

## **EXECUTIVE NOTE**

### **THE EDUCATION (FEES) (SCOTLAND) REGULATIONS 2011**

**SSI/2011/389**

#### **Powers under which instrument is made**

The Education (Fees) (Scotland) Regulations 2011 (“the 2011 Regulations”) are made in exercise of the power conferred by section 1 of the Education (Fees and Awards) Act 1983.

#### **Parliamentary Procedure**

The 2011 Regulations are subject to negative procedure in the Scottish Parliament.

#### **Summary of Policy Proposals**

Our intention is to change, with effect from the academic year 2012/13, the way in which higher education tuition fees are applied to students who normally live in another part of the UK outside Scotland (referred to as “RUK domiciled students”). RUK domiciled students will be excluded from arrangements in terms of which the Scottish Ministers set tuition fee levels. This will leave institutions free to set their own tuition fee levels for this group, as they currently do for ‘non-EU international students’. This will be achieved through:

- the Student Fees (Specification) (Scotland) Order 2011;
- the 2011 Regulations; and
- an associated condition attached to any grant paid by the Scottish Ministers to the Scottish Further and Higher Education Funding Council (“the SFC”) in terms of section 9 of the Further and Higher Education (Scotland) Act 2005.

The main policy drivers for these changes are:

- the need to respond to an increasing divergence in higher education tuition fee policy across the UK in order to maintain current cross-border flows of students;
- the need to protect places for students who normally live in Scotland (“Scotland domiciled students”); and
- changing the system to reduce the need to react to changes elsewhere in the UK in future.

We are making new arrangements for tuition fee levels in connection with higher education provided by any “fundable body” (within the meaning of section 6 of, and Schedule 2 to, the 2005 Act – Schedule 2 to the 2005 Act lists various educational institutions which provide courses of higher education). Broadly, the intention is that the new arrangements will apply to students commencing courses of higher education at fundable bodies in the 2012/13 academic year (or later academic years) but that the

existing arrangements will continue to apply to students who commenced courses at fundable bodies prior to the 2012/13 academic year but who are continuing their course in that academic year (or later academic years).

#### Existing arrangements which will continue

*The Student Fees (Specification) (Scotland) Order 2006*

*The Education (Fees and Awards) (Scotland) Regulations 2007*

The levels of higher education tuition fees to be charged by fundable bodies to full time students are currently set under the Student Fees (Specification) (Scotland) Order 2006 (“the 2006 Order”). The 2011 Order makes certain amendments to the 2006 Order which will remain fully in force and will continue to govern the level of higher education tuition fees for any full time student who is either a “deferred student”, an “existing student” or a “new student” within the meaning of the 2006 Order. These terms cover any student who has already started a course of education on or before 31 July 2012. The 2006 Order will also govern the level of higher education tuition fees for a “new deferred student” within the meaning of the 2006 Order. That term covers any student who starts a course of education on or after 1 August 2012 having already agreed, between 1 August 2005 and 31 July 2011, to defer entry to their course. The term “new deferred student”, however, excludes medical students who have a relevant connection with Scotland or are excepted students within the meaning of the 2011 Regulations – see further below. Such students will be subject to the new arrangements.

The 2006 Order is amended so as to make it clear that its application is excluded in the case of a “new student” who is a “post 2011/12 student” within the meaning of the 2011 Order (see further below).

The 2006 Order is amended to specify the annual tuition fees for the academic year 2012/13 for new deferred students as follows:

- for a full time new deferred student studying an honours or ordinary degree course as £1,820;
- for a full time new deferred student studying a medical degree course as £2,895
- for a full time new deferred student studying a Postgraduate Certificate of Education or Professional Graduate Diploma in Education course as £1,820; and
- for a full time new deferred student studying any other higher level course of education as £1,285.

These fees are the same amounts as the annual tuition fees for the academic year 2012-13 which are set by determination by the Scottish Ministers for the other categories of students to whom the 2006 Order applies. The 2006 Order is also amended to allow the Scottish Ministers to set fees for subsequent academic years (i.e. after 2012/13) for new deferred students by determination, rather than by Order,

only if either such fees are no greater than the 2012/13 fees or such fees are only higher than the 2012/13 fees in so far as is necessary to maintain the value of the fees in real terms. This provision mirrors a similar provision already contained in the 2006 Order for other categories of students to whom the 2006 Order applies.

The fees set under the 2006 Order apply to students who have a ‘relevant connection with the United Kingdom and Islands’ and to certain particular categories of ‘excepted student’, both within the meaning of the Education (Fees and Awards) (Scotland) Regulations 2007 (“the 2007 Regulations”).

A student must meet a number of criteria in order to establish a ‘relevant connection with the United Kingdom and Islands’ including that the student must have been ordinarily resident in the United Kingdom and Islands for a period of three years immediately preceding 1<sup>st</sup> August, 1<sup>st</sup> January, 1<sup>st</sup> April or 1<sup>st</sup> July closest to the beginning of the first term of the student’s course and that the student must be settled in the United Kingdom within the meaning of the Immigration Act 1971.

As provided for in terms of section 9(5) of the 2005 Act, in making grants to the SFC in terms of section 9 of the 2005 Act, the Scottish Ministers make it a condition of grant that the SFC, in turn, makes it a condition of any grant made by the SFC to any fundable body in terms of section 12 of the 2005 Act that the fundable body charge tuition fees at the level set by the Scottish Ministers in terms of the 2006 Order. It is intended that the Scottish Ministers will continue to make this a condition of the grant to the SFC.

For students who do not have a relevant connection with the United Kingdom and Islands and are not excepted students, both within the meaning of the 2007 Regulations (a group which comprises, in the main, students who may conveniently be referred to as ‘non-EU international students’), the fundable bodies determine the level of tuition fee charged. Fundable bodies are free to charge students in that group tuition fees at the same level as those set by the Scottish Ministers for students having a relevant connection with the United Kingdom and Islands and excepted students within the meaning of the 2007 Regulations or at a higher level than the fees charged to such students.

### New arrangements

*The Student Fees (Specification) (Scotland) Order 2011*  
*The Education (Fees) (Scotland) Regulations 2011*

The 2011 Order sets tuition fees for full time courses of higher education and it applies to any full time student who is a “post 2011/12 student”, that is a student who commences a course of education in the academic year 2012-13 (or later academic years) and who is not a “deferred student” or a “new deferred student” within the meaning of the 2006 Order.

The 2011 Order specifies the annual tuition fees for academic year 2012-13 as follows:

- for a full time post 2011/12 student studying an honours or ordinary degree course as £1,820;
- for a full time post 2011/12 student studying a Postgraduate Certificate of Education or Professional Graduate Diploma in Education course as £1,820; and
- for a full time post 2011/12 student studying any other higher level course of education as £1,285.

Under the 2011 Order there is no longer a different fee for medical students (as is the case under the 2006 Order).

The fees set by the 2011 Order apply to students who have a relevant connection with Scotland or are excepted students within the meaning of the 2011 Regulations.

The 2011 Regulations provide that a student must meet a number of criteria in order to establish a relevant connection with Scotland for the purposes of the 2011 Regulations. The student must:

- (a) be ordinarily resident in Scotland on the relevant date (being the 1<sup>st</sup> August, 1<sup>st</sup> January, 1<sup>st</sup> April or 1<sup>st</sup> July closest to the beginning of the first term of the student's course);
- (b) have been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and
- (c) be settled in the United Kingdom within the meaning of the Immigration Act 1971 on the relevant date.

The 2011 Regulations set out the categories of excepted students in Schedule 1. These categories largely mirror the categories of excepted students under the 2007 Regulations. Some minor changes have, however, been made. In particular, these are:

- the category of excepted student which covers 'UK returners' (paragraph 3) now requires the person to have been ordinarily resident in Scotland – in addition to being settled in the United Kingdom - prior to leaving the United Kingdom and then exercising a right of residence elsewhere in the EU;
- the categories of excepted student making provision for refugees (paragraph 4), certain persons given leave to enter or remain (paragraph 5), certain Iraqi nationals (paragraph 6) and certain persons granted temporary protection (paragraph 7) now all impose – in addition to a requirement to have been resident for a particular period in the United Kingdom and Islands - a requirement to be ordinarily resident in Scotland on the relevant date;

- paragraph 10 (EU nationals and their family members) no longer applies to UK nationals who have not exercised a right of residence elsewhere in the EU. In addition it is now made clear that non-EU national family members of EU nationals do not require to demonstrate 3 years ordinary residence in the EU if their EU national family member satisfies that requirement;
- provision is no longer made for a ‘British Overseas Territories national’ category of excepted student (see paragraph 14 of Schedule 1 to the Education (Fees and Awards) (Scotland) Regulations 2007).

Schedule 2 of the 2011 Regulations makes provision for assessing whether or not a person is ordinarily resident in a particular place for the purposes of the Regulations. Certain temporary absences will not lead to the student being considered not to be ordinarily resident. On the other hand, residence which is wholly or mainly for the purpose of receiving full-time education is not treated as ‘ordinary residence’.

The 2011 Order also allows the Scottish Ministers to set fees for subsequent academic years (ie after 2012/13) by determination, rather than by Order, only if either such fees are no greater than the 2012-13 fees or such fees are only higher than the 2012-13 fees in so far as is necessary to maintain the value of the fees in real terms. In considering the value of fees in real terms Scottish Ministers may have regard to any retail price index. This provision mirrors a similar provision already contained in the 2006 Order.

As is currently done in relation to fees set under the 2006 Order and as provided for in terms of section 9(5) of the 2005 Act, it is intended that in making grants to the SFC in terms of section 9 of the 2005 Act, the Scottish Ministers will make it a condition of grant that the SFC, in turn, makes it a condition of any grant made by the SFC to any fundable body in terms of section 12 of the 2005 Act that the fundable body charge tuition fees at the level set by the Scottish Ministers in terms of the 2011 Order.

For students who do not have a relevant connection with Scotland and are not excepted students within the meaning of the 2011 Regulations, fundable bodies will determine the level of tuition fee charged. As well as non-EU international students who already fall within this group under the current arrangements, this group will now include (unless they fall within any of the categories of excepted student in the 2011 Regulations) RUK domiciled students – i.e. students who normally live in a part of the UK other than Scotland and who do not therefore satisfy the requirement of ordinary residence in Scotland on the relevant date. Fundable bodies will be free to charge students in this group tuition fees at the same level as those set by the Scottish Ministers for students having a relevant connection with Scotland and excepted students within the meaning of the 2011 Regulations or at a higher level than the fees charged to such students.

The 2011 Order and 2011 Regulations will come into force on 1 August 2012.

The 2011 Order and 2011 Regulations do not affect student support. In particular eligible full-time undergraduate Scotland domiciled students will continue to have

their tuition fees met by the Scottish Government through the Student Awards Agency for Scotland (SAAS).

### **Consultation**

Although the 2011 Regulations were not themselves subject to consultation, the consultation documents produced in connection with the consultation on the 2011 Order (<http://www.scotland.gov.uk/Resource/Doc/352583/0118609.pdf>) set out the Scottish Ministers proposals regarding how “relevant connection with Scotland” would be ‘defined’ for the purposes of the 2011 Regulations. In particular it was proposed that a student would require to have been ordinarily resident in Scotland for 3 years immediately preceding 1<sup>st</sup> August, 1<sup>st</sup> January, 1<sup>st</sup> April or 1<sup>st</sup> July closest to the beginning of the first term of the student’s course. Following the consultation the Scottish Ministers have decided to define “relevant connection with Scotland” in a different way in the 2011 Regulations. This is explained above. Significantly, in order to demonstrate a “relevant connection with Scotland” for the purposes of the 2011 Regulations a student will not require to have been ordinarily resident in Scotland for a period of 3 years preceding 1<sup>st</sup> August, 1<sup>st</sup> January, 1<sup>st</sup> April or 1<sup>st</sup> July closest to the beginning of the first term of the student’s course. Rather a student will require to have been ordinarily resident in the United Kingdom and Islands for a period of 3 years immediately preceding 1<sup>st</sup> August, 1<sup>st</sup> January, 1<sup>st</sup> April or 1<sup>st</sup> July closest to the beginning of the first term of the student’s course and ordinarily resident in Scotland on that date.

### **Impact Assessments**

An Equality Impact Assessment was completed for the 2011 Order and 2011 Regulations.

### **Financial Effects**

The 2011 Order and 2011 Regulations have no implications for increased financial liability on the Scottish Government or local government. Any savings to the Scottish Government resulting from the changes to tuition fee arrangements for which the 2011 Order and 2011 Regulations make provision will be re-invested in higher education in Scotland.

The 2011 Order and 2011 Regulations are not expected to present cost implications to business, charities or public bodies, in terms of increased costs of administering proposed changes. Therefore, no Regulatory Impact Assessment has been completed for the 2011 Order.

Scottish Government  
Employability, Skills and Lifelong Learning Directorate  
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