the earliest.

From 2006/07, no eligible full-time students will have to pay tuition fees before they start their course or whilst they are studying. All eligible full time students will be able to take out a non income assessed loan to cover the cost of their tuition fees (up to the maximum amount they are entitled to for the academic year) which does not need to be repaid until the student has left university or college and is earning over £15,000 a year. This arrangement will apply to both new and old system students.

There will be no age limits for fee loans or fee contribution loans

7.3 To introduce the Maintenance Grant

From 2006/07, a new Maintenance Grant of up to £2,700 a year will be introduced for new system students from lower income households.

Students with a household income of £17,500 or less will receive the full £2,700 Maintenance Grant. Students with a household income over £17,500 and up to and including £37,425 will receive a partial grant.

Students who are eligible for a Maintenance Grant will also be able to apply for a maintenance loan, but the amount of loan they are eligible to receive will be reduced by £1 for every £1 of Maintenance Grant they receive up to £1,200.

7.4 To introduce the Special Support Grant

From 2006/07, a means-tested Special Support Grant of up to £2,700 will be introduced for new system students from lower income households who have an underlying eligibility to Income Support at the beginning of the academic year they are applying for support, or who may be eligible for Housing Benefit during the

summer vacation.

The Special Support Grant will be paid to help with the costs of books, equipment, travel and childcare. Students that are eligible for the Special Support Grant will not be eligible for the Maintenance Grant.

The amount of Special Support Grant payable will be assessed in the same way as for the Maintenance Grant. However, students who receive the Special Support Grant will not have any of their maintenance loan reduced.

7.5 To raise the age limit for students taking out maintenance loans

Maintenance loans are currently available to eligible students aged under 50 on the first day of their course (or under 55 where they intend to enter employment or another higher education course after they have left their course).

A working group was set up by the Department for Education and Skills to review age limits on student loans from 2006/07 following concerns raised during the passage of the Higher Education Act 2004 through Parliament. As a result, from 2006/07 the age limit for the maintenance loan will be raised to 60 for all students. Students will need to be aged under 60 on the first day of their course to qualify for a maintenance loan.

7.6 To introduce more flexible previous study provisions which target resources more effectively

From 2006/07, the general rule is that student support will be available for the length of the course plus one additional year if needed, less any years of previous Higher Education support. Support will be extended by a year each time a student has to repeat a year of their course if their local education authority decides that the repeat is due to compelling personal reasons.

The new previous study rules will apply to fee grants, the Higher Education Grant and fee contribution loans for old system students. They will apply to Maintenance and Special Support Grants, and the fee loans for new system students.

The majority of students who have gained an honours degree in the UK, will not be eligible for further support. However, honours degree graduates taking certain courses leading to a professional qualification e.g. medicine and other similar fields, will remain eligible for a maintenance loan.

The new previous study rules are intended to be more flexible by giving students greater scope to complete their degrees. It is also intended that by targeting resources more effectively at those students who have not had a chance to gain a Higher Education qualification, the changes will widen participation and make the system easier to administer.

7.7 To simplify the arrangements for supporting young students with children

Currently, unmarried students under the age of 25 whose eldest or only child is under the age of three are normally considered dependent on their own parents. For these students, the income of their parents will be taken into account when the student applies for HE support.

From 2006/07, all students who have the care of a child / children under 18 will be regarded as independent of their own parents, regardless of their age. As a result the income of the student's parents will not be assessed when an application for HE support is made.

This change will potentially make young students with children eligible for higher levels of support. It will also simplify means-testing arrangements and remove the need to collect information on parental income.

7.8 To harmonise the means testing arrangements for all new system students

From 2006/07, all new system students (including single independent students) will have their household income assessed in the same way for the purposes of student support. Such students whose household income exceeds £37,900 will be expected to contribute towards their living costs. This change will simplify the means-testing arrangements for these students.

Existing means testing arrangements will continue in 2006/07 for old system single independent students who will be expected to contribute towards their fees and living costs at a lower household income than other old system students.

7.9 To bring the student support arrangements for students at private HEIs in line with those at publicly funded HEIs

All students starting designated courses at private HEIs on or after 1st September 2006 will be eligible for the same package of support as new system students starting courses at publicly funded HEIs.

Students continuing on designated courses at private HEIs started prior to 1st September 2006 will continue to be eligible for a non-means tested fee grant.

7.10 To introduce statutory attendance checks for full-time students

From 2006/07, where a student is making his first application for a course, the HEI is required under the Regulations to confirm that the student has presented himself at the institution and has started to attend the course before loans and /or grants for living and other costs can be paid. If a disabled student is undertaking a course but not attending in person (regardless of the reason for not attending in person), the HEI is required to confirm that he has enrolled for the academic year. Where any student makes a subsequent application, the HEI is required to confirm that he has enrolled for that academic year.

While HEIs currently carry out the checks outlined above as part of processes that are in place for releasing payments to students, there is no statutory provision to enforce this. These Regulations put this power in place.

7.11 To allow students who are unable to attend their course as a result of their disability to access the full package of support.

From 1st September 2006, students who are undertaking a full-time course but are unable to attend the course for a reason related to their disability will be eligible to apply for the full-time student support package with the exception of the travel grant. (Students who are eligible for Disabled Students Allowances can apply for travel costs they have to pay to attend their institution as a result of their disability.)

7.12 To remove the Care Leavers' Grant

Currently, students who left care before 1st October 2001 and are under 21 at the start of their course can apply for a Care Leavers' Grant which provides up to £100 a week to help with accommodation costs in the long vacation.

From 1st September 2006, the Care Leavers' Grant will no longer be available to students in Higher Education as it is a redundant provision. This is because students who left care on or after the 1st October 2001 will be entitled to support in the long vacation from their Local Education Authority. The very low number of students who left care before 1st October 2001 and are under the age of 21 at the start of their course will be considered as a priority group for financial support from the Access to Learning Fund, which students can apply for through their Higher Education Institution.

7.13 New support arrangements for students in Wales

Following devolution of student support to the Welsh Assembly, this instrument no longer provides for support for students assessed as ordinarily resident in Wales at the beginning of their Higher Education course.

7.14 To introduce changes to support for part-time students

- *Changes to the fee support system*

There are three maximum rates of part-time fee support depending on a student's intensity of study. The rates are increased from £590 to £750, from £710 to £900 and from £885 to £1,125. This change will apply to both new and existing students

- *New Arrangements for English domiciled students studying in Devolved Administrations*

From the 2006/07 academic year, part-time students who are English-domiciled and

are physically crossing the border to study in one of the devolved administrations (Wales, Scotland or Northern Ireland) will be eligible for support for fees.

7.15 Changes to the eligibility criteria determining student support including the implementation of Directive 2004/38/EC (see Annex A for the transposition note)

Students must satisfy certain eligibility criteria to be potentially eligible for support towards either their tuition fees only or their tuition fees and maintenance support. These criteria have been revised and include changes made in implementing EU Directive 2004/38 on the rights of EC nationals and their families to move and reside in other Member States. The new criteria are set out in Schedule 1 to the Education (Student Support) Regulations 2006.

The changes introduce new categories of students who may potentially be eligible for support. These include:

- EC nationals and their family members who acquire the right of permanent residence in the UK (after a continuous period of five years residence in the UK) (tuition fee and living costs support);
- Family members of economically inactive EC nationals who have yet to acquire the right of permanent residence (tuition fee support only);
- European Economic Area (EEA) or Swiss self-employed persons and their family members (tuition fee and living costs support);
- Dependent direct relatives in the ascending line of EEA or Swiss migrant workers (tuition fee and living costs support);
- "Frontier" workers and "frontier" self-employed persons (tuition fee and living costs support);
- Children of Swiss nationals/spouses or civil partners of Swiss nationals (tuition fee and maintenance support).

Changes also enable payments of support where students acquire the right of permanent residence or become an EEA or Swiss: worker; self-employed person; frontier worker or frontier self-employed person or are a family member of such a person or the child of a Swiss national during the course of an academic year.

Scrutiny History for Directive 2004/38/EU

The Commission's draft of the Directive (reference 11807/05 (24795)) was deposited in Parliament on 1 August 2003. The Parliamentary Under-Secretary of State at the Home Office sent the Scrutiny Committees an Explanatory Memorandum on 28 August 2003. The Commons Scrutiny Committee regarded the document as

politically important and cleared it from scrutiny (see HC 63-xxxii (2002-03), paragraph 30 (17 September 2003)).

7.16 Consultation

There is no statutory requirement to consult on these Regulations. However, the following consultation was undertaken.

- Full-time policy changes

DfES held a number of workshops with key stakeholders in the Higher Education sector during Spring and Summer 2005 to give them an overview of full-time policy changes for 2006 and also provide them with an opportunity to give feedback. Through this, DfES officials were able to address concerns and answer questions from Student Finance Officers in particular those resulting from workshops held at the annual Local Education Authority (LEA) Conference.

When deciding how the new previous study rules should operate, the DfES consulted all LEAs and other external stakeholders, including student interest groups, on the proposed changes. It was originally intended to apply the new previous study rules to the whole student support package available to new students (with the exception of supplementary grants). However, following concerns raised by stakeholders during the consultation, it was agreed that students that have a UK honours degree will remain eligible for a maintenance loan as long as they are studying certain courses leading to professional qualifications such as medicine or dentistry.

As part of a two stage quality review process in Autumn 2005 for full-time policy changes, the draft 2006 Regulations were sent to stakeholders in the HE sector such as the National Union of Students (NUS), the National Association of Student Money Advisers (NASMA), Higher Education Institutions (HEIs), the Student Loans Company (SLC) and Local Education Authorities (LEAs). In response to comments from NASMA, the categories of students who qualify for the Special Support Grant were broadened.

As part of the second phase of the quality review process, representatives from NASMA and the NUS were invited to a meeting with DfES officials, so that the new arrangements for previous study could be explained to them in more detail and they could have the chance to comment.

- Part-time policy changes

A number of meetings have been held at both Ministerial and official level with key stakeholders in the part-time sector, including the Open University and Birkbeck College, London. DfES officials have also been in regular contact with their counterparts within the Devolved Administrations. These conversations provided an opportunity for our partners in the part-time sector and the Devolved Administrations

to feed views into the Department, and these were taken into consideration when determining part time policy.

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. Contact

Mark Williams at the Department for Education and Skills Tel: 020 7925 6441 or email: mark.williams@dfes.gsi.gov.uk can answer any queries regarding the Instrument.

TRANSPOSITION NOTE

DIRECTIVE 2004/38/EC OF 29 APRIL 2004 ON THE RIGHT OF CITIZENS OF THE UNION AND THEIR FAMILY MEMBERS TO MOVE AND RESIDE FREELY WITHIN THE TERRITORY OF THE MEMBER STATES

Directive 2004/38/EC lays down the conditions governing the exercise of the right of free movement within the territory of the Member States by Union citizens and their family members, the right of permanent residence in the territory of the Member States for Union citizens and their family members and the limits placed on these rights on grounds of public policy, public security or public health.

The Home Office has lead responsibility for implementation of Directive 2004/38/EC. The Department for Education and Skills has made the necessary transposition arrangements in respect of student support. This is confined to Article 24 of the Directive.

The Education (Student Support) Regulations 2006 do what is necessary to implement Article 24 of the Directive in the area of student support for which the Department for Education and Skills has responsibility, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

The following table sets out the main objectives of Article 24 of the Directive in the area of student support for which the Department for Education and Skills has responsibility and how these have been implemented in the Education (Student Support) Regulations 2006.

Article	Objectives	Implementation	Responsibility
Article 24(1) and (2)	Derogation from Article 24(1). A Member State is not obliged to grant maintenance aid for studies prior to the acquisition of the right of permanent residence to persons other than workers, self-employed persons, persons who retain such status and members of their families.	As part of the Education (Student Support) Regulations 2006. Schedule 1 to the Regulations sets out the categories of students who are potentially eligible for support. The main body of the Regulations then sets out the particular types of grants and loans available and the conditions that a student must fulfil in order to qualify for those grants and loans.	Secretary of State

		<p>The following categories of person have been added to Schedule 1 to the Regulations:</p> <ul style="list-style-type: none">(a) persons with a permanent right of residence in the United Kingdom (paragraph 3);(b) workers, self-employed persons, persons who have retained their status as such and their family members (paragraph 6); and(c) EC nationals and their family members (paragraph 9) <p>Persons mentioned in paragraphs 3, 6 and 9 may qualify for tuition fee support in accordance with Part 4 of the Regulations (full-time students) or Part 10 of the Regulations (part-time students).</p> <p>In addition, persons mentioned in paragraphs 3 and 6 may qualify for grants for living costs in accordance with Part 5 and loans for living costs in accordance with Part 6 of the Regulations (full-time students), living costs support in accordance with Part 10 of the Regulations (part-time students) or living costs support in accordance with Part 11 of the Regulations (postgraduate students)</p>	
--	--	---	--