

EXPLANATORY MEMORANDUM TO THE

EDUCATION (STUDENT SUPPORT) (NO. 2) REGULATIONS 2002 (AMENDMENT) (NO. 4) REGULATIONS 2004

2004 No.2598

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”) as amended, 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. ensure that the income of a student’s step-parent or a student’s natural parent’s cohabiting opposite sex partner is not included in the assessment of the household income if a student was already attending a course of higher education before 1st September 2004 but transferred to a new course beginning on or after that date; and
- ii. provide for a reassessment of household income if a student’s step-parent or spouse leaves the household during the course of the academic year.

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

None.

4. Legislative Background

This instrument is being made, in order to ensure that the policy intent regarding the assessment of a student’s household income, set out in paragraph 7, is correctly reflected in the Regulations.

The 2002 Regulations 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 designated higher education courses.

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).
- The Education (Student Support) (No. 2) Regulations 2002 (Amendment) (No.3) Regulations 2004 (S.I.2004/2041).

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister for Higher Education, Dr. Kim Howells, 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. 4) Regulations 2004 are compatible with the Convention rights.”

7. Policy background

Government policy is that for students entering higher education in the 2004/05 academic year, (that is, “new eligible students”), the assessment of the student’s household income should include the income of a student’s step-parent, or a parent’s co-habiting opposite sex partner (that is, the person with whom the parent lives as if they were married). However, the Regulations currently define, with a narrow exemption, new eligible students as those students starting courses on or after 1st September 2004. This means that a student who had begun a course of higher education before 1st September 2004 and who transferred from that course to one starting on or after that date would also be liable for a step-parent or cohabiting opposite sex partner contribution. The amendment to paragraph 1(g) of Schedule 3 to the Regulations will bring them into line with Government policy.

Also, Government policy is that where a student’s parents cease to live together during the course of an academic year, the student’s Local Education Authority should decide from which parent it would be most appropriate to seek a contribution, and reassess the household income accordingly. It is also the Government’s policy that the same should happen in cases where a student’s natural parent ceases to live with the student’s step-parent or cohabiting opposite sex partner. However, the 2002 Regulations currently provide that the income of a student’s step-parent should continue to be included in the household income assessment for as long the step-parent remains married to the natural parent, even if they have ceased to live together.

Government policy is also that where a student and his partner (that is, his spouse or cohabiting opposite sex partner) cease to live together the partner's income should no longer be taken into account and the household income reassessed. However, the 2002 Regulations currently require the student's spouse's income to be taken into account in the household income assessment for as long as they remain legally married, even if they have ceased to live together.

The amendments to paragraphs 4 and 5 of Schedule 3 to the Regulations will ensure that the income of a step-parent is not taken into account in circumstances where the income of both natural parents is not, and that the income of a student's partner is not taken into account when they have ceased to live together.

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

Cliff Woods at the Department for Education and Skills Tel: 0207 925 5353 or e-mail: cliff.woods@dfes.gsi.gov.uk can answer any queries regarding this instrument.