EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT SUPPORT) REGULATIONS 2008 (AMENDMENT) REGULATIONS 2009

2009 No. 862

1. This explanatory memorandum has been prepared by the Department for Innovation, Universities and Skills and is laid before Parliament by Command of Her Majesty. The memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations make amendments to the Education (Student Support) Regulations 2008 (S.I. 2008/529), as amended[1] (the 2008 Regulations). The amendments increase the maximum amounts of loan for living costs or long courses loan available to a student for the academic year beginning 1st September 2008 and before 1st September 2009. These Regulations set out the circumstances in which increased amounts may be paid including their calculation.

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

3.1 These Regulations will come into force the day after they are laid before Parliament, and so less than the usual 21 days. The full policy background to the reasons for this are set out in the paragraph 7. If these Regulations do not come into force until 21 days after they are laid (which would be 1st May 2009) a group of students from households with more than one eligible student, 3,232 in total, may face financial hardship because they would receive significantly less than the amount of loan they were expecting to receive.

3.2 The Student Loans Company, which administers the loan scheme on behalf of the Secretary of State, needs to take swift action to minimise any uncertainty or risk of any financial hardship as quickly as possible. Before the 1st May, the Student Loans Company will need to contact the students concerned to explain the error and the proposed way forward, calculate their individual correct entitlement, give the students an option as to whether they wish to receive the increased amount, and pay the increased amount. They cannot make the increased payment until the Regulations, which provide the power to make the increased payments, are in force.

3.3 It was not possible to make and lay the Regulations any earlier because the administrative error which led to the overpayment was only notified to the

[1] The Regulations have been amended by the Education (Student Support) (No.2) Regulations 2008 S.I. 2008/1582, the Education (Student Support) (Amendment)(No.2) Regulations 2008, S.I. 2008/2094, and the Education (Student Support) (Amendment)(No.3) Regulations 2008 S.I. 2008/2939.

Department on 9th March and since that time, a solution has been developed and finalised.

4. Legislative Context

4.1 Section 22 of the Teaching and Higher Education Act 1988 makes provision for the Secretary of State to provide financial support for students in Higher Education (HE). Such support is to be provided in accordance with regulations made by the Secretary of State.

4.2 Regulations are made for each academic year to make provision for the payment of grants and loans to eligible students in connection with their undertaking designated higher education courses. These amending Regulations have been made to increase the maximum amount of loans for living costs or long courses loan available to the particular group of students described in paragraph 3 above. The power to increase the maximum amount of loans is limited to the academic year 2008/2009.

4.3 Under these amending Regulations, the calculation of the increase in loan is the difference between the amount of loan that a student would have received by way of third instalment had the amount originally notified to that student been correct and the amount of loan remaining to be paid after recovering overpayments required under the existing Regulations.

5. Territorial Extent and Application

5.1 This instrument applies 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

7.1 While these amending Regulations increase the amount of loan that can be paid to this particular group of students, there is no overall change of policy here. The change is made for the 2008/09 academic year only, in order to help students who may be adversely affected by an administrative error. The 2008 Regulations are not at fault.

7.2 In March 2009, the Department was made aware that a programming error in the Student Loans Company's computer system resulted in the misapplication of means-tested deductions from the loan entitlement for this group of students. As a result, through no fault of their own, these students have been overpaid loans in the first two terms of the 2008/09 academic year.

7.3 Under the 2008 Regulations, the Secretary of State is required to recover overpayments of loans in the academic year in which they are made. If we were to do

nothing, this group of students would receive much lower loan payments for the third term than they were informed they would receive and indeed some may not receive any payment.

7.4 These Regulations will come into force one day after laying so that we can offer this group of students the correct amount of loan and make payments in time for the beginning of their third term. Waiting for the customary 21 day period to elapse, would not allow this and could lead to hardship for this group of students.

7.5 This problem was caused by a programming error in the Student Loans Company's computer system. When this error came to light in March 2009, the Student Loans Company immediately identified the numbers affected and informed the Department. The total number of students in England affected is 3,232 (0.4% of the total number of students in HE in England in academic year 2008/2009). The total value of the overpayments is £3.34 million, an average overpayment of £837 per student. The error has now been rectified.

8. Consultation outcome

8.1 These Regulations are being made urgently to mitigate the consequences of correcting an administrative error that might otherwise cause financial hardship to a particular group of students. As a consequence, no consultation was considered necessary.

9. Guidance

9.1 SLC will be contacting each student affected by the error.

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 As these Regulations apply to a particular group of students only, we will be monitoring the take-up of the additional loans with the Student Loans Company.

13. Contact

13.1 Mark Williams at the Department for Innovation, Universities and Skills (Tel: 0203 300 8430; Email - mark.williams@dius.gsi.gov.uk) can answer any queries regarding the instrument.