EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) REGULATIONS 2014

2014 No. 2765

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Education (Student Support) Regulations 2011 which prescribe the amount of support for tuition, living and other costs for students taking designated higher education courses.

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

3.1 None

4. Legislative Context

4.1 This instrument amends the Education (Student Support) Regulations 2011 ("the 2011 Regulations" (S.I. 2011/ 1986))

4.2 It amends the 2011 Regulations to increase the support available to students in a number of areas. It increases the maximum loan for living costs by forecast inflation for new and continuing full-time students attending their courses in respect of an academic year beginning on or after 1 September 2015. It amends the 2011 Regulations to increase maximum adult dependants' grant, childcare grant and parents' learning allowance by forecast inflation for new and continuing full-time students attending their courses in respect of an academic year beginning on or after 1 September 2015. It also amends the 2011 Regulations to increase maximum fee loans by forecast inflation for students who started their courses before 1 September 2012 at institutions in Northern Ireland.

4.3 This instrument amends provisions in the 2011 Regulations covering support to allow students who already hold an honours degree or higher level higher education (HE) qualification to apply for part-time fee loans to undertake another course leading to an honours degree in engineering, technology or computer science. This change will apply to students starting part-time courses at universities and colleges in the UK in respect of an academic year beginning on or after 1 September 2015.

4.4 This instrument also amends provisions in the 2011 Regulations to allow eligible students who do not qualify for student support to continue receiving support where errors have been made in their initial assessment in relation to previous higher education study undertaken by students, including previous equivalent or higher level qualifications. This change will apply to students starting or continuing full-time, full-time distance learning or part-time courses in respect of an academic year beginning on or after 1 September 2015.

4.5 This instrument adds a definition of disability to the 2011 Regulations which incorporates the definition of disability set out in the Equality Act 2010. This reflects existing policy and is incorporated for the avoidance of doubt. This applies to all full-time, full-time distance learning, part-time and postgraduate students applying for disabled students' allowance (DSA) for the first time on or after the date these amendment regulations come onto force.

4.6 This instrument amends the 2011 Regulations by restricting entitlement to DSA for a computer to expenditure which exceeds £200. This change will apply to all full-time, full-time distance learning, part-time and postgraduate students applying for DSA for the first time in respect of an academic year beginning on or after 1 September 2015.

4.7 This instrument amends the 2011 Regulations to provide the Secretary of State with discretion on the award of DSA funding. Guidance on how that discretion is to be exercised will be published annually to enable assessors to identify the type of support generally available through DSA. New guidance will be published for academic year 2015/16 and will apply to all full-time, full-time distance learning, part-time and postgraduate students applying for DSA for the first time in respect of an academic year beginning on or after 1 September 2015.

4.8 This instrument adds a condition to the 2011 Regulations which requires the teaching and supervision of a course to have been approved by a UK degree awarding body for that course to be automatically designated for student support. This change will apply to all full-time, full-time distance learning and part-time courses in respect of an academic year beginning on or after 1 September 2015.

4.9 This instrument amends provisions in the 2011 Regulations to prevent a student from receiving childcare grant where that student's partner has elected to receive financial support for childcare under a healthcare bursary from the National Health Service (NHS). This change will apply to students starting or continuing full-time courses in respect of an academic year beginning on or after 1 September 2015.

4.10 This instrument makes some minor technical changes and corrections to the 2011 Regulations which will apply on the date that these amendment regulations come into force.

5. Territorial Extent and Application

5.1 The 2011 Regulations apply to England.

6. European Convention on Human Rights

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

7. Policy background

Section 22 of the Teaching and Higher Education Act 1998 makes provision for the Secretary of State to provide financial support for students in higher education. Such financial support is to be provided in accordance with regulations made by the

Secretary of State. Student support regulations are made annually by the Secretary of State to provide this support to eligible students in connection with their undertaking designated higher education courses. The following paragraphs set out the changes in more detail:

7.1 Increasing elements of the student support package for new and continuing full-time students attending their courses in 2015/16.

The maximum loan for living costs for full-time students entering higher education from 1 September 2012 onwards will be increased by forecast inflation, 3.34% for 2015/16 to £5,740 for students living away from home and studying outside London, £8,009 for students living away from home and studying in London, £4,565 for students living at home and £6,820 for students attending an overseas institution or an overseas period of study or work placement in an Erasmus year.

The maximum loan for living costs for eligible full-time students who entered higher education on or after 1 September 2009 but before 1 September 2012 will be increased by 3.34% for 2015/16 to £5,167 for students living away from home and studying outside London, £7,230 for students living away from home and studying in London, £4,005 for students living at home and £6,151 for students attending an overseas institution or an overseas period of study or work placement in an Erasmus year.

Maximum dependants' grants for full-time students will be increased by 3.34% for 2015/16. The maximum adult dependants grant will be increased to £2,757 for 2015/16 and the maximum parents' learning allowance to £1,573. The amount of childcare grant payable in 2015/16 will be based on 85% of actual childcare costs, subject to increased maxima of £155.24 per week for one child or £266.15 per week for two or more children.

The maximum fee loan for English domiciled full-time students who started their courses before 1 September 2012 at universities and colleges in Northern Ireland will be increased by 3.34% for 2015/16 to £3,805 in line with an equivalent increase to maximum fees for this group of students in Northern Ireland.

7.2 Allowing students who already hold an honours degree or higher level HE qualification to apply for part-time fee loans for a further course leading to an honours degree in engineering, technology or computer science.

Most students who hold a higher education (HE) qualification are currently not entitled to apply for additional fee loan for a second course if that course leads to a qualification that is equivalent or lower in level (ELQ) than their previous HE qualification. The only part-time exception is for students studying on a course of initial teacher training (if completed in no more than 4 years).

This instrument amends the 2011 Regulations to allow students to apply for fee loans for a designated part-time honours degree course in engineering, technology or computer science even if that course leads to a qualification that is equivalent or lower in level than their previous qualification. Eligible students who incur extra costs while studying as a result of their disability will also be able to apply for part-time DSA.

Students will be able to vary their intensity of study but must complete their course in no more than four times the period required to complete a full-time equivalent course (up to a maximum 16 years support for any honours degree courses in engineering, technology or computer science). Study must be at a minimum 25% intensity of a full-time course for each year of their part-time course.

This change will apply to students starting part-time courses at universities and colleges in the UK in respect of an academic year beginning on or after 1 September 2015.

7.3 Allowing payments of support to certain students who would not otherwise qualify because their course leads to an equivalent or lower qualification.

Most students who hold a higher education qualification are currently not entitled to apply for fee loans for a second course if that course leads to a qualification that is equivalent or lower in level (ELQ) than their first qualification. ELQ rules also apply for full-time maintenance grants and loans for living costs.

This instrument amends the 2011 Regulations to make provision for payments of grants and loans for living costs and fee loans to be made to eligible students who would otherwise not be entitled to support under ELQ rules. The provision will apply to the academic year in which the error was discovered and any previous years of the course where the student had received student support.

The circumstances where payments would be allowed would be where the Student Loans Company (SLC) were solely responsible for errors made in applying ELQ rules when assessing a student for support. In addition, this instrument will also provide that in exceptional circumstances a student will continue to qualify for fee and living costs support for future years of the course.

This change will apply to students starting or continuing full-time, full-time distance learning or part-time courses in respect of an academic year beginning on or after 1 September 2015.

7.4 Allowing payments of support to certain students who would not otherwise be entitled to a fee loan and maintenance grant for a full-time course for an academic year because they have undertaken a previous higher education course.

Full-time students who are not subject to ELQ rules but who have undertaken years of previous higher education study will have those years deducted from their entitlement for fee loans and, where they are attending their course, maintenance grants if they wish to apply for support for a second course. This means that they may have to self-fund some or all of their years of study for a second course.

This instrument amends the 2011 Regulations to make provision for the payment of fee loans and maintenance grants to be made to eligible students who would otherwise not be entitled to support for an academic year due to the application of previous study rules. The circumstances where payments would be allowed would be where the Student Loans Company (SLC) were solely responsible for notifying a student by mistake that they qualify for a fee loan for an academic year.

In addition, this instrument will also provide that in exceptional circumstances a student will continue to qualify for fee and maintenance grant support for future years of the course.

This change will apply to eligible students starting or continuing full-time and full-time distance learning courses in respect of an academic year beginning on or after 1 September 2015.

7.5 Adding a definition of 'disability' to the 2011 Regulations.

The 2011 Regulations currently stipulate that disabled students' allowance (DSA) can be awarded for students who incur extra costs while studying as a result of their disability. However, they do not define who should be treated as disabled for student support purposes.

This instrument introduces the definition of disability in the Equality Act 2010 to the 2011 Regulations to define more clearly who is entitled to DSA support and who is not.

This change makes explicit current policy and the new definition will apply on or after the date that these amendment regulations come into force in relation to all full-time, full-time distance learning, part-time and postgraduate students applying for DSA for the first time.

7.6 Restricting support for computers through DSA.

The 2011 Regulations currently stipulate that DSA can be awarded for students who incur extra costs while studying as a result of their disability. This includes spending on major items of specialist equipment such as personal computers. In practice, DSA is now being awarded to purchase standard information technology (IT) equipment, for example, standard desktop and laptop computers and standard computer software.

This instrument amends the 2011 Regulations to restrict entitlement to DSA for computers to an amount equal to the purchase cost less £200.

This change will apply to all full-time, full-time distance learning, part-time and postgraduate students applying for DSA for the first time in respect of an academic year beginning on or after 1 September 2015.

7.7 Introducing a Secretary of State discretion on the provision of DSA support.

The 2011 Regulations currently stipulate that DSA can be awarded for students who are obliged to incur extra costs while studying as a result of their disability.

This instrument amends the 2011 Regulations by introducing a discretion for the Secretary of State to determine when DSA is paid to eligible students for the purpose of assisting with the additional costs which a student is obliged to incur in connection with undertaking a course because of their disability.

This change will apply in respect of all full-time, full-time distance learning, part-time and postgraduate students applying for DSA for the first-time in respect of an academic year beginning on or after 1 September 2015.

BIS will in due course publish guidance on how this discretion will be exercised. It is intended that the guidance will cover a number of areas including:

Accommodation: It is intended that the guidance will set out the circumstances in which DSA funding should be made available for students in respect of accommodation costs while at university or college. It will clarify the support that is expected to be provided by universities and colleges under their duty to make reasonable adjustments under the Equality Act 2010 and the support that will be provided through DSA. Universities and colleges are required to make reasonable adjustments under the Equality Act 2010 in relation to any elements of a course which place a disabled student at a substantial disadvantage compared to a non-disabled student.

IT peripherals and consumables: It is intended that the guidance will set out when DSA funding will be made available for students in respect of expenditure on IT peripherals and other consumables (such as printers and ink cartridges). The guidance will clarify the alternative services that are expected to be provided by universities and colleges under their duty to make reasonable adjustments under the Equality Act 2010 and the support that will be provided through DSA.

Registration of assessors and providers: Currently, the 2011 Regulations do not stipulate how a disabled student's entitlement for DSA should be assessed or who should undertake such an assessment. It is intended that the guidance will include provision that DSA should only be paid out on the basis of a study needs assessment by an approved body, and in respect of expenditure on assistive technology equipment provided by an approved supplier. It is currently intended that the Disabled Students Quality Assurance Group (DSA-QAG) will carry out audits of providers and suppliers to ensure that public funds are being managed effectively and appropriately.

7.8 Adding a designation condition to the 2011 Regulations requiring the teaching and supervision of a course to have been approved by a UK degree awarding body.

The overarching policy intention is that higher education courses designated for student support should meet the expectations set out in the UK Quality Code for Higher Education published by the Quality Assurance Agency for Higher Education. This sets out a clear expectation that degree-awarding bodies should take ultimate responsibility for academic standards (the award) and the quality of learning opportunities (i.e. appropriate and effective teaching, support, assessment and learning resources) irrespective of where courses are delivered or who provides them.

However, the 2011 Regulations do not explicitly require that where courses lead to an award granted by a degree awarding body, that body should take responsibility for the quality of the learning opportunities. This means that higher education courses leading to awards granted by degree awarding bodies and provided by universities and colleges funded by the Higher Education Funding Council for England (HEFCE), could be automatically designated for student support even where those courses do not meet the expectations in the UK Quality Code.

This instrument adds an additional designation condition to the 2011 Regulations which requires that where courses lead to an award granted by a degree awarding body, that body should formally approve or validate the teaching and supervision of a course in order for the course to attract student support.

This change will apply to all full-time, full-time distance learning and part-time courses in respect of an academic year beginning on or after 1 September 2015.

7.9 Preventing students from receiving childcare grant through the 2011 Regulations where their student partner has elected to receive childcare allowance through the NHS bursary scheme.

Full time students who are eligible for student support and who have dependant children may apply for childcare grant (CCG) which provides an income assessed contribution of up to 85% of the actual childcare costs subject to a maximum grant of £155.24 per week for one child only or £266.15 per week for two or more children. Some students will have student partners who are eligible for an NHS bursary and are therefore entitled to apply for childcare support through the NHS bursary scheme. This instrument amends the 2011 Regulations to prevent a student from receiving childcare grant if that student's partner has elected to receive childcare support through the NHS bursary scheme.

This change will apply to students starting or continuing full-time courses in respect of an academic year beginning on or after 1 September 2015.

7.10 Technical amendment to clarify which courses are automatically designated.

For the 2014/15 academic year, the automatic designation of courses has been restricted to courses provided by or on behalf of "authority funded" universities and colleges (authority funded being defined as HEFCE or equivalent funding bodies in the Devolved Administrations). However drafting relating to authority funded higher education institutions in the 2011 Regulations does not make it clear that institutions must be located in the United Kingdom and courses should be delivered for the most part in the United Kingdom.

This instrument amends the 2011 Regulations so that courses wholly provided by authority funded institutions or provided by publicly funded institutions on behalf of an authority funded institution can be automatically designated for support where those institutions are located in the United Kingdom and at least half of the course is delivered by the institution in the United Kingdom. This is a technical amendment which aligns the 2011 Regulations with policy intent and current practice.

This change will apply on the date that these amendment regulations come into force.

7.11 Technical amendment to ensure that years of study on all previous full-time and part-time courses undertaken by distance learning where a qualification has been achieved are taken into account to determine support for an additional higher education course.

Students who have achieved a lower level qualification and who wish to 'top up' their qualification to an Honours Degree on a full-time basis can apply for further fee support towards the costs of their higher level qualification. The number of years of study undertaken on their previous lower level course (or courses) and the duration of their previous course (or courses) is used to calculate how many years of fee loan students are entitled to for their 'top up' course. However, at present, the 2011 Regulations do not make it clear that previous courses include all previous qualifications undertaken by distance learning on a full-time or part-time basis.

This instrument amends the 2011 Regulations to make it clear that all years of study taken to achieve a previous lower level qualification (or qualifications) on a full or part-time distance learning basis are taken into account when calculating number of years fee loan entitlement for a 'top up' course. This is a technical amendment which ensures that the 2011 Regulations are aligned with policy intent and current practice.

This change will apply on the date that these amendment regulations come into force.

7.12 Technical amendment to ensure that years of study on all previous full-time distance learning courses where a qualification has not been achieved are taken into account when determining support for an additional higher education course.

The 2011 Regulations currently stipulate that years of previous study on a full-time designated distance learning course (or courses) that started before 1 September 2012 where a student has not achieved a qualification, should be taken into account when calculating a student's entitlement to fee loans for their current course.

This instrument amends the 2011 Regulations to make it clear that years of study on any previous full-time distance learning course where a qualification has not been achieved should be taken into account when calculating number of years' fee loan entitlement for a higher education course. This is a technical amendment which ensures that these Regulations are aligned with policy intent and current practice.

This change will apply on the date that these amendment regulations come into force.

7.13 Technical amendment to make it explicit that years of previous full-time study are taken into account where students have received statutory support for those years.

The 2011 Regulations stipulate that years of full-time study on a previous course where a qualification was not achieved, should be taken into account when calculating a student's entitlement to fee loans for their current course, where the student was paid a bursary, scholarship, grant or award of any description from public funds towards the costs of their fees for their previous course.

This instrument amends the 2011 Regulations to make it clear that 'awards of any description' paid from public funds include statutory awards such as loans for fees, paid from public funds. This is a technical amendment which ensures that the 2011 Regulations are aligned with policy intent and current practice.

This change will apply on the date that these amendment regulations come into force.

7.14 Technical amendment to make it explicit that students undertaking periods of work experience in the UK Parliament as part of a sandwich course qualify for grants for living and other costs.

The 2011 Regulations stipulate that students undertaking work placement years as part of their sandwich course, where periods of full-time study are less than 10 weeks in the academic year, do not qualify for grants for living and other costs unless periods of work experience constitute 'unpaid service'. Unpaid service means service with a public sector organisation such as a hospital, public health service laboratory or the prison service or unpaid research in a higher education institution in the United Kingdom or overseas. Grants for living and other costs include the maintenance grant, special support grant, disabled students' allowances, adult dependants' grant, childcare grant, parents' learning allowance and travel grant. All these grants, with the exception of disabled students' allowance, are subject to an assessment of a student's household income.

This instrument amends the 2011 Regulations to make it clear that work placement years in the United Kingdom Parliament undertaken as part of a sandwich course constitute 'unpaid service'. This means that students undertaking work placements in the UK Parliament will qualify for grants for living and other costs in respect of their work placement year. This is a technical amendment which ensures that the 2011 Regulations are aligned with policy intent and current practice.

This change will apply on the date that these amendment regulations come into force.

7.15 Technical amendment to make it explicit that the ordinary duration of a course covers all modes of study.

The 2011 Regulations stipulate that where a student has completed a preliminary lower level qualification such as a Higher National Diploma or Foundation Degree, entitlement to fee support for a 'top up' honours degree course takes account of the number of years that a student would normally take to complete the preliminary course – the 'ordinary duration' of the course.

This instrument amends the 2011 Regulations to make it clear that the ordinary duration of a preliminary course takes into account all preliminary courses undertaken on a full-time, part-time or distance learning basis. This is a technical amendment which ensures that the 2011 Regulations are aligned with policy intent and current practice.

This change will apply on the date that these amendment regulations come into force.

8. Consultation outcome

8.1 There is no statutory requirement to consult on these amendment regulations.

However, as part of a quality review process in Spring 2014, the draft amendment regulations were sent to stakeholders in the HE sector such as the National Union of Students (NUS), the National Association of Student Money Advisers (NASMA), Universities UK (UUK), GuildHE, the Student Loans Company (SLC) and the Higher

Education Funding Council for England (HEFCE) to check that the amendment regulations met policy intent.

In addition, an informal consultation process was held with stakeholders in the HE Sector including UUK, NUS, NASMA, GuildHE, AMOSSHE (The Student Services Organisation), HEFCE and a range of specialist stakeholders from the DSA sector to inform the changes to DSA support in more detail. This process informed an Equality Analysis specifically covering changes to DSA and detailed guidance to accompany the DSA changes. The DSA Equality Analysis was published in October 2014, with the laying of these amendment regulations.

A wider Student Support Equality Analysis covering other changes in these amendment regulations was also undertaken and this was published in October 2014, with the laying of these regulations.

9. Guidance

9.1 The Minister of State announced the broad changes to student support for the 2015/16 Academic Year in a Written Ministerial Statement to Parliament on 13 March 2014. This was followed by a separate announcement on 7 April 2014 outlining the Government's intentions to reform DSA subject to an equality analysis and consultation. A final statement on DSA was released on 12 September 2014 that set out the Government's proposals for reform for 2015/16 and 2016/17.

Information setting out these changes was circulated to universities and colleges and other HE stakeholders when the announcements were made. Students, universities, colleges and others will be given information on changes to student support for 2015/16 and 2016/17 on Gov.UK and Student Finance England's student and practitioners' websites.

Guidance materials are being produced by Student Finance England for students intending to apply for full-time and part-time financial support for 2015/16 and these will be available in both hard copy and electronic formats.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

10.2 The impact on the public sector is minimal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The 2011 Regulations will be kept under review and in particular we will be monitoring the views of stakeholders. We will also be monitoring the number of students who receive grants and loans. This information is published in the Student Loans Company's Statistical First Releases.

13. Contact

13.1 Mark Williams at the Department for Business, Innovation and Skills Tel: 020 7215 1546 or email: mark.williams@bis.gsi.gov.uk can answer any queries regarding the instrument.