

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT SUPPORT) REGULATIONS 2009 (AMENDMENT)
REGULATIONS 2010**

2010 No. 2546

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Education (Student Support) Regulations 2009 (S.I. 2009/1555) (“the 2009 Regulations”) provide for support for students taking designated higher education courses in respect of an academic year beginning on or after 1st September 2010. These Regulations make amendments to the 2009 Regulations.

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

3.1 None

4. Legislative Context

4.1 Regulations are made annually by the Secretary of State to make provision for the payment of grants and loans to eligible students in connection with their undertaking and/or attendance on designated higher education courses.

4.2 These Regulations have been made to give effect to an increase in the amounts of grants for tuition fees (for those students who are still eligible for such grants) and student loans for tuition fees in line with inflation for the 2011/12 academic year. These Regulations also make amendments to the 2009 Regulations which implement some minor policy and technical changes which apply to student support arrangements for the 2010/11 academic year, from the date the Regulations come into force.

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. These Regulations make provision for fee support available in

relation to an academic year beginning on or after 1st September 2011 in relation to England and amend some of the provisions in the 2009 Regulations.

The policy changes effected by the Regulations are set out below:

7.1 Increase to fee loan maximum amounts

The maximum fee loan, fee contribution loan and fee grant for eligible full-time students will be increased by 2.7% from 1st September 2011.

Maximum amounts and household income thresholds for loans and grants for living costs that are available for eligible full-time students, will be maintained at 2010/11 levels from 1st September 2011. Maximum amounts and, where applicable, household income thresholds for grants for fees, course grants and disabled students' allowances that are available for eligible part-time and full-time distance learning students will be maintained at 2010/11 levels from 1st September 2011. Maximum amounts for disabled students' allowances that are available for postgraduate students will also be maintained at 2010/11 levels from 1st September 2011.

The Schedule to these Regulations set out the new payment rates for fee loans, grants for fees and fee contribution loans that will apply from 1st September 2011.

7.2 Restricting the number of years' fee and Maintenance Grant support for students already holding certain lower level higher education qualifications who wish to "top up" their qualification to an honours degree.

Full-time students holding a lower level higher education ("HE") qualification are eligible to apply for fee and maintenance grant support to 'top up' their qualification to an honours degree. The general policy intention for students holding a lower level qualification is that they should be eligible to apply for a limited number of years' fee and maintenance grant support to achieve a higher level qualification.

The amendment clarifies the policy intention that students holding any lower level HE qualification who wish to 'top-up' to an honours degree should only be eligible to apply for a limited number of years' fee and maintenance grant support rather than for the full duration of their honours course.

These Regulations amend the definition of an 'end-on course' in Regulation 2(1) of the 2009 Regulations to include only courses mentioned in paragraphs 2, 3 or 4 of Schedule 2 or foundation degree courses in the list of courses that are completed and where a qualification is achieved immediately before a student starts a full-time first degree course beginning on or after 1st September 2009.

Also, the definition of a 'preliminary course' in Regulation 2(1) of the 2009 Regulations is amended to include only courses mentioned in paragraphs 2, 3 or 4 of Schedule 2 or overseas equivalents and foundation degrees or overseas equivalents.

An amendment is also made to Regulation 23(2)(b) of the 2009 Regulations to ensure that the provisions in this regulation only apply to courses listed in paragraphs 2, 3 or 4 of Schedule 2 of the 2009 Regulations or overseas equivalents and foundation

degrees or overseas equivalents that are completed and where a qualification is achieved before a student begins their current course on or after 1st September 2009.

These changes will ensure that fee and maintenance grant support for students holding other lower level HE qualifications who wish to receive further support for an honours degree is limited.

7.3 Excluding students who already hold an honours degree from receiving fee and maintenance grant support for a further degree course.

Full-time students studying for a first degree are eligible to apply for fee and maintenance grant support as well as loans for living costs. However, students are not entitled to receive fee and maintenance grant support to pursue a qualification at a level that is equivalent to or lower than one they already hold, referred to as an equivalent or lower qualification (ELQ). For example, the policy intention is to prevent a student who already has a qualification at honours degree level from receiving fee and maintenance grant support to take a second undergraduate degree course.

Regulation 2 (5) of the 2009 Regulations allows the Secretary of State to determine that a qualification is an ELQ where a qualification already held by the student is of a level equivalent to or higher than the level of the qualification to which the current course leads. It is amended to make explicit that this will apply where a student holds a UK honours degree.

7.4 Excluding the Higher Education bursary paid to students leaving care from calculations of income made in assessing entitlement to means-tested grants.

From August 2009, a non-taxable bursary has been payable by local authorities to care leavers who started higher education on or after 1st September 2008. The purpose of the bursary is to ensure that care leavers do not leave university with disproportionately higher debts than their peers and/or drop out before completing their courses. It is also intended to encourage participation by care leavers in higher education.

No amendment is required to the income assessment provisions relating to the full-time student support package as these are based on gross taxable income (which excludes all bursaries). However, the higher education bursary ("HE bursary") is included in the definition of gross household income which is the basis for calculating fee and course grants for students taking part-time and full-time distance learning courses.

An amendment to Regulation 2 (1) defines the Higher Education bursary. Regulation 122(4)(f) of the 2009 Regulations is amended to ensure that the HE bursary is excluded from the household income assessment for full-time distance learning courses. Regulation 139(4)(f) of the 2009 Regulations is amended to ensure that the HE bursary is excluded from the household income assessment for part-time courses. These amendments ensure that the award of the HE bursary does not reduce the amount of support part-time and full-time distance learning students receive.

An amendment is also made to Regulation 42(2) of the 2009 Regulations to add the HE bursary to the items to be disregarded when calculating dependants' net income for the purposes of determining entitlement to dependants' grants.

7.5 Defining a family member in line with Article 2 of EU Directive 2004/38.

Schedule 1 to the 2009 Regulations defines various categories of students and their relatives who may be eligible for elements of the student support package. In relation to European Economic Area (EEA) workers and self-employed persons, Schedule 1 of the 2009 Regulations refers to a child of that person or the child of that person's spouse or civil partner.

An amendment to paragraph 1 to Schedule 1 of the 2009 Regulations is made to replace references to 'a child' with one that refers to direct descendants of the person or of the person's spouse or civil partner who are under the age of 21 or dependent on the person or person's spouse or civil partner.

This change aligns the definition of a family member for EEA workers/ self-employed persons with that for other categories of students in the 2009 Regulations and the definition of a family member in Article 2 of EU Directive 2004/38.

7.6 Amendment to ensure that where a student applies for a current year income assessment, the correct financial year's income is used.

Under the 2009 Regulations, where parental income is assessed to determine a student's entitlement to full-time grants and loans for living costs, the income used is that based on the financial year before the financial year that precedes the start of the academic year (the prior financial year).

However, if the income for the financial year in which the start of the course falls (the current financial year) is not likely to be more than 85% of prior year income, students can ask for the means-test to be based on an estimate of income for the current financial year. Using a "current year assessment" prevents students suffering hardship that might prevent them continuing their studies when household income drops significantly.

Where a current year assessment has been allowed, the financial year assessed becomes the reference year for the assessment of support in the following academic year, with actual, rather than estimated, income now being considered. The income used for the following academic year will therefore be based on the previous financial year.

Schedule 4, paragraphs 5 (3) and (4) of the 2009 Regulations are amended to clarify the policy intention where a student requests a second or subsequent current year assessment in consecutive academic years. The amendment ensures that the previous year's financial income is used for such cases.

7.7 Technical amendment to ensure that full-time students eligible for a means-tested healthcare bursary qualify for a reduced rate loan for living costs only and part-

qualify for student support.

Students who are studying for certain health care qualifications have their tuition fees paid by the Department of Health and are eligible to apply for related bursaries and other support such as disabled students' allowances under Department of Health provisions. Because they have access to this support, their eligibility for student support is reduced. Where a means tested healthcare bursary is available, the policy intention is that students are eligible to apply for a reduced rate loan for living costs, but not for a tuition fee loan or grants for living costs. Where a bursary that is not means tested is available, the policy intention is that students do not qualify for any full-time grants and loans. In addition, students studying for healthcare qualifications do not qualify for support for part-time or full-time distance learning courses or for postgraduate disabled students' allowances.

The 2009 Regulations are amended to clarify the general policy intention that support under the Student Support Regulations is restricted for all students who are eligible to apply for healthcare bursaries, rather than just those who actually receive them.

The definition of a 'bursary year' in Regulation 2(1) of the 2009 Regulations is amended to clarify that all full-time students eligible to apply for a means-tested healthcare bursary or Scottish healthcare allowance, whether or not they receive a payment, can only apply for the reduced rate loan for living costs.

Regulation 5(3)(c) of the 2009 Regulations is amended to clarify that students who are eligible to apply for a non means-tested healthcare bursary or any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, do not qualify for full-time fee loans and grants and loans for living costs.

Regulation 116(3)(a) of the 2009 Regulations is amended to clarify that students who are eligible to apply for healthcare bursaries or any allowances under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, do not qualify for full-time distance learning fee grants, course grants and disabled distance learning students' allowances.

Regulations 116(4), 120(3) and 123(3) of the 2009 Regulations are removed to clarify the policy intention that disabled students who are eligible to apply for a means-tested healthcare bursary do not qualify for full-time distance learning fee grants, course grants and disabled distance learning students' allowances. Previously, Regulation 116(4) created an exception for disabled students receiving means tested bursaries to a general disqualification from eligibility for distance learning support, but Regulations 120(3) then disqualified these students from receiving fee and grants and Regulation 123(3) disqualified them from receiving disabled students allowances. Removing the exceptions delivers the policy intention in a simpler way.

Regulation 133(3)(a) is amended to clarify that students who are eligible to apply for healthcare bursaries or allowances under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, do not qualify for part-time fee grants, course grants and disabled part-time students' allowances.

Regulation 150(4)(a) is amended to clarify that students who are eligible to apply for healthcare bursaries, allowances under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 or certain other allowances, bursaries or awards of similar description do not qualify for postgraduate disabled students' allowances.

7.8 Technical amendment to ensure students undertaking work placements under the European Action Scheme for the Mobility of University Students (ERASMUS) are eligible to apply for the full-time maintenance support package.

ERASMUS is an EU scheme that enables higher education students in 31 European countries to study for part of their degree in another country. During an academic year that is an “Erasmus year”, the policy intention is that these students may study at an institution or attend a work placement in their chosen country.

For clarification purposes, these Regulations amend the 2009 Regulations by referring to students attending a work placement as part of an “Erasmus year”. Therefore “Erasmus year” students on work placements have the same entitlement to support as other ERASMUS students, rather than a reduced entitlement that applies to other students on work placements as part of a sandwich course.

The definition of an “Erasmus year” in Regulation 2(1) of the 2009 Regulations is amended to include periods of work placement attended at a workplace outside the United Kingdom. The definition of a sandwich course in Regulation 2(10) of the 2009 Regulations is amended to exclude an academic year that is an “Erasmus year”.

Regulation 39(2) of the 2009 Regulations is amended to clarify that students on a period of study or work placement as part of an “Erasmus year” are treated as being in attendance on their course for the purpose of qualifying for grants for living and other costs. Regulations 48, 49 and 52 of the 2009 Regulations are amended to clarify that students undertaking ERASMUS work placements are eligible to apply for a grant for travel.

Regulation 83(2) of the 2009 Regulations is amended to clarify that students on a period of study or work placement as part of an “Erasmus year” are treated as being in attendance on their course for the purpose of qualifying for loans for living costs.

Regulation 87(c) of the 2009 Regulations is amended to clarify that students undertaking a work placement as part of an “Erasmus year” are eligible to apply for the overseas rate of loan for living costs.

7.9 Technical amendment to ensure that that only full-time initial teacher training courses beginning on or after 1st September 2010 are designated as full-time courses.

The 2009 Regulations provide that full and part-time undergraduate and postgraduate courses of Initial Teacher Training (“ITT courses”) starting before 1st September 2010 are designated as full-time courses and attract the full-time fee and maintenance support package (with part-time courses attracting a half-rate fee loan and maintenance grant). Regulation 6(1)(b) of the 2009 Regulations is amended to fully clarify this policy and ensure that only full-time teacher training courses starting on or after 1st September 2010 are designated as full-time courses.

7.10 Technical amendment to correct a typographical error

Regulation 36 amends a typographical error in regulation 141 (5)

- ***Consolidation***

7.11 The Department intends to consolidate this instrument with the 2009 Regulations if a full set of Regulations are laid for the 2012/13 academic year.

8. Consultation outcome

8.1 The highly compressed timetable for finalising policy decisions and laying the Regulations has prevented an external review of these Regulations by stakeholders in the Higher Education sector.

9. Guidance

9.1 Changes for 2011/12 will be notified through Departmental and partner bodies' publications and websites. For example, students will be informed of changes through the respective guides to full-time and part-time financial support. These will be available in hard copy and electronic formats. In addition, on-line guidance chapters will be updated to reflect changes for 2011/12.

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

Liz Napier at the Department for Business, Innovation and Skills Tel: 020 7215 6638 or email: liz.napier@bis.gsi.gov.uk can answer any queries regarding the instrument.