

Executive Note

The Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment (No. 2) Regulations 2005 SSI/2005/545

1. The above regulations (“the Amendment (No. 2) Regulations”) were made in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980; sections 1 and 2 of the Education (Fees and Awards) Act 1983; and section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The purpose of the Amendment (No. 2) Regulations is to amend existing regulations in relation to student fees, student support and the Graduate Endowment, which have been previously amended to take account of the European Court of Justice judgement in the case of Bidar (case C-209/03) of 15 March 2005.

3. The regulations amended are the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992, the Education Authority Bursaries (Scotland) Regulations 1995, the Education (Fees and Awards) (Scotland) Regulations 1997, the Students’ Allowances (Scotland) Regulations 1999, the Graduate Endowment (Scotland) Regulations 2001 and the Education Maintenance Allowances (Scotland) Regulations 2004 (“the principal regulations”).

4. The principal regulations were amended by the Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment Regulations 2005 (S.S.I. 2005/341) (“the 2005 Regulations”) to introduce a new category of student eligible for support and liable for the graduate endowment. This new category consists of non-UK EU nationals, or their children, who fulfil ordinary residence requirements on a qualifying date and for the proceeding 3 years period. Only the 3 years’ residence requirement applies in the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992.

5. The Amendment (No. 2) Regulations principally make further amendments to the new category of eligible student introduced by the 2005 Regulations. The Education (Student Loans) (Scotland) Regulations 2000 were also amended by the 2005 Regulations, but it has not been necessary to include these in the Amendment (No. 2) Regulations.

Amendments

6. The Nursing and Midwifery Student Allowances (Scotland) Regulations 1992 are amended to remove the definition of “relevant day” inserted by the 2005 Regulations, as this was achieved by S.S.I. 2005/217. The definition of “national of a member state” is also removed, and Schedule 1 Paragraph 9 amended to clarify the definition of the new category of student.

7. The Education Authority Bursaries (Scotland) Regulations 1995, the Students’ Allowances (Scotland) Regulations 1999, the Graduate Endowment (Scotland) Regulations 2001 and the Education Maintenance Allowances (Scotland) Regulations 2004 are amended

to clarify that Schedule 2 Paragraph 1(a), which makes provision for temporary absence from the United Kingdom, applies to the requirement for residence on the qualifying date. They are also amended to make it clear that Schedule 2 Paragraph 2 only applies to the requirements for 3 years' ordinary residence.

8. The Education (Fees and Awards) (Scotland) Regulations 1997 are amended to rectify a drafting error in the 2005 Regulations, to ensure that the new category of student introduced by those regulations constitute an exception for the purposes of Schedules 1 and 2.

9. The Education Maintenance Allowances (Scotland) Regulations 2004 are amended to ensure that non-UK EU nationals are required to fulfil ordinary residence on the qualifying date in the UK and Islands, rather than in Scotland. This is consistent with the residence criteria which applies to those with settled status.

10. In addition, the Education Authority Bursaries (Scotland) Regulations 1995 and the Education Maintenance Allowances (Scotland) Regulations 2004 are amended to insert "or" in place of "and" where it appears between sub-paragraphs (a) and (b) of Schedule 2 Paragraph 2. This ensures that the conditions for ordinary residence set out in these sub-paragraphs are alternative rather than cumulative. This applies to all categories of students referred to by Schedule 2 Paragraph 2.

Financial Effects

11. The Amendment Regulations have negligible financial effects on the Scottish Executive, Local Government or on business. It has not been necessary to prepare a Regulatory Impact Assessment.

12. The Amendment Regulations will potentially increase the demand for support from students in higher education (HE). However, as the number of places which can be funded by the Scottish Higher Education Funding Council in HE is limited, increased demand will not necessarily lead to an overall increase in expenditure. Students who are eligible for the EMA programme as a result of the Amendment Regulations will be funded through Annually Managed Expenditure (AME).

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