EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 139

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.

2. Purpose of the instrument

2.1 This instrument amends the Education (Student Support) Regulations 2011 to ensure that students who are currently eligible to receive support for tuition, living and other costs continue to be eligible on the same basis when the United Kingdom (UK) leaves the European Union (EU).

2.2 It also makes corresponding amendments to (i) the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007, (ii) the Education (Fees and Awards) (England) Regulations 2007, (iii) the Education (Student Support) (European University Institute) Regulations 2010, (iv) the Further Education Loans Regulations 2012, (v) the Education (Postgraduate Master's Degree Loans) Regulations 2016, (vi) the Higher Education (Fee Limit Condition) Regulations 2017 and (vii) the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No.2) etc.) Regulations 2018.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 applies to England and Wales.

4.2 The territorial application of this instrument is limited to 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, no statement is required.

6. Legislative Context

6.1 The Education (Student Support) Regulations 2011 and other regulations relating to student finance contain eligibility criteria, pursuant to which certain groups are

eligible for student finance support. These groups include EU nationals, UK nationals who have exercised free movement rights to reside elsewhere in the European Economic Area ("EEA") or Switzerland, and EEA and Swiss migrant workers and their family members. Subject to meeting the relevant residency requirements, these groups are eligible for student finance support and 'home fee status' – which means they must be charged the same tuition fees as domestic students.

6.2 When the UK leaves the EU, it will no longer be a Member State nor part of the EEA for the purposes of these regulations, and UK nationals will no longer be EU nationals.

6.3 Technical amendments are therefore required to be made to the student finance regulations. First, to ensure that the current eligibility rules continue to apply after EU exit, until such time as substantive changes to the eligibility of EU nationals and others are introduced. Second, to reflect the fact that from exit day the UK will no longer be a member of the EU. The government has already provided assurances that EU nationals who start courses in the 2018/19 and 2019/20 academic years will continue to be eligible for student finance support for the duration of their courses. The policy for subsequent academic years is still under consideration.

6.4 This instrument amends the Education (Student Support) Regulations 2011 (S.I. 2011/1986) (the "Student Support Regulations"), which prescribe the amount of support for tuition, living and other costs for students taking designated higher education courses. The Student Support Regulations are made under sections 22 and 42(6) of the Teaching and Higher Education Act 1998 ("THEA 1998"), which empowers the Secretary of State to make regulations to provide financial support for students in higher education.

6.5 The amendments made include:

a. updating references to the EEA to include the UK and Gibraltar, as appropriate, to reflect the UK's status after EU exit, and so that these references continue to operate as they do now after exit day;

b. amending the eligibility category relating to EU nationals and their family members to ensure that students, such as British citizens resident in Gibraltar, who may have relied on this category before EU exit, can continue to access home fee status and student support on the same basis after exit day;

c. amending the definition of "Erasmus year" to confirm that this definition will apply in relation to academic years beginning before or after exit day, and that it covers students who are participating in the Erasmus scheme, or were participating in the scheme, immediately before exit day. In practice, this means that students participating in the Erasmus scheme in the current academic year will continue to be treated as being on an Erasmus year for student finance purposes for the remainder of the 2018/19 academic year; and

d. updating references to "Member State" and "EEA State" to reflect the status of the UK after exit, so that these references continue to operate appropriately after exit day.

6.6 This instrument also makes similar amendments to:

a. the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (S.I. 2007/778) (the "Qualifying Courses and Persons Regulations"), which set out the persons and courses to whom maximum fee limits apply, and are made under sections 24(6) and 47 of the Higher Education Act 2004;

b. the Education (Fees and Awards) (England) Regulations 2007 (S.I. 2007/779), which provide that persons who do not have a specified connection with the UK can be charged higher fees than those that do, and are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983;

c. the Education (Student Support) (European University Institute) Regulations 2010 (S.I. 2010/447), which provide support for a small number of students taking designated postgraduate courses at the European University Institute in Florence, Italy, and are made under sections 22, 42(6) and 43(1) of the THEA 1998;

d. the Further Education Loans Regulations 2012 (S.I. 2012/1818), which provide for the payment and repayment of loans for students taking designated further education courses, and are made under sections 22 and 42(6) of the THEA 1998;

e. the Education (Postgraduate Master's Degree Loans) Regulations 2016 (S.I. 2016/606), which provide for the payment and repayment of postgraduate master's degree loans, and are made under sections 22 and 42(6) of the THEA 1998;

f. the Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189), which supersede the Qualifying Courses and Persons Regulations in respect of academic years starting on or after 1 August 2019, and prescribe the higher education providers, courses and persons to whom maximum fee limits apply, and are made under sections 10(1), (4)(b) and (6) and 119(3) and (5) of the Higher Education and Research Act 2017; and

g. the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No.2) etc.) Regulations 2018 (S.I. 2018/599), which provide for the payment and repayment of postgraduate doctoral degree loans, and are made under sections 22 and 42(6) of the THEA 1998 and sections 5 and 6 of the Sale of Student Loans Act 2008.

7. Policy background

What is being done and why?

7.1 On 2 July 2018, the then Minister of State for Universities, Research and Innovation, Sam Gyimah MP, announced that eligibility rules for students from the EU, and their family members, who commence courses in England in the academic year starting in August 2019 will remain unchanged. EU nationals will remain eligible for home fee status, undergraduate, postgraduate and advanced learner financial support from Student Finance England for the duration of their courses under the current eligibility rules. Similar assurances have been made by government for earlier academic years.

7.2 This instrument gives effect to that announcement so that EU nationals and others who meet the current eligibility requirements continue to be eligible for home fee status and student finance support for courses starting in the 2019/20 academic year and the remainder of the 2018/19 academic year on the same basis as now (and that assurance would last for the duration of their course).

7.3 Implementing any changes to funding can often mean long lead in times and ambiguity for students and institutions. This instrument will ensure certainty for the 2018/19 and 2019/20 academic years under a range of scenarios.

7.4 To comply with existing legal obligations under EU law as it currently applies, the Department for Education provides support to EU students on broadly the same basis

as available to UK nationals. As a result, EU students benefit from home fee status, capped tuition fees, and tuition fee loans after three years' residence in the EEA and Switzerland, and maintenance loans, after five years' residence in the UK and Islands (unless they are EEA/Swiss migrant or frontier workers, self-employed persons or their family members, who require three years' residence in the EEA and Switzerland only to access maintenance support). As education is devolved, the precise entitlement to student support differs across the different parts of the UK. These obligations will fall away on exit day if there is no deal - it will be open to the UK to decide whether to continue to extend support on the terms set out above or to take a different approach.

7.5 Therefore, the amendments under this instrument are necessary to support the assurances the UK government made on 2 July 2018 to ensure EU nationals that wish to start a course in England in the 2019/20 academic year or before can do so as planned, with the confidence that they will be eligible for student finance support for the duration of their course. This assurance was made to give certainty to students, institutions and the Student Loans Company ("SLC") (which, amongst other things, provides loans and grants to EU students at universities and colleges in England). Doing so allows each of them to plan sensibly in advance of the 2019/20 academic year and make necessary related decisions (e.g. about place of study in the case of students, financial planning in the case of institutions, and about the appropriate operational rules and systems in the case of the SLC). In order to give effect to the assurances these amendments are necessary in the event that the UK leaves the EU without a deal. That is because without a deal the current position for the groups covered here would not automatically be preserved. The amendments are also needed to ensure the regulations reflect the fact that, while eligibility rules are to remain unchanged for a further period (as above), the UK will no longer be part of the EU during that period.

7.6 The amendments to the references to the EEA to include Gibraltar (as outlined at 6.5a) and to the eligibility category relating to EU nationals (as outlined at 6.5b) are necessary because currently students from Gibraltar derive their entitlement to home fee status and tuition fee loans by virtue of being EU nationals. When the UK leaves the EU, they will no longer be able to rely on their EU status. Accordingly, if these amendments were not made under this instrument there would be a risk that those with British citizenship resident in Gibraltar would lose their existing rights when commencing a course in England, potentially subjecting them to higher university fees.

7.7 The amendment to the definition of "Erasmus year" (as outlined at 6.5c) is necessary to ensure access to current levels of student finance is preserved for students on an Erasmus year in order to ensure that they are not disadvantaged in student support terms by reason of having made plans to study on an Erasmus year during the academic year in which exit occurs.

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

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU because it ensures that the eligibility criteria in the amended student finance regulations continue to operate on the same basis after exit day. This instrument is made under existing powers in the

Education (Fees and Awards) Act 1983, the Teaching and Higher Education Act 1998, the Higher Education Act 2004 and the Higher Education and Research Act 2017, which allow for these amendments to be made.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 There is no statutory requirement to consult on this instrument. However, DfE has been in close discussions with sector stakeholders such as the Russell Group and Universities UK. They are highly supportive of our policy position for the 2019/20 (and 2018/19) academic year as they wish to give their members as much notice as possible (up to 2 years) to amend current business models in the event of any major policy change. Further, as part of a quality review process in Autumn 2018, the draft amendment regulations were sent to stakeholders such as the SLC and Office for Students to check that the amendments met policy intent. As the status quo will be maintained under the instrument both stakeholders were content with the suggested amendments. As education is devolved, a draft of the regulations was also shared with the devolved administrations, with Crown Dependencies and with Gibraltar for information. DfE policy leads have continued to engage the administrations more generally.

11. Guidance

11.1 The former Universities Minister, Sam Gyimah, announced guarantees on access to student finance support for EU nationals commencing a course in England in the 2019/20 academic year in a Written Ministerial Statement on 2 July 2018.

11.2 The SLC (who administer the government funded loans and grants to learners on behalf of Student Finance England) will revise their guidance on access to student finance support for prospective students and institutions as part of their standard communication updates.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. An equality analysis determined that the amendments made by this instrument would ensure that EU nationals and others currently eligible for student finance support will continue to be eligible for the 2019/20 academic year. As such we do not expect any changes to the current equalities position.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been published. The instrument maintains the current position in terms of access to home fee status and student finance support. However, as part of the Public Sector Equality Duty, an Equality Analysis[1] of the amendments has been fully scoped and considered by the Secretary of State for Education.

13. Regulating small business

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

[1] A copy of this Equality Analysis is available from Monique Clarke at the Department for Education. Email:monique.clarke@education.gov.uk

14. Monitoring & review

14.1 We will review the impact of maintaining the status quo in terms of access to student finance support more generally. Further amendments for future academic years 2020/21 and beyond will be captured in a further set of regulations in due course.

14.2 We will also continue to monitor the number of students who receive tuition fee loans and loans for living costs. This information is published in the SLC's Statistical First Releases.

15. Contact

15.1 Monique Clarke at the Department for Education Telephone: 07384 520895 or email: monique.clarke@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 Minister of State for Universities, Science, Research and Innovation, Chris Skidmore MP, can confirm that this Explanatory Memorandum meets the required standard.