EXPLANATORY MEMORANDUM TO THE

EDUCATION (STUDENT SUPPORT) (AMENDMENT) (NO. 2) REGULATIONS 2005

2005 No. 2084

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

This Statutory Instrument makes amendments to the Education (Student Support) (No. 2) Regulations 2002 ("the 2002 Regulations") as amended, and to the Education (Student Support) Regulations 2005 ("the 2005 Regulations"). These Regulations provide for support for students taking designated higher education courses and for treatment of student loans in insolvency. The 2002 Regulations apply to the provision of support to students in relation to academic years beginning on or after 1st September 2003 but before 1st September 2005 and the 2005 Regulations apply in respect of academic years beginning on or after 1st September 2005.

From 1st September 2005 the effect of the amendments is to increase the amount of grant available towards students' childcare costs ("the childcare grant"); to make the childcare grant available to students who are using childcare approved under the Childcare Approval Scheme; and to amend the provisions which set out the circumstances under which the income of a student's parent can be reassessed.

The amendments also modify the residence eligibility criteria for EU nationals for tuition fee and maintenance support (through grants and loans) towards their living costs from 1st September 2004 onwards. EU national in this context includes a UK national.

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

None.

4. Legislative Background

4.1. This instrument is being made in order to increase the maximum childcare grant available, keeping it in line with a recent increase to the childcare element of the Working Tax Credit under the Tax Credits Up-rating Regulations 2005 (SI 2005/681).

4.2. It allows access to the childcare grant by student parents who are using carers approved under the Tax Credits (Approval of Childcare Providers) Scheme 2005 (SI 2005/93).

4.3. This instrument also modifies the residence eligibility criteria for tuition fee and

maintenance support set out in Statutory Instrument 2005/1341.

4.4. The 2002 Regulations and the 2005 Regulations were made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998. These sections give the Secretary of State the power to make provision for grants and loans to students taking designated higher education courses.

Previous relevant amendments to the 2002 Regulations are:

- the Education (Student Fees and Support) (Switzerland) Regulations 2003 (S.I. 2003/3280), and
- the Education (Student Support) (No.2) Regulations 2002 (Amendment) Regulations 2004 (S.I.2004/161).

The 2005 Regulations have been previously amended by the Education (Student Support) (Amendment) Regulations 2005 (SI 2005/1341).

5. Extent

This instrument extends to England and Wales.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1. The childcare grant was introduced in September 2001 and is available to student parents who are using registered childminders and childcare schemes approved by an accredited organisation. The grant has generally followed the same rules as the childcare element of the Working Tax Credits although it pays 85% of actual childcare costs subject to a current maximum weekly grant of £114.75 where a student has one child in receipt of childcare and £170 where a student has more than one child in receipt of childcare compared to 70% of actual costs under the Working Tax Credits. The higher threshold for students is a reflection that student parents cannot easily earn outside the long vacation.

7.2. Regulation 18(4) of the 2005 Regulations is being amended to increase the maximum weekly amount of childcare grant to £148.75 where a student has one child in receipt of childcare and £255 where a student has more than one child in receipt of childcare. This increase is in line with an increase, made in April 2005, to HM Revenue & Customs' thresholds for the Tax Credits.

7.3. HM Revenue & Customs have also extended eligibility for their scheme to include parents using carers approved under the new Childcare Approval Scheme in England. Carers approved under the new scheme may carry out childcare in the parents' own home and provide childcare for children over 7 years either in their own

home or in a non-domestic location. Nannies and au pairs may also be approved as carers under the Childcare Approval Scheme provided that they meet the criteria. Regulation 18(7) of the 2005 Regulations is accordingly being amended to extend eligibility for the childcare grant to cover student parents who are using carers approved under the Childcare Approval Scheme.

7.4. Elements of the student support package are linked to a student's household income. Unless a student is categorised as an independent student, the income of one or both of his parents is taken into account in assessing the student's household income. Paragraph 5 of Schedule 5 to the 2005 Regulations sets out the provisions for calculating a student's parent's income. Paragraphs 5(3) and 5(4) provide for two sets of circumstances in which a reassessment may be undertaken if the income of a parent suffers a drop of at least 15%, either temporarily or for a longer-term period. The local education authority (LEA) to which certain student support functions of the Secretary of State are transferred usually bases an assessment of a student's entitlement to student support on the income of the parent in the financial year which ends before the academic year in respect of which the support is being assessed begins ("the previous financial year").

7.5. Paragraph 5(3) of Schedule 5 currently provides that where, due to some event beyond a parent's control, his or her income in the current financial year is likely to be no more than 85% of his or her income in the previous financial year, LEAs can base their assessment of the student's entitlement to student support on the income of the parent in the current financial year instead.

7.6. Paragraph 5(4) of Schedule 5 currently provides that where, due to some event beyond a parent's control, his or her income in any financial year drops to 15% or more below his or her income in the previous financial year and continues to do so, LEAs may assess the student's entitlement to support in respect of the academic year during which that event occurred by basing the assessment on the average of the income of the parent in the two financial years in which that academic year falls.

7.7. Paragraphs 5(3) and 5(4) of Schedule 5 to the 2005 Regulations are being revised to remove the requirement that the drop in the parental income must have been caused by an event beyond the parent's control. This will make the administration of the financial assessment more straightforward for the LEAs.

7.8. The ordinary residence modifications made in S.I. 2005/1341 ensured that maintenance support (through grants and loans) was available to EU nationals who have satisfied a residence requirement in the UK and Islands throughout the three year period preceding the first day of the first academic year of the course. Such students are not required to be "settled" in the UK under the terms of the Immigration Act 1971. These new regulations remove the right to maintenance support from the non-EU national child of such a person.

7.9. In the case of UK nationals, this instrument limits the new category of eligibility to those who have exercised a Community right of free movement within the EEA.

7.10. Where the three year period of ordinary residence in the UK and Islands has been wholly or mainly for the purpose of receiving full-time education, eligibility is limited to those who were ordinarily resident in the EEA immediately prior to the period in paragraph 7.8 above.

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. Contacts

Janet Coatsworth at the Department for Education and Skills Tel: 01325 391231 or email: janet.coatsworth@dfes.gsi.gov.uk can answer any queries regarding the new ordinary residence eligibility criteria. Cliff Woods at the Department for Education and Skills Tel: 020 7925 5353 or e-mail: cliff.woods@dfes.gsi.gov.uk can answer any other queries regarding this instrument.