

EXPLANATORY MEMORANDUM TO
THE FURTHER EDUCATION LOANS AND THE EDUCATION (STUDENT
SUPPORT) (AMENDMENT) REGULATIONS 2019

2019 No. 983

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 To amend the Further Education Loans Regulations 2012 (S.I. 2012/1818) (“the 2012 Regulations”) by inserting a new power for the Secretary of State to cancel a student’s Advanced Learner Loans liability. The power will enable the Secretary of State to cancel all or part liability, where the specified circumstances apply.
- 2.2 To amend the Education (Student Support) Regulations 2011 (S.I. 2011/1986) (“the Student Support Regulations”) by making certain technical corrections to the formulae for the new dependants’ grants means tests inserted by the Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2019 (S.I. 2019/142). This will ensure that higher education students receive the correct entitlement to dependants’ grants for the 2019/20 academic year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Although this instrument is necessary to introduce the Advanced Learner Loans cancellation power, it also corrects some technical aspects of the means tests applicable to dependants’ grants available to higher education students. As these corrections constitute more than half of the instrument, the Department has agreed with the SI Registrar that it is appropriate to adopt the free issue procedure in respect of the instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation.

6. Legislative Context

- 6.1 This instrument amends the 2012 Regulations. The 2012 Regulations provide for tuition fee support for students undertaking designated further education courses on or after 1st August 2013. These tuition fee loans (known as “Advanced Learner Loans”) are available for students who are aged 19 and over and studying designated qualifications at Level 3 (equivalent to two A-Levels) to Level 6.
- 6.2 This instrument provides for a new regulation 25 to provide the Secretary of State with a power to cancel a student’s liability to repay some or all of a loan when certain circumstances apply. Those circumstances are that an eligible student has taken out a fee loan in relation to a designated further education course at an institution, but the course to which the fee loan relates is no longer available at the institution and the student has applied in writing to the Secretary of State for cancellation. The Secretary of State must have due regard to the student’s circumstances when considering a cancellation. Regulation 25(3) sets out factors that the Secretary of State may take into account when deciding whether it is appropriate to cancel all or part of a loan. An example of the potential application of the power would be when a provider has gone into liquidation and the student is not able to continue a course with a different provider.
- 6.3 This instrument also amends the Student Support Regulations. The Student Support Regulations provide for financial support for English-domiciled students in higher education. This instrument makes technical amendments to the Student Support Regulations in relation to grants for full-time students with adult or child dependants for the 2019/20 academic year.
- 6.4 The Department for Education is making these amendments to the 2012 Regulations and to the Student Support Regulations under the same enabling powers (section 22(1) and (2) and section 42(6) of the Teaching and Higher Education Act 1998).

7. Policy background

What is being done and why?

- 7.1 A number of further education providers exit the market in an orderly fashion. Others exit because of failing to meet Ofsted or Education and Skills Funding Agency (‘ESFA’) standards and funding requirements, or more immediately if subject to unplanned liquidation. In such situations, the ESFA and Student Loans Company (‘SLC’) identify the loans-funded students affected. The ESFA may offer solutions that include teach-out of provision if appropriate. Where it is not, the ESFA supports students with options to move to a different provider, and in the case of students close to their next scheduled repayment due date, the SLC takes necessary steps to defer such repayments until a solution is established.
- 7.2 Evidence shows that it is not always possible for students to continue with a different provider in such circumstances. The cancellation power will provide a means to address such cases, for example, where a student has not had the benefit of an Advanced Learner Loan because of being unable to complete a course to obtain a

qualification. The cancellation power will apply irrespective of whether the student is studying at an independent training provider, a Further Education College or other eligible institution.

- 7.3 The Department for Education currently provides Childcare Grant (CCG) for full-time higher education students attending undergraduate courses in advance of expenditure on prescribed childcare charges. We base entitlement on estimates of childcare costs. This can lead to overpayments and carries a significant risk of fraud. We are introducing a new payment system from 2019/20 that will pay CCG directly to the childcare provider on proof of charges incurred. In order to implement this system we are moving from the current composite dependants' grants income assessment to separate and simpler income assessments.
- 7.4 The Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2019 (S.I. 2019/142) came into force on 21 February 2019. They amend the Student Support Regulations, so that separate income assessments for CCG, Adult Dependants' Grant (ADG) and Parents' Learning Allowance (PLA) can be undertaken. The new dependants' grants means testing will apply to new and continuing full-time students in the 2019/20 academic year.
- 7.5 This instrument makes technical amendments to the formulae for the new dependants' grants means tests to ensure students receive the correct entitlement to CCG, ADG and PLA in 2019/20.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 The Department is not currently considering the feasibility of consolidating the Student Support Regulations.

10. Consultation outcome

- 10.1 There is no statutory requirement to consult on the 2012 Regulations. The government has not conducted a consultation on the cancellation power given the intended impact on students.
- 10.2 There is also no statutory requirement to consult on the Student Support Regulations.

11. Guidance

- 11.1 Department for Education and the SLC will be entering into arrangements regarding the exercise of the new cancellation power in relation to Advanced Learner Loans.
- 11.2 Information setting out higher education student support changes for 2019/20 has been made available to universities, colleges and other higher education stakeholders on Student Finance England's (SFE) practitioners' website. Guidance materials have been produced by SFE for students intending to apply for financial support and all of this remains current. It is not considered necessary to provide additional guidance consequent on the technical amendments in this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector arising from the amendments to the 2012 Regulations is a loss of potential repayment from students affected. The value of cancellations is not easily quantifiable. The Department estimates it may cancel Advanced Learner Loans liabilities with a cumulative issuance value between £1m-£1.5m in 2019-20. This is reflective of historic cases where continuation of study has not been possible. There is no impact on the public sector arising out of these amendments to the Student Support Regulations.
- 12.3 An Impact Assessment has not been prepared for this instrument, either in respect of the amendments to the 2012 Regulations or the Student Support Regulations, because no impact on business is foreseen, given that neither the cancellation power nor the minor amendments to dependants' grants provisions will create a financial or administrative burden on business. An equality analysis has been undertaken in respect of the amendments to the 2012 Regulations. That concludes the power will not in itself have a negative impact on learners with protected characteristics.
- 12.4 An Equality Analysis (EA)¹ covering changes to higher education student support for 2019/20 was published on the .GOV.UK website in February 2019.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that an agreement exists between the Department and HM Treasury to monitor and regularly report to HM Treasury the impacts of the cancellation power.
- 14.2 The regulation does not include a statutory review clause. The Department will also be monitoring the number of students in higher education who receive grants as well as other types of student support. This information is published in the SLC's Statistical First Releases, which are available on the SLC website².Contact

15. Contact

- 15.1 Paul Robinson at the Department for Education. Telephone: 07880 474849 or email: paul.robinson@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Paul Williams, Deputy Director for Student Funding Policy, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Anne Milton MP, Minister of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

¹ A hard copy of this EA is available from Linda Brennan at the Department for Education: Tel: 07391 018296 Email: Linda.Brennan@education.gov.uk

² <https://www.slc.co.uk/official-statistics/full-catalogue-of-official-statistics/student-support-for-higher-education-in-england.aspx>