

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT LOANS) (AMENDMENT) (NO. 2) (ENGLAND
AND WALES) REGULATIONS 2005

2005 No.2119

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 The Education (Student Loans) (Amendment) (No. 2) (England and Wales) Regulations 2005 (the “Regulations”) amend the Education (Student Loans) Regulations 1998 (the “1998 Regulations”), to take account of the **European Court of Justice Judgment in Bidar**, by modifying the residence eligibility criteria for EU students for mortgage style repayment loans from 1st August 2004 onwards. .

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

3.1 None

4. Legislative Background

4.1 The 1998 Regulations were made under the Education (Student Loans) Act 1990 and make provision for payment of mortgage style repayment loans to students in higher education.

4.2 The 1990 Act gave the Secretary of State the power to make arrangements to enable eligible students to receive loans towards their maintenance. That Act was repealed in 1998 but transitional and savings provisions were made to enable the Secretary of State to continue to make loans to students who, in very general terms, began to attend courses of higher education before 1st August 1998. Students who started courses after that date are generally eligible for income contingent loans under the Student Support Regulations made under the Teaching and Higher Education Act 1998.

4.3 The Regulations are being made to amend the 1998 Regulations to ensure the policy regarding assistance to EU nationals who have satisfied a residence requirement in the United Kingdom and Islands implements the rulings made by the ECJ in the case of Bidar, and reflects them correctly in the 1998 Regulations.

5. Extent

5.1 This instrument applies to England and Wales

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 As stated in paragraph 4, mortgage style repayment loans, paid under the 1998 Regulations are intended to provide maintenance support for students in higher education. The Regulations amend the 1998 Regulations so as to create a new category of EU students who may be eligible, from the 2004/05 academic year onwards, to receive mortgage style repayment loans in relation to their attendance on courses covered by the transitional and savings provisions referred to in paragraph 4.2.

7.2 The regulations ensure that mortgage style repayment loans are available to EU nationals who have satisfied a residence requirement in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course. Such students are not required to be “settled” in the UK within the meaning of the Immigration Act 1971.

7.3 In the case of UK nationals falling within this new category, the Regulations limit eligibility to those who have exercised a Community right of free movement within the European Economic Area (EEA).

7.4 Where the three year period of ordinary residence in the UK and Islands has been wholly or mainly for the purposes of receiving full-time education, eligibility is limited to those who were ordinarily resident in the EEA immediately prior to the period referred to in 7.2 above.

7.5 The Regulations provide that students who:

(i) fall within the new category; and

(ii) want to take out a mortgage style repayment loan in respect of their attendance on a course throughout the 2004/05 academic year,

must have entered into an agreement for that loan by 1st August 2006.

7.6 Students falling within the new category who want to take out a mortgage style repayment loan in respect of an academic year beginning on or after 1st August 2005 must enter into the agreement for that loan by 1st August immediately following the start of the relevant academic year.

8. Impact

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

8.2 The impact on the public sector is minimal.

9. Contact

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