

EXECUTIVE NOTE

THE EDUCATION (FEES, AWARDS AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2012

SSI 2012/72

1. The Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2012 (“the 2012 Regulations”) are made in exercise of the powers conferred by sections 49(3), 73(f) and 74(1) of the Education (Scotland) Act 1980 and, sections 1 and 2 of the Education (Fees and Awards) Act 1983. The 2012 Regulations are subject to negative procedure.

Policy Objectives

Overview

2. The 2012 Regulations amend the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the SLTF Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing Regulations”), the Education (Fees and Awards) (Scotland) Regulations 2007 (“the 2007 Fees Regulations”), the Students’ Allowances (Scotland) Regulations 2007 (“the Allowances Regulations”), the Education (Student Loans) (Scotland) Regulations 2007 (“the Loans Regulations”), the Education Maintenance Allowances (Scotland) Regulations 2007 (“the EMA Regulations”) and the Education (Fees) (Scotland) Regulations 2011 (“the 2011 Fees Regulations”).

3. With the exception of amendments to the 2011 Fees Regulations themselves, the broad aim of the 2012 Regulations is, so far as appropriate in view of the different policies which inform those instruments and the different purposes which those instruments serve, to align the various categories of ‘eligible student’ in Schedule 1 to the amended instruments (or, in the case of the 2007 Fees Regulations, the categories of student for which provision is made in regulation 5 of, and Schedule 1 to those Regulations) with the various categories of student for which provision is made in regulation 3 of, and Schedule 1 to, the 2011 Fees Regulations (ie students with a ‘relevant connection to Scotland’ and ‘excepted students’).

4. The 2012 Regulations also correct a number of minor drafting errors and omissions in the instruments amended to ensure that they accurately reflect the Scottish Government’s policy intentions and practice. In addition, a number of amendments are made to ensure that the instruments amended reflect the current requirements of EU law.

Particular Amendments

5. Various amendments are made to the definitions in regulation 2 (interpretation) of all of the amended instruments. In particular, and with the exception of the 2011 Fees Regulations, the existing definition of “family member” in each of the amended instruments is replaced with a revised and updated definition of “family member”. This updated definition is based on that used in regulation 2 (interpretation) of the 2011 Fees Regulations. This updated definition is introduced to ensure that the definition of “family member” in the

amended instruments accords with EU law. Taken together with the amendments made by regulations 6(2), 10(2), 16(3), 22(2), 29(2), 35(2), 39(2) and 43(2) the amendments to definitions also correct a drafting error in the amended instruments and ensure that the term “Swiss frontier employed person” is used consistently throughout. In the case of the amendments to the 2011 Fees Regulations (see regulations 42(b) and 43(2)) these amendments meet an undertaking given to the Scottish Parliament’s Subordinate Legislation Committee to correct this drafting error. The definitions of “EEA frontier self-employed person”, “EEA frontier worker”, “Swiss frontier employed person” and “Swiss frontier self-employed person” in the 2007 Fees Regulations are amended so that reference is made to the person being a employed person, worker or self-employed person in the United Kingdom rather than Scotland. New regulation 2(5) and (6) are inserted into the 2007 Fees Regulations to provide an aid to the interpretation of Schedule 1 so far as the various paragraphs of Schedule 1 require an assessment to be made of a student’s position in relation to a particular ‘course’. Similar amendments are made to the SLTF Regulations, the Allowances Regulations and the Loans Regulations. New regulation 2(3) and (4) is inserted into the Allowances Regulations to clarify the interpretation of paragraph 1(a) of Schedule 1 to those Regulations.

6. Amendments are made to the SLTF Regulations and the Loans Regulations which enable Scottish Ministers to pay tuition fee loans to certain postgraduate students. With effect from academic session 2012-13 these loans will replace the allowances previously paid to postgraduate students.

7. Amendments are made to Schedule 1 to each of the amended instruments (that Schedule in each amended instrument contains various categories of ‘eligible student’ - or, in the case of the 2007 Fees Regulations, ‘excepted student’ – for the purposes of those instruments). The amendments are intended to align the categories of ‘eligible student’ or ‘excepted student’ with the broadly equivalent categories of ‘excepted student’ as set out in Schedule 1 to the 2011 Fees Regulations. So far as not already included, provision is included in the amended Schedules to allow students who currently fall within another category in the Schedules to remain eligible – so far as eligibility is determined by reference to falling within a category in those Schedules – if they are continuing with their course. This is intended to ensure that students who are currently entitled to support in respect of a particular course will not, provided they are continuing with the same course, cease to be eligible simply because of changes to the other categories in the Schedules which could otherwise affect their eligibility. In the case of the Loans Regulations, new paragraph 8A of Schedule 1 (see regulation 35) is added in view of the fact that other amendments to those Regulations facilitate the payment of loans in respect of tuition fees to certain postgraduate students. In addition, paragraph 1(1)(a) of Schedule 1 to the Nursing Regulations is amended to correct a drafting error so that the reference to “the United Kingdom” there now refers to “the United Kingdom and Islands” (see regulation 16). In the case of the 2007 Fees Regulations paragraphs 11 and 12 of Schedule 1 are omitted (see regulation 22) and equivalent provision is then made in new Schedule 1A (on which see regulation 23).

8. Amendments are made to Schedule 2 (ordinary residence) to the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the EMA Regulations and the 2011 Fees Regulations. In the main these changes are to reflect the amendments to Schedule 1 to each of the instruments but some drafting errors are also corrected. Similar ‘ordinary residence’ provisions are found in regulation 2(interpretation) of each of the SLTF Regulations and the Loans Regulations and amendments are also made to those provisions. A

new Schedule 1A (ordinary residence) is inserted into the 2007 Fees Regulations. Schedule 1A replaces and supplements the 'ordinary residence' provisions which were contained in paragraphs 11 and 12 of Schedule 1 to the 2007 Fees Regulations and which have now been omitted.

9. The Allowances Regulations and the Nursing Regulations are amended (i) to clarify that the Scottish Ministers may, though are not obliged to, 'means test' the amount of any allowance and (ii) to enable the Scottish Ministers to recover any 'overpayment' of an allowance paid to a student under either set of Regulations from any allowance payable to that student under either set of Regulations in any other academic year.

10. Part 3 (post-graduate agricultural studentships) of, and Schedules 2 (post-graduate agricultural studentships – excepted candidates) and 3 (fees awards – excepted candidates) to, the 2007 Fees Regulations are revoked as these provisions are no longer in use.

Impact Assessments

11. An equality impact assessment has not been considered necessary.

Financial Effects

12. The Cabinet Secretary for Education & Lifelong Learning confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Employability, Skills & Lifelong Learning Directorate

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