EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) REGULATIONS 2016

2016 No. 270

1. Introduction

1.1 This explanatory memorandum has been prepared by 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 set out the eligibility requirements to receive support for tuition, living and other costs for students taking designated higher education courses.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 The 2011 Regulations and this entire instrument apply only to England.

3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument amends the Education (Student Support) Regulations 2011 ("the 2011 Regulations" (S.I. 2011/1986)). The 2011 Regulations are made under sections 22 and 42(6) of the Teaching and Higher Education Act 1998, which provides for the Secretary of State to make regulations to provide financial support for students in Higher Education. 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.

4.2 This instrument extends the residency requirement for EU nationals undertaking higher education courses to qualify for grants and loans for living and other costs. It increases the requirement for these students to have been ordinarily resident in the United Kingdom and Islands from three years to five years in the period immediately before the first day of the first academic year of the course.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

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

What is being done and why

7.1 Currently, EU nationals undertaking higher education courses qualify for grants and loans for living and other costs once they have been ordinarily resident in the United Kingdom and Islands for three years in the period immediately before the first day of the first academic year of the course. There is evidence that student support eligibility criteria applied in England are more generous than in many other European countries; and almost half of EU countries do not offer any support towards living costs. As a result, increasing numbers of EU students who are accessing the full living costs support package in England are adding further pressure on the Higher Education budget. This is compounded by the difficulty of recovering loans if EU students return to their home country after graduation.

7.2 In the 2014/15 academic year there were a total of 37,200 EU domiciled students who received tuition fee support from Student Finance England; a rise from 31,700 in 2011/12. This number does not include EU students who are self-financing or who receive student support from Scotland, Wales and Northern Ireland.

7.3 In 2009/10 academic year there were around 11,600 EU nationals who received living cost support at a cost of £75m. In 2012/13 academic year this had risen to around 22,800 awards amounting to £162m. This had risen to 31,500 EU national students in the academic year 2014/15 awarded grants and loans amounting to £240m. This was an increase of 220% over the 2009/10 academic year. Of this maintenance loans are by far the biggest component at £143m. A further £82m was awarded in maintenance grants whilst approximately £16m of other targeted support grants were awarded.

7.4 Of the 9,900 EU domiciled tuition fee loan borrowers who should have started repaying their loans in 2013, 29% had either fully repaid or were over the earnings threshold and had made a repayment towards their loans. This is significantly lower than the figure for borrowers as a whole; 50% of all borrowers had either fully repaid their loans or were over the earnings threshold and had made a repayment towards their loans.

7.5 This instrument amends the 2011 Regulations to increase the ordinary residence requirement for EU nationals who are not UK nationals from three to five years. This means that such EU nationals undertaking higher education courses will qualify for grants and loans for living and other costs if they have been ordinarily resident in the United Kingdom and Islands for five years before the first day of the first academic year of their course. This change is part of a series of measures supporting wider Government plans to maintain the financial sustainability of the Higher Education sector and aligns the residency requirement for EU students in England with the five year residency requirement in Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands and Sweden.

7.6 This instrument will apply to students who (i) apply for support on or after these Regulations come into force in relation to an academic year which begins on or after 1st August 2016 and (ii) do so not having previously been assessed as eligible for

student support under the three year residency rule that governed eligibility before the amendments to the eligibility rules that are made by this instrument. An example of a student falling within (ii) is one who has started a course during an earlier academic year and who now wishes to transfer to a course that begins on or after 1ss August 2016.

Consolidation

7.7 The Department is currently considering the feasibility of consolidating the relevant legislation.

8. Consultation outcome

8.1 The proposed change was subject to open consultation in September – November 2014 published on the Gov.uk website. Fourteen responses were received from HE representative bodies, higher education institutions and individuals. Nine respondents did not agree to the change and two supported the proposal.

8.2 A Government Consultation Response and Equality Analysis covering this change was published on 1 February 2016 on Gov.uk, the link is https://www.gov.uk/government/consultations/higher-education-living-cost-support-eu-nationals-residency-requirements

9. Guidance

9.1 The Minister of State has announced the change in a Written Ministerial statement to Parliament. The Government Consultation Response and Equality Analysis has been published alongside.

9.2 Information setting out these changes has been circulated to Higher Education representative bodies, Devolved Administrations and other HE stakeholders when the announcement was made.

9.3 Guidance materials are being produced by Student Finance England for students intending to apply for support in the academic year 2016/17.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

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 be monitoring the number of EU national students who receive maintenance loans. This information is published in the Student Loans Company's statistical First Release.

13. Contact

13.1 Glenna Pryor at the Department for Business, Innovation and Skills Tel: 0114 207 5227 or email: Glenna.pryor@bis.gsi.gov.uk can answer queries regarding the instrument.