EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT) REGULATIONS 2007

2007 No. 1336

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

2. Description

2.1 These Regulations make amendments to existing legislation to enable students who are children of Turkish workers and undertaking designated higher education courses to potentially qualify for financial support. These Regulations also make amendments to existing legislation to ensure that these students are charged the same fees for higher education as UK nationals.

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

3.1 None

4. Legislative Background

4.1 These Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983, sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998 and sections 24 and 27 of the Higher Education Act 2004. They will amend:

- The Education (Student Support) Regulations 2006;
- The Education (Student Support) Regulations 2007;
- The Students Fees (Qualifying Courses and Persons) Regulations 2006;
- The Education (Fees and Awards) Regulations 1997; and
- The Education (Student Support) (European Institutions) (No. 2) Regulations 2006. ,

4.2 These amendments are made, following the judgment of the European Court of Justice (ECJ) in the case of *Gaye Gürol v Bezirksregierung Köln* (C-374/03), to ensure compliance with article 9 of Decision 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Community and Turkey. The ECJ made clear in its judgment in the *Gürol* case that article 9 of Decision 1/80 has direct effect in the Member States and also applied to student support.

4.3 Additional minor amendments are also being made to the Education (Student Support) Regulations 2006 and 2007. These are detailed in paragraph 7.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Education (Student Support) Regulations 2006 and 2007 and the Education (Student Support) (European Institutions) (No. 2) Regulations 2006 enable the Secretary of State for Education and Skills to pay financial support to students who are undertaking designated courses of higher education in the 2006/07 and 2007/08 academic years. Support is payable to students to assist with their tuition fees and living costs.

7.2 The Education (Fees and Awards) Regulations 1997 provide that it shall be lawful to charge higher tuition fees to persons who do not have a specified connection with the UK than to those who do. They also enable rules of eligibility to be adopted for making awards for undertaking education or research, which confine awards to persons having the specified connection with the UK. Such differentiation might otherwise not be lawful under the Race Relations Act 1976. The persons with the specified connection are those mentioned in Schedule 1 to the Regulations.

7.3 The Student Fees (Qualifying Courses and Persons) Regulations 2006 provide for the courses and students to whom the fee controls of the Higher Education Act 2004 should apply for the academic year 2006/07.

7.4 Decision 1/80 of the Association Council, amongst other things, makes provision in respect of the rights of Turkish nationals working in a Member State of the European Community and the rights of nationals of Member States working in Turkey. Article 9 of that Decision provides

"Turkish children residing legally in a member State of the Community with their parents who are or have been legally employed in that member State, shall be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that member State. They may in that member State also benefit from the advantages provided for under the national legislation in this area."

7.5 These Regulations have, consequently, been made to amend the Regulations referred to above to ensure that, subject to their satisfying the necessary residence and other eligibility criteria, a student who is the child of a Turkish worker will

(a) qualify for financial support in connection with undertaking a designated course of higher education in the 2006/07 and 2007/08 academic years. Where appropriate amendments have been made to application deadlines to ensure that these students have a comparable period of time to apply for support to UK nationals; and

(b) in the 2006/07 academic year be eligible to be charged fees at the same level as UK nationals.

7.6 The amending Regulations also make minor amendments to the Education (Student Support) Regulations 2006 and 2007:

(a) following the decision to ensure that students on compressed degree courses are eligible for support for the duration of the course, regulation 60 of the 2006 Regulations is amended to ensure that students with reduced entitlement who qualify for a loan are eligible for the non-final year rate in the second year of their course; and

(b) a minor and technical amendment is made to the 2007 Regulations to ensure that the period of eligibility of a part-time postgraduate student for purposes of the Disabled Students' Allowance is consistent with that of a part-time undergraduate student.

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. Contact

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