EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) (EUROPEAN INSTITUTIONS) REGULATIONS 2006

2006 No.953

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 provide support for a small number of students taking designated postgraduate courses at one of three European Institutions; the Bologna Center in Bologna, Italy; the College of Europe in either Bruges, Belgium or Natolin, Poland; or the European University Institute in Florence, Italy.

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

3.1 None.

4. Legislative Background

4.1 These Regulations are made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998 which give the Secretary of State the power to make provision for grants to eligible students in connection with their undertaking of designated higher education courses and further education courses.

4.2 These Regulations set out the support arrangements for students attending courses at one of the three European Institutions for the 2005/06 and 2006/07 academic years. They uprate the grants available to students who are eligible for support under the regulations and introduce a number of policy changes which are set out in more detail in paragraph 7.

5. Extent

5.1 These 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

The intention is:

7.1 To define the package of financial support available to students for the 2005/06 and 2006/07 academic years

The amounts of support available have been updated, either using revised figures from the institutions as applicable or uprating in line with inflation, for the 2005/06 and 2006/07 academic years.

7.2 To make changes to the eligibility criteria determing student support including the implementation of the Directive 2004/38/EC (see Annex A for the transposition note) and other EC legislative issues

Students must satisfy certain eligibility criteria to be potentially eligible for support towards either their tuition fees only or their tuition fees and other support. These criteria have been revised and include changes made to implement the provisions of the EC Directive on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member states so far as the Directive relates to student support. This must be in place by 30th April 2006.

The changes introduce new categories of student who may potentially be eligible for support. These include:

- EC nationals and their family members who acquire the right of permanent residence in the UK (after a continuous period of 5 years residence in the UK);
- Family members of economically inactive EC nationals who have yet to acquire the right of permanent residence;
- 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.

Changes also enable payments of support where students:

- acquire the right of permanent residence;
- become an EEA or Swiss: worker; self-employed person; frontier worker or

frontier self-employed person;

- become a family member of an EEA or Swiss; worker; self-employed person; frontier worker or frontier self-employed person; or

- become the child of a Swiss national,

during the course of an academic year.

7.3 Scrutiny History for Directive 2004/38/EU

The Commission's draft of the Directive (reference 11807/05 (24795)) was deposited in Parliament on 1 August 2003. The Parliamentary Under-Secretary of State at the Home Office sent the Scrutiny Committees an Explanatory Memorandum on 28 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)).

7.4 A transposition note in relation to the implementation of the Directive so far as it relates to student support is attached. It is already available from the Department for Education and Skills or on the website of the Office of Public Sector Information. A copy is also in the library of each House of Parliament.

7.5 Welsh devolution

Following devolution of student support to the Welsh Assembly, these regulations make no provision for the payment of support to students who were ordinarily resident in Wales prior to the start of their higher education course.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this statutory instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal.

9. Contact

Karen Duncan at the Department for Education and Skills Tel: 01325 391092
or email: karen.duncan@dfes.gsi.gov.uk who can answer any queries regarding the regulations.

Annex A

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 made the necessary transposition arrangements in respect of student support. This is confined to Article 24 of the Directive.

The Education (Student Support) (European Institutions) Regulations 2006 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 in the Education (Student Support) (European Institutions) Regulations 2006.

Article	**Objectives**	**Implementation**	**Responsibility**
Article 24(1) and (2)	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 members of their families.	As part of the Education (Student Support) (European Institutions) Regulations 2006. Schedule 1 to the Regulations sets out the categories of students who are potentially eligible for support. The main body of the Regulations then set out the particular types of grants available and the conditions that a student must fulfil in order to qualify for those	Secretary of State

		grants and loans. The following categories of person have been added to Schedule 1 to the Regulations: (a) persons with a permanent right of residence in the UK (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 paragraph 9 qualify for a fees only award in accordance with Part 4 of the Regulations. Persons mentioned in paragraphs 3 and 6 qualify for fee and maintenance support in accordance with Part 4 of the Regulations.	