

## EXPLANATORY MEMORANDUM TO

### THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) REGULATIONS 2015

2015 No. 1951

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Education (Student Support) Regulations 2011 which prescribe the amount of support for tuition, living and other costs for students taking designated higher education courses.

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

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

- 3.1 This instrument corrects two errors from earlier regulations. In accordance with SIP paragraph 3.4.13, the Department has discussed whether to use the free issue procedure with the SI Registrar. The SI Registrar is content that the free issue procedure should not be applied in this instance, because the Education (Student Support) (Amendment) Regulations 2015 have not been drafted to correct the earlier errors: the corrections feature minimally in lengthy amending Regulations which would have been made in any event.

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

- 3.2 The 2011 Regulations and this entire instrument apply only to England.
- 3.3 The instrument applies only to England because it applies only to the provision of support to higher education students in England (see regulation 1(2) of the Education (Student Support) Regulations 2011). The instrument does not have minor or consequential effects outside England but deletes obsolete transitional provisions relating to arrangements for students who were ordinarily resident in Wales at the start of their course before the 2006/07 academic year.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 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.
- 3.5 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 that 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 amends the Education (Student Support) Regulations 2011 (“the 2011 Regulations” (S.I. 2011/ 1986)). The 2011 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. Student Support Regulations are made annually by the Secretary of State to provide this support to eligible students in connection with their undertaking designated higher education courses.
- 4.2 This instrument introduces a revised living costs support package for most new students starting to attend full-time courses in respect of an academic year beginning on or after 1 September 2016. These students, known as 2016 cohort students, will no longer qualify for maintenance grant or special support grant, but will instead qualify for an increased loan for living costs in 2016/17. This instrument increases the maximum loan for living costs for full-time students continuing to attend their courses in 2016/17. It also increases the maximum long courses loan and reduced rate loan for living costs for new and continuing full-time students in 2016/17. This instrument amends the 2011 Regulations to increase maximum fee loans for students who started their courses before 1 September 2012 at institutions in Northern Ireland.
- 4.3 This instrument also contains provisions relating to the registration of students with awarding bodies; to the entitlement to childcare grant; allowing for the use of electronic signatures in Student Loan Company contract documentation and to the recovery of overpayments.
- 4.4 This instrument makes some minor technical changes and a correction to the 2011 Regulations which will apply on the date that these amendment regulations come into force.

#### **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**

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 Creating a new 2016 cohort definition to differentiate between those full-time students who start their courses in the 2016/17 academic year and those who started their courses in an earlier academic year.

- 7.1.1 Full-time students attending their courses qualify for a living costs package which depends on when they started their higher education courses. The 2011 Regulations define these groups of full-time students as ‘cohorts’.
- 7.1.2 This instrument amends the 2011 Regulations by introducing a new ‘2016 cohort’ for new students starting to attend full-time courses in respect of an academic year beginning on or after 1 September 2016. 2016 cohort students will qualify for the new living costs support package being introduced for 2016/17. These reforms are being introduced as part of a series of Higher Education measures supporting wider Government plans to reduce the deficit, maintain the financial sustainability of the Higher Education sector and ensure that access to finance is not a barrier to participation in higher education.
- 7.1.3 Full-time students who are not defined as 2016 cohort students in the 2016/17 academic year, current system students including 2008, 2009 or 2012 cohort students, will continue to qualify for the full-time living costs package in 2016/17 that applied during the 2015/16 academic year.

#### 7.2 Introducing a new living costs support package for 2016 cohort students.

- 7.2.1 New full-time students starting to attend their courses in the 2016/17 academic year ‘2016 cohort students’, will not qualify for a means-tested maintenance grant. They will instead qualify for an increased loan for living costs, which for most 2016 cohort students on household incomes of £25,000 or less will be 10.3% higher than the maximum maintenance grant and loan for living costs package available for low income students in the 2015/16 academic year.
- 7.2.2 This instrument amends the 2011 Regulations so that the maximum loan for living costs in 2016/17 for most 2016 cohort students living away from home and studying outside London will be £8,200; for students living away from home and studying in London, £10,702; for students living in the parental home, £6,904 and for students studying overseas as part of a UK course, £9,391.
- 7.2.3 For household incomes above £25,000, the loan for living costs for most 2016 cohort students will be means-tested down to a minimum non-means tested loan for living costs.
- 7.2.4 The minimum non means-tested loan for living costs in 2016/17 for 2016 cohort students will be increased by forecast inflation, 2.41%, when compared with the minimum loan for living costs for 2012 cohort students in the 2015/16 academic year. The minimum loan for living costs for 2016 cohort students living away from home and studying outside London will be £3,821 at household incomes of £62,180 or more; for students living away from home and studying in London, £5,330 at household incomes of £69,803 or more; for students living in the parental home, £3,039 at household incomes of £58,201 or more; for students studying overseas as part of a UK course, £4,540 at household incomes of £65,797 or more.

- 7.3 *Introducing a new living costs support package for 2016 cohort students who qualify for benefits.*
- 7.3.1 The 2011 Regulations stipulate that full-time students on household incomes of £42,620 or less who are eligible for certain benefits qualify for a means-tested special support grant instead of a maintenance grant in the 2015/16 academic year. Full-time students who qualify for special support grant are also entitled to more loan for living costs than other full-time students in 2015/16.
- 7.3.2 New full-time students who are eligible for benefits and are starting to attend their course in the 2016/17 academic year '2016 cohort students', will not qualify for special support grant in 2016/17. They will instead qualify for an increased loan for living costs which for 2016 cohort students eligible for benefits on household incomes of £25,000 or less will be 2.41% higher (forecast inflation) than the maximum special support grant and loan package available for low income students who are eligible for benefits in the 2015/16 academic year.
- 7.3.3 This instrument amends the 2011 Regulations so that the maximum loan for living costs in 2016/17 for 2016 cohort students who are eligible for benefits and are living away from home and studying outside London will be £9,347; for students living away from home and studying in London, £11,671; for students living in the parental home, £8,144 and for students studying overseas as part of a UK course, £10,453.
- 7.3.4 For household incomes above £25,000, the loan for living costs for 2016 cohort students who are eligible for benefits will be means-tested down to a minimum non-means tested loan for living costs.
- 7.3.5 The minimum non means-tested loan for living costs in 2016/17 for 2016 cohort students who are eligible for benefits will be increased by forecast inflation, 2.41%, when compared with the minimum loan for living costs for 2012 cohort students who are eligible for benefits in the 2015/16 academic year. The minimum loan for living costs for 2016 cohort students who are eligible for benefits who are living away from home and studying outside London will be £3,821 at household incomes of £62,182 or more; for students living away from home and studying in London, £5,330 at household incomes of £69,805 or more; for students living in the parental home, £3,039 at household incomes of £58,209 or more; for students studying overseas as part of a UK course, £4,540 at household incomes of £65,801 or more.
- 7.3.6 The loan for living costs for 2016 cohort students who are eligible for benefits is made up of two separate elements, a maintenance element and a special support element towards the costs of books, equipment, travel and childcare. For 2016 cohort students who are eligible for benefits, the maximum maintenance element for students living away from home and studying outside London will be £5,878; for students living away from home and studying in London, £8,202; for students living in the parental home, £4,675 and for students studying overseas as part of a UK course, £6,984. Students who qualify for more loan for living costs than the maximum maintenance element will receive an additional special support element of loan. 2016 cohort students who are eligible for benefits on household incomes of £25,000 or less, will qualify for the maximum special support element of £3,469 as part of their loan for living costs entitlement.
- 7.3.7 The special support element of the loan for living costs will be disregarded by the Department for Work and Pensions (DWP) as student income when calculating means-tested benefits for students in higher education.

- 7.4 *Introducing a new loan for living costs for 2016 cohort students who are aged 60 or over on the first day of the first academic year of their higher education course.*
- 7.4.1 The 2011 Regulations stipulate that full-time students aged 60 or over on the first day of the first academic year of their higher education course on household incomes of £42,620 or less qualify for special support grant in 2015/16. However, this group of students do not qualify for loans for living costs in 2015/16.
- 7.4.2 New full-time students aged 60 or over on the first day of the first academic year of their higher education course in 2016/17, '2016 cohort students', will not qualify for special support grant in 2016/17. Those students on household incomes of £43,668 or less will instead qualify for a means-tested loan for living costs towards the costs of books, travel, equipment and childcare. Those students who are on household incomes of £25,000 or less will qualify for a maximum loan for living costs of £3,469 in the 2016/17 academic year. The maximum loan will be tapered down to a £50 loan for students with household incomes of £43,668. Students on incomes above £43,668 will not qualify for a loan for living costs.
- 7.4.3 The loan for living costs for students aged 60 or over on the first day of the first academic year of their course will be disregarded by the Department for Work and Pensions (DWP) as student income when calculating means-tested benefits for students in higher education.
- 7.5 *Increasing elements of the student support package for new and continuing full-time students in 2016/17.*
- 7.5.1 Full-time students attending courses that are longer than 30 weeks and three days in length during the academic year qualify for a means-tested long courses loan for each additional week or part week above 30 weeks and three days. Students attending their courses for 45 weeks or more in the academic year qualify for the same amount of long courses loan as students attending for 52 weeks.
- 7.5.2 This instrument amends the 2011 Regulations to increase the maximum long courses loans by forecast inflation, 2.41%, for new and continuing full-time students in 2016/17. For students living away from home and studying outside London, the maximum long courses loan will be £88 a week; for students living away from home and studying in London, £113 a week; for students living in the parental home, £57 a week and for students studying overseas as part of a UK course, £122 a week.
- 7.5.3 Full-time students undertaking a work placement year of a sandwich course do not qualify for the full living costs support package unless they are undertaking an unpaid placement in the public sector, as defined in the 2011 Regulations. Instead, most students undertaking work placement years qualify for a reduced rate, non income assessed loan for living costs.
- 7.5.4 The maximum reduced rate loans for living costs will be increased by forecast inflation, 2.41% for full-time students undertaking a work placement year in 2016/17. For students living away from home and studying outside London, the maximum reduced rate loan for living costs will be £2,483; for students living away from home and studying in London, £3,487; for students living in the parental home, £1,863 and for students studying overseas as part of a UK course, £2,970.
- 7.5.5 These changes aim to maintain the real value of loans for living costs and long courses loans for new and continuing students in the 2016/17 academic year.

- 7.6 *Increasing elements of the student support package for full-time students continuing their courses in 2016/17.*
- 7.6.1 This instrument makes a number of amendments to the 2011 Regulations in respect of living costs support for full-time students continuing to attend their courses in the 2016/17 academic year.
- 7.6.2 The maximum loan for living costs for full-time students entering higher education on or after 1 September 2012 but before 1 August 2016, '2012 cohort students', will be increased by forecast inflation, 2.41% for 2016/17 to £5,878 for students living away from home and studying outside London, £8,202 for students living away from home and studying in London, £4,675 for students living at home and £6,984 for students attending an overseas institution or an overseas period of study or work placement in an Erasmus year.
- 7.6.3 The maximum loan for living costs for eligible full-time students who entered higher education on or after 1 September 2009 but before 1 September 2012, '2009 cohort students', will be increased by 2.41% for 2016/17 to £5,292 for students living away from home and studying outside London, £7,404 for students living away from home and studying in London, £4,102 for students living at home and £6,299 for students studying overseas as part of a UK course.
- 7.6.4 These changes aim to maintain the real value of loans for living costs for full-time students continuing to attend their courses in the 2016/17 academic year.
- 7.6.5 The maximum fee loan for English domiciled full-time students who started their courses before 1 September 2012 who are studying at universities and colleges in Northern Ireland will be increased by 3.19% for 2016/17 to £3,925 in line with an equivalent increase to maximum fees for this group of students in Northern Ireland.
- 7.6.6 This change will ensure that fee loans will cover the full costs of tuition fees for eligible English domiciled full-time students who started their courses before 1 September 2012 who are studying at universities and colleges in Northern Ireland.
- 7.7 *Adding a condition to require higher education institutions to register students with an awarding body before confirming the student is attending or undertaking their course.*
- 7.7.1 The 2011 Regulations currently stipulate that a higher education institution must confirm that a student is attending or undertaking a full-time or part-time course at the start of the first academic year before a payment of fee loan can be made by the SLC to the institution.
- 7.7.2 This instrument amends the 2011 Regulations to require publicly funded institutions, including further education colleges and private institutions that are not awarding bodies to register students with the relevant awarding body at the start of the course before confirming with the SLC that their students are attending or undertaking their full-time or part-time course.
- 7.7.3 Where an institution has its own degree awarding powers and registers a student on a course, it is also registering the student for the award. This instrument amends the 2011 Regulations to require higher education institutions with their own degree awarding powers to register the student on the course at the institution before confirming with the SLC that the student is attending or undertaking their full-time or part-time course.

- 7.7.4 For institutions that have a validation agreement with another institution which has its own degree awarding powers, this instrument amends the 2011 Regulations to require the validation body to have been notified that the student is studying on the course before confirming with the SLC that the student is attending or undertaking their full-time or part-time course.
- 7.7.5 For institutions that franchise a course to another institution, this instrument amends the 2011 Regulations to require the institution to register the student with the awarding body before confirming with the SLC that the student is attending or undertaking their full-time or part-time course.
- 7.7.6 These changes, which are currently included in guidance for Alternative Providers only, have been introduced in order to provide additional protection for all students. This will reduce the risk that students will be funded for their fees by the SLC for a course for which they are not registered or notified and subsequently required to repay their fee loans. These changes will apply for students starting to attend full-time and part-time courses in respect of an academic year beginning on or after 1 September 2016.
- 7.8 *Preventing students receiving childcare grant through the 2011 Regulations where that student or student's partner has made a valid declaration of eligibility under the Childcare Payments Act 2014.*
- 7.8.1 Full time students who are eligible for student support and who have dependent children may apply for childcare grant (CCG) which provides an income assessed contribution of up to 85% of the actual childcare costs subject to a maximum grant of £155.24 a week for one child only or £266.15 per a week for two or more children.
- 7.8.2 The Government is expecting to introduce Tax Free Childcare (TFC) for working families in early 2017. The Government will pay 20% of childcare costs up to a maximum of £10,000 – up to £2,000 for each child up to the age of 12. Both parents must be in work and earning under £150,000. Whilst it is unlikely that many students in higher education will be entitled to TFC, there is a possibility that a small number of full time students on lower household incomes could be double funded through TFC and CCG.
- 7.8.3 This instrument amends the 2011 Regulations to prevent a student from receiving CCG where that student or the student's partner has made a statement that they are eligible for TFC for a three month entitlement period.
- 7.8.4 This change will apply from the date that these amendment regulations come into force.
- 7.9 *Allowing electronic signatures to be used where a student is required to sign a contract for a loan for fees or living costs.*
- 7.9.1 Students applying for fees and living costs support can complete almost all of the application process online. However, all applicants must also currently sign a paper declaration form, which confirms that the student has read and agreed to the terms and conditions of the repayable loan. The SLC is carrying out further work on potential options for introducing electronic signatures to the student application process.
- 7.9.2 The 2011 Regulations explicitly state that information required from a student by the Secretary of State (i.e. the Student Loans Company) can be signed using an electronic signature. However, the 2011 Regulations do not stipulate what type of signature can be used when a student enters into a contract with the Secretary of State for a loan.

- 7.9.3 This instrument amends the 2011 Regulations to make it explicit that a loan contract can be signed by electronic signature. This change will apply from the date that these amendment regulations come into force.
- 7.10 *Changes to recovery of overpayment of grants and loans*
- 7.10.1 This instrument makes a number of amendments to the 2011 Regulations in respect of overpayments of grants and loans for fees and living costs.
- 7.10.2 The language used in the 2011 Regulations in respect of overpayments of grants and loans for fees and living costs is being changed so that the wording is consistent. This instrument amends the 2011 Regulations by removing the word “eligible” so that it is clear that the policy intent is and always has been that any overpayment must be recovered, whether the student was eligible or not for support.
- 7.10.3 Any overpayment, whether it is for grant or loan, should be recovered from the student as soon as possible and while the student continues to study. This policy is unchanged, but the current wording in the 2011 Regulations has led to some confusion. This instrument amends the 2011 Regulations so that overpayments can be recovered from future instalments of either grant or loan. While some overpayments can be subtracted from certain future payments (including if the student returns to study at a later date), recovering directly from the student as soon as possible after the overpayment arises maximises the probability of recovery and ensures value for the taxpayer.
- 7.10.4 Recovery of overpayments whilst a student continues to study may cause difficulties for some students. If a student provides reasonable evidence that recovery would result in hardship for the student, the recovery of the overpayment may be suspended until they have left their course.
- 7.10.5 These changes will apply from the date these amendment regulations come into force.
- 7.11 *Removing obsolete references to students ordinarily resident in Wales.*
- 7.11.1 Most functions covering financial support to students under Section 22 of the Teaching and Higher Education Act 1998 were transferred from the Secretary of State to the Welsh Assembly, under section 44 of the Higher Education Act 2004.
- 7.11.2 The Student Support Regulations were amended for the 2006/07 academic year to make it explicit that students ordinarily resident in Wales at the start of their course who qualified for support under earlier years of the Student Support Regulations no longer qualified for student support for subsequent years of their course in England from 2006/07 onwards.
- 7.11.3 The same exclusion was introduced in 2006/07 for (a) students starting a top up course ‘end-on’ course from 2006/07 onwards who were ordinarily resident in Wales when they started their lower level course before 2006/07 and (b) students who transferred to a course from 2006/07 onwards from a course starting before 2006/07 when the student was ordinarily resident in Wales.
- 7.11.4 The 2011 Regulations make it clear elsewhere that a student must be ordinarily resident in England on the first day of their course in order to qualify for student support in England as an eligible student. This Instrument therefore amends the 2011 Regulations to remove drafting relating to transitional arrangements for students who were ordinarily resident in Wales at the start of their course before the 2006/07 academic year.



- 7.11.5 This change will apply from the date that these amendment regulations come into force.
- 7.12 *Clarifying the rules on funding for students on allied health profession (AHP) courses in Scotland.*
- 7.12.1 Full-time students undertaking an academic year of a course for which a student is eligible to apply for a healthcare bursary or Scottish Healthcare Allowance (a ‘bursary year’) are entitled to a reduced rate non-means tested loan for living costs under the 2011 Regulations. English domiciled students studying on Allied Health Profession (AHP) courses in Scotland have from 2013/14 onwards been entitled to apply for a means-tested Young Students Bursary or if they are classified as independent students, for a means-tested Independent Students Bursary. These bursaries are also available for Scottish domiciled students and have replaced the Scottish Healthcare Bursary.
- 7.12.2 This Instrument amends the 2011 Regulations to make it clear that the new bursaries for AHP courses fall within the definition of the Scottish Healthcare allowance in the 2011 Regulations. This makes it clear that English domiciled students undertaking AHP courses in Scotland are deemed to be undertaking bursary years and are entitled to a reduced rate non-means tested loan for living costs only for an academic year of their course.
- 7.12.3 This technical change will apply from the date that these amendment regulations come into force.
- 7.13 *Academic years of study on preliminary courses.*
- 7.13.1 Full-time students undertaking an honours degree course after completing a lower level course (a ‘preliminary course’) can apply for a fee loan for their honours degree course. Their entitlement to fee loan takes into account the number of academic years that the student has spent on preliminary courses (excluding years of repeat study due to compelling personal reasons). Academic years of study on preliminary courses include each year that the student has completed and each year that the student began or completed part of the way through the academic year.
- 7.13.2 This Instrument amends the 2011 Regulations to make it clear that entitlement to fee loans will take into account full and part academic years of study on preliminary courses.
- 7.13.3 This technical change will apply from the date that these amendment regulations come into force.

### ***Consolidation***

- 7.14 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 these amendment regulations. However, as part of a quality review process in Summer 2015, the draft amendment regulations were sent to stakeholders in the Higher Education sector such as the Student Loans Company (SLC) and the Higher Education Funding Council for England (HEFCE) to check that the amendment regulations met policy intent.

8.2 An Equality Analysis covering changes to student support for 2016/17 will be published in December 2015, with the laying of these regulations.

## **9. Guidance**

9.1 The proposed changes to student support for the 2016/17 academic year were announced at the Budget on 8 July 2015. The Minister of State announced more detailed proposed changes to student support for 2016/17 in a Written Ministerial Statement to Parliament on 21 July 2015.

9.2 Information setting out these changes was circulated to universities and colleges and other HE stakeholders when the announcements were made. Students, universities, colleges and others will be given information on changes to student support for 2016/17 on GOV.UK and Student Finance England's student and practitioners' websites.

9.3 Guidance materials are being produced by Student Finance England for students intending to apply for full-time and part-time financial support for 2016/17 and these will be available in both hard copy and electronic formats.

9.4 Information on the changes to recovery of overpayment has been developed with SLC and the Devolved Administrations. The changes have also been discussed with representatives from the Higher Education Sector and their views sought on how the changes should be transmitted to students who have an overpayment.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

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 The 2011 Regulations will be kept under review and in particular we will be monitoring the views of stakeholders. We will also be monitoring the number of students who receive grants and loans. This information is published in the Student Loans Company's Statistical First Releases.

## **13. Contact**

13.1 Mark Williams at the Department for Business, Innovation and Skills Tel: 020 7215 1546 or email: mark.williams@bis.gsi.gov.uk can answer any queries regarding the instrument.