

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT)**  
**REGULATIONS 2012**

**2012 No. 1653**

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.

**2. Purpose of the instrument**

2.1 This instrument amends the Education (Student Support) Regulations 2011 which prescribe the amount of support for tuition and living costs for students taking designated higher education courses. The instrument also makes minor amendments to regulations concerning student fees.

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

3.1 None

**4. Legislative Context**

4.1 This instrument amends the following regulations:

- The Education (Student Support) Regulations 2011 (“the Student Support Regulations 2011” (S.I. 2011/ 1986))
- The Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (“the Qualifying Courses and Persons Regulations 2007” (S.I. 2007/778))
- The Education (Fees and Awards)(England) Regulations 2007 (“the Fees and Awards Regulations 2007” (S.I. 2007/779))

4.2 This instrument amends the Student Support Regulations 2011 to increase the maximum maintenance grant and special support grant for full-time students in respect of an academic year beginning on or after 1 September 2013. (An academic year beginning on or after 1 September 2013 is deemed to include courses starting on or after 1 August 2013.) It also increases the maximum loan for tuition for certain students continuing their full-time courses in Northern Ireland and the fee grant and course grant for certain continuing part-time students in respect of an academic year beginning on or after 1 September 2013.

4.3 This instrument also amends provisions in the Student Support Regulations 2011 covering support for students who become eligible for grants and loans part-way through the academic year and for students with dependants. These amendments will apply to new and existing students in respect of the 2013/14 academic year.

4.4 This instrument amends the definition of a qualified teacher in the Student Support Regulations 2011 and the Qualifying Courses and Persons Regulations 2007 for students applying for support for courses starting on or after 1 September 2012. It also adds St Barthélemy to the list of overseas territories in the Qualifying Courses and Persons Regulations 2007 and the Fees and Awards Regulations 2007. These changes will apply to student support arrangements for the 2012/13 academic year.

4.5 This instrument makes some minor technical changes and corrections to the Student Support Regulations 2011, the Qualifying Courses and Persons Regulations 2007 and the Fees and Awards Regulations 2007 which will apply to student support arrangements for the 2012/13 academic year.

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

5.1 The Regulations apply to England.

## **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**

Section 22 of the Teaching and Higher Education Act 1998 makes provision for the Secretary of State to provide financial support for students in higher education. Such financial support is to be provided in accordance with regulations made by the Secretary of State. 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. The following paragraphs set out the changes in more detail:

### 7.1 Uprating elements of the tuition and living costs support packages for new and continuing students in 2013/14.

The maximum maintenance grant for full-time students entering higher education from 1 September 2012 onwards (known as '2012 cohort' students) will be increased by 3.22% for 2013/14 to £3,354 if their household income is £25,000 or less. The maximum maintenance grant and special support grant for full-time students who started their courses before 1 September 2012 will also be increased by 3.22% for 2013/14 to £3,080. Equivalent changes have also been made to the provisions relating to the special support grant.

The maximum loan for tuition for full-time students who started their courses before 1 September 2012 at Northern Irish institutions will be increased by 3.22% for 2013/14 to £3,575, in line with an equivalent increase to maximum tuition fees for this group of students in Northern Ireland.

Maximum fee and course grants for full-time distance learning and part-time students who started their courses before 1 September 2012 will also be increased by 3.22% for 2013/14. Maximum fee grants will be increased to £845, £1,015 or £1,270

depending on the intensity of study on the course. Maximum course grants will be increased to £275.

## 7.2 Changes to the definition of a Qualified Teacher.

Since 1 April 2012, teachers awarded QTLS (Qualified Teacher Learning and Skills) status by the Institute for Learning have been included in the definition of a qualified teacher as a result of Regulations made under Section 132(1) of the Education Act. Qualified teachers are not eligible for tuition loan and maintenance grant support under the Student Support Regulations 2011.

There are certain circumstances, however, where QTLS holders will not have the appropriate experience to teach in schools. These students may need to undertake a further teacher training course, for example, to teach in Primary Schools.

This instrument amends the definition of a qualified teacher in the Student Support Regulations 2011 and the Qualifying Courses and Persons Regulations 2007 to allow QTLS holders who have not achieved the Secretary of State's Teacher Standards to apply for tuition loans and maintenance grants for a further teacher training course starting on or after 1 September 2012.

## 7.3 Support for Students starting Distance Learning Courses in England who subsequently move to Scotland, Wales or Northern Ireland.

The Student Support Regulations 2011 are being amended to make it clear that full and part-time distance learning students living in England who establish eligibility for student support at the start of their course and then move to another part of the UK will continue to receive student support if they continue to undertake the course from there. If a student no longer resides in the UK then their support will cease.

This technical change will apply to new full-time and part-time students undertaking their courses by distance learning who are applying for support for courses starting on or after 1 August 2012.

## 7.4 Changes to the amount of support payable when a student becomes eligible for support during the course of an academic year.

The Student Support Regulations 2011 list eight separate 'events' which can occur during an academic year which would result in a student becoming eligible for support or, where already eligible for tuition loan support, entitled to living cost and targeted support. Where one of these events occurs after the first day of the first academic year of the course, different rules apply concerning the period of eligibility depending on the type of grant or loan that the student becomes entitled to receive.

Currently, a student qualifies for a loan for tuition if they become eligible for support within the first three months of the academic year. Eligibility for maintenance grants and special support grant is linked to tuition loan eligibility and the same rule on the period of eligibility applies to these grants. Students who become eligible for maintenance grant or special support grant as a result of an 'event' occurring within the first 3 months of an academic year are currently entitled to a full year's support.

Different arrangements apply to other grants and loans for living and other costs. A student qualifies for loans for living costs, adult dependants' grant and parents' learning allowance for the academic quarters (which normally correspond to terms) following the date when the student becomes eligible for support. A student qualifies for childcare grant, disabled students' allowance and the grant for travel for the full academic year irrespective of the date they become eligible for support.

This instrument amends the Student Support Regulations 2011 to specify that maintenance grant, special support grant, childcare grant, grants for travel and disabled students' allowances (excluding that for major items of specialist equipment) will be payable in respect of quarters of the academic year as is currently the case for the loan for living costs, adult dependants' grant and parents' learning allowance.

The Student Support Regulations 2011 are also amended so that where one of the events listed occurs during the academic year, maintenance grant, special support grant, childcare grant, grants for travel and disabled students' allowances (excluding that for major items of specialist equipment) will be payable in respect of those academic quarters that begin after the relevant event occurs. Eligibility for major items of specialist equipment will continue to be assessed as an annual entitlement.

The aim of this change is to simplify the system by aligning the period of entitlement across all types of grant for living and other costs to the academic quarters following the date the student becomes eligible for support. Tuition loans will remain payable for the entire year.

These changes will apply to full-time, full-time distance learning, part-time and postgraduate students, becoming eligible for support, or in the case of EU students eligible for tuition fee support only, becoming entitled to living cost and targeted support, in the 2013/14 academic year as a result of an event.

#### 7.5 Using Income from the Prior Financial Year as a basis for the Dependants' Grants Income Assessment.

Eligible full-time students with dependants can apply for additional support in the form of adult dependants' grant, childcare grant or parents' learning allowance. Applicants for these grants undergo a second separate income assessment, in addition to the income assessment required to determine entitlement for living cost support. This second income assessment is currently based on the student's partner's, child's or adult dependant's estimated net income for the current academic year. A dependants' net income is their income for the academic year in question after income tax and social security contributions have been deducted.

The Student Support Regulations 2011 are being amended so that, for new and existing students in the 2013/14 academic year, the basis for the dependants' grants income assessment changes from net income for dependants in the current academic year to (a) residual income based on taxable income from the prior financial year for partners and adult dependants and (b) net income from the prior financial year for dependent children.

This change will mean that a student will only be required to declare their income once, as part of the main financial assessment, and that same income will be used in

the income assessment for dependants' grants. This change aims to reduce overpayments of grants, and reduce the administrative burden for students by reducing the reliance on estimated income in the targeted support income assessment.

This instrument will also amend the Student Support Regulations 2011 in relation to the dependants' grants income assessment to allow students whose dependants' income reduces by 15% or more from the prior financial year to apply for a current year assessment based on income for the current financial year in line with the main household income assessment.

These changes will apply to new and existing full-time students in the 2013/14 academic year.

#### 7.6 Removing the provision for students and their partners to have existing prior financial obligations taken into account in the Dependants' Grants Income Assessment.

Currently, as part of the dependants' grants income assessment, students or their partners can have certain ongoing prior financial commitments such as rent or mortgage payments taken into account to produce a lower net income. As part of the assessment, students are required to estimate the cost of such ongoing recurring financial obligations for the current year, and provide proof of actual cost at the end of the year.

Once the current recurring financial obligations have been taken into account, a set disregard (known as a threshold) is then deducted from the net household income in line with family circumstances. Different thresholds apply for students with no children, a couple with one child, a couple with two or more children, a lone parent with one child, a lone parent with two or more children.

The Student Support Regulations 2011 are being amended to (i) remove the facility to declare current recurring financial commitments from the dependants' grants income assessment for new students and (ii) to increase the disregard thresholds which are applied for new students to mitigate against any consequent reduction in the amount of adult dependants' grant, childcare grant or parents' learning allowance to which a student would be entitled under the new arrangements. The categories of disregard will not change.

These changes will simplify the targeted support application process, with the aim of reducing overpayments and significantly reducing the evidential burden on students. These changes will apply to new full-time students starting their courses on or after 1 August 2013.

#### 7.7 Reducing the maximum amount of childcare grant for students who have applied for support without a named childcare provider.

The Student Support Regulations 2011 currently allow students with dependent children to apply for a childcare grant. This provides an income assessed contribution of up to 85% of the actual childcare costs charged up to a maximum prescribed amount of £148.75 a week for one dependant child or up to £255 a week for two or more dependant children.

Childcare grant is payable in advance, and students are required to provide an estimate of the cost of their childcare, alongside estimates of their income and expenditure. These estimates are later reconciled against actual amounts. Students may overestimate the cost of, or their need for, childcare, and this can lead to overpayments of childcare grant. Students are permitted to make an initial application without specifying a named childcare provider. Students who have not identified their child care provider may find it particularly difficult to estimate cost.

The Student Support Regulations 2011 are being amended by this instrument to apply a lower limit to the amount of childcare grant payable to students who have not identified a childcare provider. The lower limit will be £115 a week or 85% of actual costs, whichever is the lower and will be limited to one quarter (term) of the academic year.

The aim of this change is to reduce the number of overpayments of childcare grant and consequently to reduce the number of students required to repay overpayments of grant whilst they are still studying. Overpayments and their subsequent recovery can have an adverse impact on students which may lead to hardship or withdrawal from their studies.

The change will apply to all new and continuing full-time students who apply for childcare grant in 2013/14 or later. Students receiving the lower rate of grant, due to not identifying a child care provider, will have their application reassessed once the provider details are supplied.

#### 7.8 Interpretation of 'ordinarily resident'.

'Ordinarily resident' is not currently defined in the Student Support Regulations 2011 and it is implicit that the term should be interpreted to only include lawful residence. This interpretation is being challenged however and it is claimed that lawful residence is not required and actual residence is sufficient.

For the avoidance of doubt, this instrument amends the Student Support Regulations 2011, the Qualifying Courses and Persons Regulations 2007 and the Fees and Awards Regulations 2007 to make it clear that 'ordinarily resident' means lawfully resident. These technical changes will apply to all students starting or continuing courses on or after 1 August 2012.

#### 7.9 Changes to the definition of a 'parent' in relation to residence.

Schedule 1 to the Student Support Regulations 2011, and the Fees and Awards Regulations 2007 identifies different categories of students who can be charged 'home' or 'regulated' fees and who are eligible for student support. This includes the children of certain categories of students. 'Parent' is also defined within the schedules to the above regulations.

An amendment is being made to the interpretation of 'parent' in the Student Support Regulations 2011 and the Fees and Awards Regulations 2007 to make it clear that only natural parents and those who are legally responsible for a "child" will be treated

as “parents” for the purposes of the regulations. This technical change will apply to all students starting or continuing courses on or after 1 August 2012.

#### 7.10 Removal of the residence requirement for non-EU family members of EU nationals in relation to regulated fees.

Students who are (i) not defined as qualifying persons, or (ii) defined as qualifying persons but are not studying on qualifying courses, are not subject to regulated fees and can be charged a fee of any amount. Categories of students defined as qualifying persons who are subject to regulated fees are set out in the Schedule to the Qualifying Courses and Persons Regulations 2007.

Following representation to BIS on the free movement of EU nationals and their family members, BIS agreed that, in relation to regulated fees, non-EU family members of EU nationals would no longer be required to satisfy a three year residency requirement, if the EU nationals from whom they derived their rights satisfied this requirement. This change removes any possibility of indirect discrimination against non-EU family members of EU nationals. We are amending the Qualifying Courses and Persons Regulations 2007 to give effect to this change and ensure our policy intent is fully reflected in regulations. This technical change will apply to all students starting or continuing courses on or after 1 August 2012.

The amendment does not apply to non-EU family members of UK nationals, in cases where the UK national has not exercised a right to freedom of movement under EU law. In these circumstances, family members of UK nationals will continue to be required to satisfy the existing three year ordinary residence requirement.

#### 7.11 Changes to the list of Overseas Territories.

On the 1 January 2012, the status of St Barthélemy changed from one of the "outermost regions" of the EU to an overseas territory of France. This instrument will add St Barthélemy to the list of overseas territories in the Qualifying Courses and Persons Regulations 2007 and the Fees and Awards Regulations 2007.

The amendment ensures that eligible students from St Barthélemy will continue to fall within Schedule 1 to the Fees and Awards Regulations 2007 and the Schedule to the Qualifying Courses and Persons Regulations 2007. This means that they will continue to be subject to maximum fee caps set by regulations under the Higher Education Act, 2004, and will benefit from home fee status.

This change will apply to all students starting or continuing courses on or after 1 August 2012.

## **8. Consultation outcome**

8.1 There is no statutory requirement to consult on these Regulations.

However, as part of a quality review process in Spring 2012, the draft 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), Universities

UK (UUK), GuildHE, the Student Loans Company (SLC) and the Higher Education Funding Council for England (HEFCE) to check that the Regulations met policy intent.

Changes relating to dependants' grants in this instrument were developed in collaboration with NUS, NASMA and AMOSSHE, the Student Services Association. Stakeholder engagement was also carried out with the HE Sector on changes to the amount of support payable when a student becomes eligible for support during the course of an academic year.

## **9. Guidance**

9.1 The Minister of State announced the broad changes to student support for the 2013/14 Academic Year in a Written Statement to Parliament on 8 March 2012 and the arrangements were circulated to institutions and the HE sector at that time. Students, prospective students, institutions and others will be given detailed information about the 2013/14 student support package through the Student Finance Tour and also through information provided on directgov (and subsequently the gov.uk website). Further guidance materials will be produced by the Student Loans Company for those intending to apply for full-time and part-time financial support for 2013/14 and these will be available in both hard copy and electronic formats.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

10.2 The impact on the public sector is minimal.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The 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](mailto:mark.williams@bis.gsi.gov.uk) can answer any queries regarding the instrument.