EXPLANATORY MEMORANDUM

THE EDUCATION (STUDENT LOANS) (AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2006

2006 No. 929

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

2.1 The Education (Student Loans) (Amendment) (England and Wales) Regulations 2006 (the "Regulations") amend the Education (Student Loans) Regulations 1998 (the "1998 Regulations"). The 1998 Regulations provide support for students attending higher education courses who began their courses before 1st September 1998, as well as certain students who started their courses after that date.

2.2. These Regulations increase the maximum amounts of loan for maintenance available to students who will continue to receive support payments under the 1998 Regulations during the 2006/07 academic year. The Regulations also amend the eligibility criteria for these loans.

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

3.1 None

4. Legislative Background

4.1 The 1998 Regulations were made under the Education (Student Loans) Act 1990 and make provision for payment of mortgage style repayment loans to students in higher education.

4.2 The 1990 Act gave the Secretary of State the power to make arrangements to enable eligible students to receive loans towards their maintenance. That Act was repealed in 1998 but transitional and savings provisions were made to enable the Secretary of State to continue to make loans to students who, in very general terms, began to attend courses of higher education before 1st August 1998. Students who started courses after that date are generally eligible for income contingent loans under the Student Support Regulations made under the Teaching and Higher Education Act 1998.

4.3 These Regulations increase the maximum amounts of loan for maintenance for the academic year 2006/07 in line with inflation.

4.4 The Regulations also make amendments to the criteria that students must satisfy in order to be eligible for a loan. This is being done, in part, to implement Directive 2004/38/EEC of the European Parliament and of the Council of 29th April 2004.

5. Extent

5.1 This instrument applies to England and Wales

6. European Convention on Human Rights

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

7. Policy background

7.1. These Regulations increase the maximum amounts of loan for living costs, available to students who will remain eligible for mortgage style student loans payments under the 1998 Regulations in respect of the academic year beginning on or after 1st September 2006. The increases to all maximum amounts are in line with inflation.

7.2. Students must satisfy certain eligibility criteria to potentially be eligible for a loan. These criteria have been revised and include changes made in implementation of EU Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely in the territory of other Member States (see Annex A for the Transposition Note). These new eligibility criteria will be set out in Schedule 1 to the 1998 Regulations as amended by these Regulations.

7.3. The changes introduce new categories of students who may potentially be eligible for mortgage style loans. These include:

- EC nationals and their family members who acquire the right of permanent residence in the UK (after a continuous period of five years residence in the UK);
- European Economic Area (EEA) or Swiss self-employed persons and their family members;
- Dependent direct relatives in the ascending line of EEA or Swiss migrant workers;
- "frontier" workers and "frontier" self-employed persons;
- Children of Swiss nationals.

Scrutiny history for Directive 2004/38/EC

7.7. The Commission's draft of the Directive (reference 11807/05 (24795)) was deposited in Parliament on 1st August 2003. The Parliamentary Under-Secretary of State at the Home Office sent the Scrutiny Committees an Explanatory Memorandum on 28th August 2003. The Commons Scrutiny Committee regarded the document as politically important and cleared it from scrutiny (see HC 63-xxxii (2002-03) paragraph 30 (17 September 2003)).

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

Charles Stewart at the Department for Education and Skills in London Tel: 020 7925 5586 or email charles.stewart@dfes.gsi.gov.uk can answer queries regarding Directive 2004/38/EC and the uprating of the maximum amounts of loan.

ANNEX

TRANSPOSITION NOTE

DIRECTIVE 2004/38/EC OF 29 APRIL 2004 ON THE RIGHT OF CITIZENS OF THE UNION AND THEIR FAMILY MEMBERS TO MOVE AND RESIDE FREELY WITHIN THE TERRITORY OF THE MEMBER STATES

Directive 2004/38/EC lays down the conditions governing the exercise of the right of free movement within the territory of the Member States by Union citizens and their family members, the right of permanent residence in the territory of the Member States for Union citizens and their family members and the limits placed on these rights on grounds of public policy, public security or public health.

The Home Office has lead responsibility for implementation of Directive 2004/38/EC. The Department for Education and Skills has made the necessary transposition arrangements in respect of student loans. This is confined to Article 24 of the Directive.

The Education (Student Loans) (Amendment) (England and Wales) Regulations 2006 do what is necessary to implement Article 24 of the Directive in the area of student loans for which the Department for Education and Skills has responsibility, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

The following table sets out the main objectives of Article 24 of the Directive in the area of student loans for which the Department for Education and Skills has responsibility and how these have been implemented by the Education (Student Loans) (Amendment) (England and Wales) Regulations 2006.

Article	Objectives	Implementation	Respon sibility
Article 24(1) and (2)	Derogation from Article 24(1). A Member State is not obliged to grant maintenance aid for studies prior to the acquisition of the right of permanent residence to persons other than workers, self-employed persons, persons who retain such status and members of their families.	As part of the Education (Student Loans) (Amendment) (England and Wales) Regulations 2006 ("2006 Regulations). The 2006 Regulations provide for the existing Schedule 1 to the Education (Student Loans) Regulations 1998, as amended, to be substituted with the new Schedule as set out in the 2006 Regulations. Schedule 1 sets out the categories of students who are potentially eligible for support. The main body of the Regulations then sets out the amounts of student loans available and the conditions that a student must fulfil in order to qualify for those loans.	Secre-tary of State

		The following categories of person have been added to Schedule 1 to the Regulations: (a) persons with a permanent right of residence in the United Kingdom (paragraph 3); and (b) workers, self-employed persons, persons who have retained their status as such and their family members (paragraph 6).	