EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) REGULATIONS 2026

2026 No. 459

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Baroness Jacqui Smith, Minister of State for Skills at the Department for Education, confirms that this Explanatory Memorandum meets the required standard.

2.2 Hollie Godsmark, Deputy Director for Higher Education System Integrity, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Morgane Pairain at the Department for Education can be contacted by email at the following address with any queries regarding this instrument: HE.SystemIntegrity@education.gov.uk. Alternatively, the department can be contacted by telephone: 0370 000 2288.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Education (Student Support) (Amendment) Regulations 2026 "the Regulations" amend the Education (Student Support) Regulations 2011 to change the circumstances in which higher education courses delivered by a provider (delivery partner) on behalf of a registered provider (lead provider) are eligible for student support in England.

4.2 The Regulations provide that from academic year 2028/29 courses delivered by a delivery partner on behalf of a lead provider are not designated for student support where that delivery provider is not registered with the Office for Students ("OfS") and teaches 300 or more students, unless an exemption applies.

4.3 The Regulations also make provision for transitional arrangements for delivery providers that are awaiting a registration decision, specify categories of delivery partners which are exempt from the registration requirement and enable the Secretary of State to revoke designation for student support in the following academic year if the provider's student number exceed the 300 student threshold (known as the correction year).

4.4 It is necessary to lay three Statutory Instruments (SIs) to implement this policy:

4.4.1 The first is this SI which will amend the Education (Student Support) Regulations 2011. We are laying this SI now to ensure providers have sufficient notice that they may need to submit an application for registration with the OfS ahead of an 'in good time' deadline of 01 July 2026, if they want to guarantee that their courses are designated for student support in academic year 2028/29 if they have not received an outcome from the OfS. By giving this advanced notice, alongside other proactive

communications, such as our GOV.UK guidance[1] for providers on the operation of the new requirements, including student number calculations, transitional arrangements, and the process for OfS registration, we can ensure that providers are prepared to deal with the roll out of this policy.

4.4.2 The second SI will amend the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No. 2) etc.) Regulations 2018, and the Education (Postgraduate Master's Degree Loans) Regulations 2016 in order to replicate the above policy changes to post-graduate and doctoral courses, both of which are higher education courses.

4.4.3 The third SI will ensure that these changes to the existing higher education student finance regime are reflected in the new regime, when it is introduced.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 This instrument strengthens the regulatory oversight of higher education provision delivered through subcontracting arrangements in England referred to as 'franchising arrangements'. It does so by requiring certain higher education delivery partners to be registered with the OfS in order for their courses to remain designated for public student finance. Evidence gathered by the National Audit Office and the Public Accounts Committee identified significant risks arising from the growth of large-scale franchised provision delivered by unregistered delivery partners, including poor quality provision, weak governance, and misuse of public funds.

5.2 The policy implemented by this instrument requires unregistered delivery partners with 300 or more students to apply for, and secure registration with, the OfS if they wish to deliver courses that are designated for student finance. The threshold is calculated on a headcount basis and includes all franchised students taught by the delivery partner, regardless of mode of study or partnership structure. The new requirements will apply to new students from the 2028/29 academic year onwards.

5.3 The Government's policy objective is to protect students and taxpayers by closing a regulatory gap that has allowed large scale delivery of higher education to occur without direct oversight by the statutory regulator.

What was the previous policy, how is this different?

5.4 Previous policy required lead higher education providers to be registered with the OfS for their courses to be designated for student finance, but allowed courses delivered by an unregistered provider on behalf of a registered provider to also be designated for student finance. Evidence showed that this latter type of arrangement did not provide the assurance needed to protect public money.

5.5 The new policy, implemented by this instrument, differs in that it directly links eligibility for student finance to the regulatory status of the delivery partner itself once

[1] https://www.gov.uk/government/publications/franchise-arrangements-for-higher-education-providers

a defined scale of provision is reached. The new policy means that unregistered delivery partners with 300 or more franchised students are now required to register with the OfS, unless exempt, in order for their courses to be designated for student finance. This represents a shift from indirect oversight by the OfS through lead providers to direct regulation by the OfS of delivery partners delivering higher education at scale.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the legislative framework governing the designation of higher education courses for student support in England by introducing a requirement for certain delivery partners to be registered with the OfS. Previously, the law allowed courses delivered under franchising arrangements to remain designated for student finance provided that the lead provider was registered with the OfS, irrespective of the regulatory status of the delivery partner.

6.2 This instrument changes this position by restricting course designation where a delivery partner exceeds the prescribed franchised student number threshold and has not secured registration with the OfS.

Why was this approach taken to change the law?

6.3 The Government considered alternative approaches, including reliance on enhanced OfS conditions of registration for lead providers and providing non-statutory guidance for higher education providers. However, these options were not considered sufficient to address the scale and persistence of the risks identified, particularly where delivery partners operated largely independently of lead providers in practice. Legislation was therefore considered necessary to provide legal certainty, prevent regulatory avoidance, and ensure consistent application across the sector. This approach also allows the threshold to be reviewed and adjusted in future by amending the Regulations should evidence of risk to quality or public funds persist.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no statutory requirement to consult on these Regulations. The Department for Education conducted a public consultation[2] between 30 January 2025 and 4 April 2025. The consultation sought views on proposals to require certain franchised higher education delivery partners to register with the OfS in order for their courses to remain designated for student finance. The consultation was open to all interested parties and was conducted online via GOV.UK. Stakeholders consulted included registered higher education providers, unregistered delivery partners, further education colleges, professional bodies, academics, and individuals. Overall, there was broad support for the policy proposals including for the introduction of a requirement to register with the OfS triggered by a student number threshold, the proposed exemptions from this requirement, and the proposed implementation timetable. It was thought that these proposals would help support quality in higher education and provide greater assurance to the taxpayer. Several risks were raised including in relation to providers behaviour shifts, OfS capacity, and impact on other areas of the higher education system.

[2] https://www.gov.uk/government/consultations/franchising-in-higher-education

7.2 The Government response to the consultation, including a detailed analysis of responses and its final policy decisions, was published in December 2025 and is available on GOV.UK[3]. We have also provided further policy detail on GOV.UK since the publication of the government response: https://www.gov.uk/government/publications/franchise-arrangements-for-higher-education-providers/franchise-arrangements-for-higher-education-providers

7.3 The devolved governments were informed of the proposals. The policy applies to England only, reflecting the territorial remit of the OfS. No formal legislative consent was required.

8. Applicable Guidance

8.1 Guidance for providers on the operation of the new requirements, including student number calculations, transitional arrangements, and the process for OfS registration, have been published by the Department for Education and the OfS.

8.2 This guidance is publicly available on GOV.UK[4] and the OfS website[5].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is moderate because the instrument primarily affects unregistered higher education delivery partners operating at scale and registered lead providers that franchise provision to them. Affected institutions may face regulatory costs associated with applying for registration with the OfS or restructuring their provision to remain below the threshold. Such impacts fall mainly on larger providers and are therefore considered proportionate.

9.3 The legislation does not materially impact small or micro businesses.

9.4 To minimise the impact of the requirements on small or micro businesses (employing up to 50 people), the approach taken is to limit the registration requirement to providers with 300 or more franchised students. Providers below this threshold are more likely to be classified as small, micro, and medium-sized businesses, and so our measures have some built-in protection for these businesses.

9.5 The impact on the public sector is limited. There will be some additional administrative activity for the OfS and the Department for Education in assessing student numbers and processing registration applications. These impacts have been assessed and are considered manageable within existing structures.

[3] https://www.gov.uk/government/consultations/franchising-in-higher-education
[4] https://www.gov.uk/government/publications/franchise-arrangements-for-higher-education-providers/franchise-arrangements-for-higher-education-providers
[5] https://www.officeforstudents.org.uk/for-providers/registering-with-the-ofs/subcontracting-or-validating-higher-education/franchise-providers/

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be done through ongoing monitoring of the available data and through regular stakeholder engagement. The government response to the consultation also set out that the threshold will be kept under review.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Baroness Jacqui Smith, Minister of State for Skills at the Department for Education has made the following statement: "A statutory review clause is not considered appropriate for this SI because whilst the measures implement new regulatory requirements affecting higher education providers engaged in franchised delivery, the impact of these measures can be monitored through the ongoing monitoring and reporting mechanisms in place by the OfS and the Student Loans Company. The OfS already undertakes continuous monitoring of registered higher education providers, including those involved in franchised provision. This includes routine data collection, risk-based assessments and compliance activity, which together provide an effective mechanism for identifying any emerging issues or unintended consequences arising from the regulations. These existing arrangements ensure that the policy outcomes can be assessed and addressed through routine regulatory activity, removing the need for a separate, formal review requirement in legislation. The Department will continue to assess the impact of the regulations through established channels and will take further action if evidence indicates that additional intervention or legislative change is required."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").