EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) (No.2) REGULATIONS 2008

2008 No. 2094

1. This Explanatory Memorandum has been prepared by the Department for Innovation, Universities and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations make amendments to the Education (Student Support) Regulations 2008 (S.I. 2008/529) ("the 2008 Regulations") and the Education (Student Support) (No. 2) Regulations 2008 (S.I. 2008/1582) ("the 2008 (No.2) Regulations"). The 2008 Regulations and the 2008 (No.2) Regulations provide for support for students taking designated higher education courses in respect of academic years beginning on or after 1st September 2008 and 1st September 2009 respectively.

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

These Regulations are to be issued free of charge to all known recipients of the 2008 Regulations and the 2008 (No.2) Regulations.

4. Legislative Background

4.1 Regulations are made annually by the Secretary of State to make provision for the payment of grants and loans to eligible students in connection with their undertaking and/or attendance on designated higher education courses.

4.2 These Regulations have been made to make amendments to the 2008 Regulations which apply to student support arrangements for the 2008/09 academic year and to the 2008 (No.2) Regulations which apply to student support arrangements for the 2009/10 academic year. These Regulations take into account the income related allowance aspect of the Employment Support Allowance (ESA), which is a new benefit replacing incapacity benefit and income support paid on the grounds of incapacity or sickness. These Regulations also correct some technical errors to ensure that the underlying policy is reflected in the Regulations.

5. Territorial Extent and Application

These Regulations apply to England.

6. European Convention on Human Rights

As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

Section 22 of the Teaching and Higher Education Act 1988 makes provision for the Secretary of State to provide financial support for students in Higher Education. Such support is to be provided in accordance with regulations made by the Secretary of State. These Regulations, by amending the 2008 Regulations and 2008 (No.2) Regulations, make provision for support available in relation to the academic years beginning on or after 1st September 2008 and 1st September 2009 respectively.

These Regulations introduce new amending provisions concerning the Employment Support Allowance, however they mostly correct provisions in the 2008 Regulations and the 2008 (No.2) Regulations. The Regulations will therefore be available free of charge to those who have purchased or who subsequently purchase either instrument.

The changes effected by these Regulations are set out below:

7.1 Employment Support Allowance (ESA)

The Department of Work and Pensions has introduced a new social security benefit, the Employment Support Allowance ("ESA"),which is an integrated contributory and income-related allowance to replace Incapacity Benefit and Income Support paid on the grounds of incapacity. ESA will be payable in respect of new claims arising from 27 October 2008. The Regulations have been amended to take the income-related allowance strand of the ESA into account so that part-time students (or their partners) and full-time students on distance learning courses (or their partners) who would have been in receipt of incapacity benefit and therefore passported to the full part-time package of student support will continue to receive the same level of student support if they are in receipt of ESA.

Means-tested benefits are taken into account when assessing income for full-time students with eligibility for Special Support Grant and other dependants' grants. The Regulations do not however, specify individual means-tested benefits and so no change needs to be made to the Regulations in respect of financial assessment of full-time students. However, for eligibility for support for part-time students or full-time students on distance learning courses, each benefit is referred to separately in the Regulations and so the part-time and full-time distance learning provisions in the 2008 Regulations and 2008 (No.2) Regulations need to be amended to include the income-related strand of the ESA.

7.2 Substitution of grant for loan

Since September 2006, new students in higher education have been able to apply for a means-tested Maintenance Grant. However, students eligible for a Maintenance Grant have their loan for living costs reduced by £1 for every £1 of grant awarded up to a maximum of £1,260 (08/09 figure).

Students whose household incomes mean that they are not eligible for a Maintenance Grant are still eligible for a loan for living costs, 25% of which is based on household income.

Changes made to simplify the 2008 Regulations inadvertently resulted in the incorrect calculations on substitution of grant for loan and means-testing the loan in the Regulations. However, these changes have not been made to the processing of student applications as the policy has not changed. Students will continue to receive the correct amount. This purely technical amendment therefore ensures that the Regulations remain in line with policy.

7.3 To ensure that the previous study rules for students who start their course in 2009 are aligned with the ELQ policy.

For students starting their courses from September 2009, the Education (Student Support) (No. 2) Regulations amended the previous study rules to take account of the new ELQ policy. This means that students who have undertaken previous UK or overseas study where a qualification has not been achieved (apart from previous part-time and self-funded study) will have those years of previous study taken into account. This change meets the Government's new policy rationale which is to hold places for those without an HE qualification rather than taking into account previous years of UK public funding.

However, Regulation 13(8) still linked previous study to UK fee support for a specific group of students, which contradicts the new policy intent and means that new students starting their courses from September 2009 who have taken a previous overseas course but did not achieve a qualification will be treated more favourably than those who took a previous UK course but who did not achieve a qualification. The amendment ensures that that the new policy is reflected in the Regulations.

7.4 Guidance

These amendments will be notified through Departmental and partner bodies' publications and websites. As the policy remains the same and has no impact on the processing systems, these changes will not impact adversely on students. On-line guidance chapters for Local Authorities will be updated to reflect these amendments for 2008/09 and 2009/10.

7.5 Consultation

While the 2008 and the 2008 (No.2) Regulations were consulted upon widely among a range of stakeholders, time has been limited in preparing these Regulations. Some of the amendments which are now being made were

raised by external stakeholders as part of the consultations. There is no policy change in these Regulations and hence there is no need for further external consultation.

8. Impact

8.1 An 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

Phillip Hossell at the Department for Innovation, Universities Skills (Tel: 01325 392023 or email: phillip.hossell@dius.gsi.gov.uk) can answer any queries regarding these Regulations.