

**EXPLANATORY MEMORANDUM TO THE  
EDUCATION (STUDENT SUPPORT) (AMENDMENT) REGULATIONS 2005**

**2005 No. 1341**

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, and to the Education (Student Support) Regulations 2005 (“the 2005 Regulations”). These Regulations provide for support for students taking designated higher education courses and for treatment of student loans in insolvency. The 2002 Regulations apply to the provision of support to students in relation to academic years beginning on or after 1st September 2003 but before 1st September 2005 and the 2005 Regulations apply in respect of academic years beginning on or after 1st September 2005.

The effect of the amendments is to create a new category of students who have become eligible for grants and loans towards their living costs following the European Court of Justice judgment in the case of Bidar (case C-209/03).

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 regarding assistance to EU nationals and their children who have satisfied a residential requirement in the UK and Islands implements the rulings made by the ECJ judgment in the case of Bidar, and reflects them correctly 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.

Previous relevant amendments to the 2002 Regulations are:

- the Education (Student Fees and Support) (Switzerland) Regulations 2003 (S.I.

2003/3280), and

- the Education (Student Support) (No.2) Regulations 2002 (Amendment) Regulations 2004 (S.I.2004/161).

The 2005 Regulations were made under the same sections of the Teaching and Higher Education Act 1998. There have been no previous amendments.

## **5. Extent**

This instrument applies to England and Wales.

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

No statement is required.

## **7. Policy background**

7.1. Government policy has been that in order to be eligible for higher education student support in England and Wales, a student must be able to satisfy three requirements relating to residence and immigration status on the first day of the first academic year of his or her course (although there are some exceptions to that rule). On that date, the student must:

- (a) have been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date, other than wholly or mainly for the purpose of receiving full-time education;
- (b) be ordinarily resident in England and Wales (ordinary residence has been defined in the courts as habitual and normal residence from choice); and
- (c) be settled in the United Kingdom under the terms of the Immigration Act 1971 (1971 c.,77 as amended). That is to say ordinarily resident without being subject to any restriction on the period for which he or she may stay.

7.2. Also European Union (EU) nationals and their children are charged fees at the lower “home” rate if they have been ordinarily resident within the European Economic Area or Switzerland for the three years preceding the first day of the first academic year of their course; such students may apply for the same income assessed assistance towards these tuition fees as UK-domiciled students. However, only those students who qualify to be treated as EEA or Swiss migrant workers, or who have settled status in the UK and have satisfied the requirement that they have been ordinarily resident in the UK for the three years prior to the start of their course have been eligible for grants and loans towards their living costs as well.

7.3. The ECJ judgment in the case of Bidar has ruled that:

- (i) grants and loans towards living costs now fall within the scope of the EC Treaty, which prohibits discrimination on the grounds of nationality;
- (ii) the settled status requirement is incompatible with EC law and should not

apply to non-UK EU nationals; and

(iii) the requirement that residence in the UK should not be wholly or mainly for the purposes of receiving full-time education should also not apply to non-UK EU nationals.

7.4 The addition of a new paragraph to Schedule 1 to the 2002 Regulations and Schedule 2 to the 2005 Regulations respectively creates a new category of student who, from academic year 2004/05 onwards, may be eligible to receive living cost support through grants and loans. Only non-UK EU nationals and their children who have satisfied the three year residence requirement in the UK and Islands prior to the start of their course will benefit from these amendments. The amendment to regulation 6(2) of the 2002 Regulations also provides that those students who now wish to apply for living costs support in respect of the 2004/05 academic year must do so by the date specified.

## **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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