EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) REGULATIONS 2006

2006 No. 955

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. These Regulations amend the Education (Student Support) Regulations 2005 (S.I.2005/52) as amended ("the 2005 Regulations"), and the Education (Student Support) Regulations 2006 (S.I. 2006/119) ("the 2006 Regulations"). The 2005 Regulations provide support for students attending designated higher education courses in respect of an academic year beginning on or after 1st September 2005 but before 1st September 2006; and the 2006 Regulations provide support for students attending designated higher education courses in respect of an academic year beginning on or after 1st September 2006.

2.2. The changes made by the Regulations are described in the "Policy Background" Section below.

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

None.

4. Legislative Background

4.1. The 2005 and 2006 Regulations were made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998 as amended which gives the Secretary of State the power to make provision for loans and grants to eligible students in connection with their undertaking of designated higher education courses.

4.2. The Student Support Regulations are laid annually. The 2005 Regulations set out the student support arrangements for the 2005/06 academic year and the 2006 Regulations do the same for the 2006/07 academic year.

4.3. These Regulations make amendments to the criteria in the 2005 and 2006 Regulations that students must satisfy in order to be eligible for student support. 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

Amendments made by this instrument to the 2005 Regulations apply in relation to England and Wales. Amendments made by this instrument to the 2006 Regulations apply in relation to England.

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. Higher education students must satisfy certain eligibility criteria to qualify for loans and grants in respect of their tuition fees and living costs. To qualify for support under the 2005 Regulations, a student must fall within one of the categories in Schedule 2 to those Regulations. Schedule 2 to the 2005 Regulations is revised in particular to implement EU Directive 2004/38/EC on the rights of citizens of the Union and their families to move and reside in other Member States (see Annex A for the Transposition Note).

7.2. The new categories 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);
- Family members of economically inactive EC nationals;
- 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.

7.3. Consequential changes to the 2005 Regulations also cover the payment of support to students who fall into one of the above categories after the start of the academic year.

7.4. Amendments are also made to Schedule 2 to the 2005 Regulations and the corresponding Schedule in the 2006 Regulations (Schedule 1) to make provision to ensure that students who are settled in the United Kingdom and who have exercised a right of residence within the territory comprising the European Economic Area and Switzerland are not at a disadvantage as a result of having exercised that right if they apply for student support. Some drafting amendments are also made to Schedule 1 to the 2006 Regulations. Although the amendments to Schedule 1 to the 2006 Regulations are not as extensive as those to Schedule 2 to the 2005 Regulations, the whole of Schedule 1 to the 2006 Regulations is replaced so that the full text of the Schedule is available to users in one instrument.

Scrutiny history for Directive 2004/38/EC

7.5. 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)).

7.6. Eligible students may apply for an Adult Dependants' Grant in respect of either a spouse or partner, or another adult dependant of the eligible student whose net income does not exceed a prescribed amount. These Regulations amend the criteria for this grant in the 2005 and 2006 Regulations so that an eligible student may not apply for this grant if the spouse, partner or adult dependant is also an eligible student in his or her own right, or holds a statutory award.

7.7. Eligible students may also apply for a Parents' Learning Allowance in respect of any children of theirs who are wholly or mainly financially dependent upon them. These Regulations amend the criteria for this grant in the 2005 and 2006 Regulations so that an eligible student cannot qualify for this grant in respect of any dependent child who is an eligible student in his or her own right or who holds a statutory award.

7.8. Eligible students may be treated as financially independent of their parents if they fall into one of a group of categories prescribed in the Regulations. These Regulations amend one of the categories in the 2006 Regulations so that students may be deemed to independent eligible students if they were looked after by a local authority throughout any three-month period ending on or after the date on which they attained the age of 16 and before the first day of the first academic year of their course, provided that they have not at any time during the relevant period been under the charge or control of their parents.

7.9. These Regulations remove transitional provisions in the 2005 Regulations relating to the introduction of civil partnerships that are now redundant. They also make a technical amendment to the 2005 Regulations to incorporate a reference to section 188 of the Finance Act 2004.

7.10. These Regulations introduce into the 2006 Regulations only a new form of support, namely a loan in respect of the college fees payable by a qualifying student to a college or permanent private hall of the University of Oxford or a college of the University of Cambridge in connection with his or her attendance on a qualifying course. This loan is being introduced to provide support for graduate students who are attending specified undergraduate courses at the one or the other of these two Universities.

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 in Darlington Tel: 01325 391231 or e-mail janet.coatsworth@dfes.gsi.giv.uk can answer queries regarding Directive 2004/38/EC. **Cliff Woods** at the Department for Education and Skills in London Tel: 020-7925-5353 or e-mail: cliff.woods@dfes.gsi.gov.uk can answer any queries regarding the Adult Dependants Grant and the Parents Learning Allowance. **Shelley Stewart-Murray** at the Department for Education and Skills in London Tel: 020-7925-5226 or e-mail: shelley.stewart-murray@dfes.gsi.gov.uk can answer any queries regarding the new college fee 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 responsibility for the necessary transposition arrangements in respect of student support. This is confined to Article 24 of the Directive.

The Education (Student Support) (Amendment) Regulations 2006 amend **the Education (Student Support) Regulations 2005** (as amended) to do what is necessary to implement Article 24 of the Directive in the area of student support 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 support for which the Department for Education and Skills has responsibility and how these have been implemented by amending the Education (Student Support) Regulations 2005.

Article	Objectives	Implementation	Responsibility
Article 24(1) and (2)	Article 24(1) gives Union citizens residing on the basis of the Directive in the territory of a host Member State a right to equal treatment within the scope of the Treaty. This right extends to their family members who have a right of residence or permanent residence. Article 24(2) is a 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	As part of the Education (Student Support) (Amendment) Regulations 2006 (the "Amending Regulations") which amend the Education (Student Support) Regulations 2005, as amended (the "2005 Regulations"). Schedule 2 to the 2005 Regulations sets out the categories of students who are potentially eligible for support. The main body of the 2005 Regulations then sets out the particular types of grants and loans available and the conditions that a student must fulfil in order to qualify for those grants and loans. The following categories of	Secretary of State

	members of their families.	person have been added to Schedule 2 to the 2005 Regulations by the Amending Regulations: (a) persons with a permanent right of residence in the United Kingdom (paragraph 3); (b) workers, self-employed persons, persons who have retained their status as such and their family members (paragraph 6); and (c) EC nationals and their family members (paragraph 9) Persons mentioned in paragraphs 3, 6 and 9 may qualify for tuition fee support in accordance with Part 4 of the 2005 Regulations (full-time students) or Part 9 of the 2005 Regulations (part-time students). In addition, persons mentioned in paragraphs 3 and 6 may qualify for grants for living costs in accordance with Part 5 and loans for living costs in accordance with Part 6 of the 2005 Regulations (full-time students), living costs support in accordance with Part 9 of the 2005 Regulations (part-time students) or living costs support in accordance with Part 10 of the 2005 Regulations (postgraduate students)	