

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) (No.3)**  
**REGULATIONS**  
**2008 No. [2939]**

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.

This 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) (“the 2008 Regulations”) and the Education (Student Support) (No.2) Regulations 2008 (S.I. 2008/1582) (“the 2008 (No.2) Regulations”). The 2008 Regulations and the 2008 (No.2) Regulations provide for financial support for students attending or undertaking designated higher education courses in the academic years beginning on or after 1st September 2008 and 1st September 2009 respectively.

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

3.1 Regulation 4 corrects a drafting error in the Education (Student Support) (No.2) Regulations 2008 (SI 2008/1582) reported by the JCSI in its 28th Report printed on 22nd October 2008.

4. **Legislative Context**

4.1 Regulations are made for each academic year by the Secretary of State to make provision for the payment of grants and loans to eligible students in connection with their undertaking designated higher education courses.

4.2 Following the Secretary of State’s statement to the House of Commons on 29th October 2008, these Regulations have been made to amend the methodology of financial assessments for new full-time students starting their courses on or after 1st September 2009. They also make a technical amendment to the 2008 Regulations, and further technical amendments to the 2008 (No.2) Regulations.

5. **Territorial Extent and Application**

5.1 This instrument applies to England.

6. **European Convention on Human Rights**

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

## **7. Policy Background**

7.1 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. Such financial support is to be provided in accordance with regulations made by the Secretary of State. These Regulations, by amending the 2008 Regulations and 2008 (No.2) Regulations, make provision for support available in relation to the academic years beginning on or after 1st September 2008 and 1st September 2009 respectively. The Secretary of State's announcement of 5th July 2007 introduced new income thresholds which aimed to ensure that two thirds of new students starting their courses in 2008 would receive a full or partial maintenance grant. In order to retain the proportion of new students receiving full or partial grant in 2009, whilst maintaining affordability, the upper threshold for eligibility for some maintenance grant has now been revised. There is one other small change to how far household income must fall before a reassessment can be carried out.

The policy changes effected by these Regulations are set out below:

### **7.1.1 To create a new 2009 cohort definition to differentiate between students who start their course in the 2009/10 academic years and those who started earlier**

The 2008 (No.2) Regulations treat students starting their courses in the 2008/09 and 2009/10 academic years who (a) have not studied on a previous course starting before 1 September 2008, (b) are starting a course for the initial training of teachers (apart from a first degree course) or (c) are starting a course leading to certain professional qualifications as belonging to the 2008 cohort. These students benefit from the maintenance grant and loan thresholds effected by the 2008 Regulations and kept at a broadly similar level in the 2008 (No.2) Regulations. These Regulations create a new "2009 cohort" for those students in the same categories starting their courses in the 2009/10 academic year.

Students who started their courses in the 2008/09 academic year, who are currently defined as 2008 cohort students, will remain as 2008 cohort students. Students who are eligible for the pre-2008 package of maintenance support will be described as "current system students who are not 2008 cohort or 2009 cohort students".

### **7.1.2 To change household income thresholds for eligibility for partial grant from £60,032 to £50,020**

As set out in the Secretary of State's statement of 29th October, Ministers have decided that the new standard 2009 cohort students will be assessed for maintenance grant support on the basis of a lower income threshold of

£25,000 (the same as for 2008 cohort students) and an upper income threshold of £50,020, with different tapers from incomes of £25,000 up to £34,000 and then from £34,000 up to £50,020. The upper income threshold of £50,020, at which point the minimum level of grant is received, is lower than the £60,032 threshold for 2008 cohort students but still higher than the rate of £39,333 for other current system students in 2009/10. Substitution of grant for loan will apply for standard 2009 cohort students but students eligible for the special support grant will continue to be eligible for the full maintenance loan as well as the special support grant up to the upper income threshold of £50,778. These changes should result in broadly two thirds of 2009 cohort students receiving full or partial maintenance grant or special support grant.

2009 cohort students on postgraduate initial teacher training courses will continue to receive a guaranteed minimum maintenance grant regardless of income. A consequence of the changes to the tapers is that the guaranteed minimum grant for certain initial teacher training (ITT) students will be marginally reduced compared to 2008 cohort students although their overall entitlement will be broadly similar as they will receive an increase to their loan entitlement.

### **7.1.3 To return re-assessment threshold to 85% from 95%**

Alongside the new provisions for 2009/10 onwards, the income threshold for re-assessments for all students from the 2009/10 academic year was changed from 85% to 95%. In 2008 and previous academic years, if a student's household income for the financial year following the one on which they had been assessed is likely to be 85% or less than the assessed income, they can be re-assessed for support. As part of the changes for 2009, students were being assessed on household income a year older than before and the threshold was revised from 85% to 95%. However, the original 85% threshold is reinstated as part of the general threshold amendments.

### **7.1.4 Technical Amendment to ensure that the 2008 Regulations, covering the 2008/09 academic year, reflect the general policy intent that students who have studied on a previous course are excluded from the 2008 cohort**

Currently, students who have undertaken a previous designated full-time distance learning course or a previous part-time course undertaken by distance learning that started before 1st September 2008, are included in the definition of as 2008 cohort students, as the 2008 Regulations currently only take account of previous courses which the student has attended. However this fails to meet the general policy objective which is to exclude students from the 2008 cohort if they have studied on any previous designated course starting before 1st September 2008, whether or not the student actually attended the course or undertook it by distance learning.

The definition of a 2008 cohort student is therefore now defined as one who has not previously “undertaken” any course designated for the purposes of section 22 of the 1998 Act which began before 1st September 2008.

Changing “attended” to “undertaken” ensures that previous study on a designated distance learning course or part-time course taken on a distance learning basis excludes a student from the 2008 cohort and ensures consistency across the 2008 and 2008 (No.2) Regulations, as the 2008 (No.2) Regulations already include this amendment.

#### **7.1.5 Technical amendment to ensure that the 2008 (No.2) Regulations reflect the policy intention for transferring students**

When a student transfers from one course to another, that student retains his or her entitlement to the same package of student support that pertained when he or she commenced the original course. In 2009, new rules were introduced which denied eligibility to a student who had gained a qualification at a level equal to or higher than that they are currently studying, whether or not that study had been carried out abroad. This amendment protects students in this position, so that they are eligible for the support arrangements which were in place in the 2008/09 academic year rather than those introduced for 2009.

#### **7.1.6 Technical amendments to ensure that wording in relation to “end-on” courses is consistent and also to correct an error in regulation 132(12). Typographical corrections are made to regulations 68(9) and 68A (2).**

An “end-on” course is defined in the Regulations as a course which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a previous course. However, the word “immediately” is omitted in Regulation 2(1)(d) of the 2008 (No.2) Regulations. This amendment inserts “immediately” to ensure that policy is correctly expressed.

Regulation 132 deals with conditions under which students are eligible for the part-time student support package. The date of “1st September 2009” in regulation 132(12) was inserted in error and has been amended to read “1st September 2007” as the provision is unchanged from regulation 132(12) in the 2008 Regulations for the 2008/2009 academic year. Typographical errors in regulations 68(9) and 68A (2) have been corrected.

#### **7.1.7 Amendment to correct defective drafting as raised by JCSI in their 28th report**

The 2008 (No.2) Regulations allow students to apply for their financial support almost a year before the relevant course starts. However, the wording of Regulation 10 states that the application should be made within 9 months of the start of the academic year. The JCSI were of the opinion that Regulation 10(1) conflicted with the intention to allow early application. The Department takes this opportunity to make this change. Regulation 10(1) is therefore revised to state that the application should be made no later than 9 months after the start of the relevant academic year.

7.2 The Department intends to consolidate this instrument with the 2008 Regulations and the 2008 (No.2) Regulations when the Regulations for the

2010/11 academic year are laid in summer 2009.

## **8. Consultation outcome**

8.1 Whilst the 2008 and the 2008 (No.2) Regulations were consulted upon among a range of stakeholders there has been no consultation on the threshold changes for these Regulations as they are being made simply to maintain within affordable limits the policy intention that two thirds of students should receive either a full or partial grant. Some of the technical amendments which are now being corrected were raised by external stakeholders after the original consultation.

## **9. Guidance**

9.1 The Secretary of State announced these changes in a statement to Parliament on 29th October. These amendments will be notified through Departmental and partner bodies' publications and websites. For example, students will be informed of changes through the respective guides to full-time and part-time financial support. On-line guidance chapters for student finance assessors and advisors will be updated to reflect these amendments for the academic years 2008/09 and 2009/10.

## **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 The Regulations will be kept under review and in particular we will be monitoring the views of stakeholders. We will be monitoring the number of students who receive grants. This information is published in the Student Loans Company's Statistical First Releases.

## **13. Contact**

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