

EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) (NO.2) REGULATIONS 2002 (AMENDMENT) REGULATIONS 2005

2005 No.5

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 amends the Education (Student Support) (No. 2) Regulations 2002 (“the 2002 Regulations”), which provide for support for students taking designated higher education courses and for treatment of student loans in insolvency. The effect of the amendment is to prevent income contingent student loans being written off on discharge from bankruptcy in Northern Ireland, irrespective of when the loan was received.

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

The territorial suffix reflects the fact that the instrument has effect in Northern Ireland only. It has been agreed with the Registrar at Her Majesty’s Stationery Office that this is the correct suffix.

4. **Legislative Background**

This instrument is made under new powers created by section 42 of the Higher Education Act 2004, which came into force on 1 July 2004. The instrument amends Regulation 39(2) of the 2002 Regulations to ensure that income contingent loans are protected from the effects of bankruptcy proceedings in Northern Ireland, so that liability to repay the loan continues after discharge from bankruptcy, irrespective of when the loan is received. This closes a loophole which allowed some income contingent repayment student loans to be treated as bankruptcy debts and therefore written off on discharge from bankruptcy. Regulation 39(1) was amended in August 2004, so that income contingent loans are protected from the effects of bankruptcy in England and Wales.

The 2002 Regulations have previously been amended by:

- the Education (Student Support) (No.2) Regulations 2002 (Amendment) Regulations 2003 (S.I.2003/1065),
- the Education (Student Fees and Support) (Switzerland) Regulations 2003 (S.I. 2003/3280),

- 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),
- the Education (Student Support) (No.2) Regulations 2002 (Amendment) (No.4) Regulations 2004(S.I.2004/2598).

It is proposed that the 2002 Regulations be consolidated in 2005.

5. Extent

This instrument applies to Northern Ireland.

6. European Convention on Human Rights

The Minister Of State for Higher Education, 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) Regulations 2005 are compatible with the Convention rights.

7. Policy background

Government policy is and always has been that student loans should not be written off on discharge from bankruptcy. The amendment to regulation 39(2) closes a loophole whereby liability to repay some income contingent student loans was written off on discharge from bankruptcy.

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

Charles Stewart at the Department for Education and Skills Tel: 0207 925 5586 or e-mail: charles.stewart@dfes.gsi.gov.uk