

POLICY NOTE

THE EDUCATION (FEES AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2017

SSI 2017/180

The above instrument was made in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980 and section 1 of the Education (Fees and Awards) Act 1983. The instrument is subject to negative procedure.

Policy Objectives

These Regulations make a number of miscellaneous amendments to 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 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 Fees Regulations”). The policy objectives of the main amendments are summarised below.

Providing access to student support for those persons with a period of long residence in the UK

Regulations 5, 7, 11, 14, 19 and 23 amend the eligibility criteria applying to persons who are regarded as being settled in the UK the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the Loans Regulations, and the EMA Regulations. The amendments will enable a third country national who has lived in the UK for a significant part of his or her life but who does not have an unrestricted right to remain in the UK under immigration law to qualify for student support. Regulation 24 amends the Fees Regulations so that those students are also regarded as having a relevant connection with Scotland for the purposes of the tuition fees which are charged. The purpose of the amendments is to enable persons who have resided in the UK for significant periods of their lives to access student support on the same terms as UK nationals. The amendments have been guided by the decision of the Supreme Court in R(on the application of Tigere) v Secretary of State for Business, Innovation and Skills [2015] UKSC 57.

Restricting access to allowances paid under the Nursing Regulations

Regulation 10 amends the Nursing Regulations to require students to be ordinarily resident in Scotland on the relevant date in order to qualify for the Nursing and Midwifery Bursary.

This change is being made as a result of the review of the nursing and midwifery ‘reciprocal arrangements’ across the UK. Prior to academic year 2017-2018, students studying nursing and midwifery applied to the funding body of the country in which they were studying, rather than the country they were ordinarily resident in when the course commenced, for their bursary and tuition fee support. Following review, all four of the UK governing administrations agreed to move to a position whereby each administration would fund the

students that were ordinarily resident in their country at the date they commence their studies regardless of which part of the UK the course was studied in.. This brings the residency policy for the Nursing and Midwifery Bursary in Scotland into line with the more general system of student of support for other courses of higher education.

Other amendments

Regulations 3(b) and (c) and 16 amend the SLTF Regulations and the Loans Regulations by adding a provision for those who do not meet the ordinary resident requirements. In order to qualify for a tuition fee loan in Scotland, generally students must have been ordinarily resident in the UK for 3 years prior to the start of their course and be ordinarily resident in Scotland on the relevant date. The amendment provides for those who, have been born in the UK, lived the greater part of their life there and have been ordinarily resident for 1 out of the last 3 years.

Regulations 4 and 17 amend the Loans Regulations and the SLTF regulations. The purpose of these amendments is to make it clear that the Scottish Ministers may determine that a course is designated for the purposes of regulation 3(2) of each set of Regulations. This is a technical amendment which is intended to ensure consistency with the enabling power set out in section 74(1) of the Education (Scotland) Act 1980.

Regulations 6 and 20 amend the Loans Regulations and the SLTF Regulations by adding 'Certificates of Higher Education' to the list of the Higher Education courses designated for student loan support. This is to allow students studying a Certificate of Higher Education to qualify for support under the Loans and/or SLTF Regulations.

Regulations 9 and 13 amend the Allowances Regulations and the Nursing Regulations. The purpose of these amendments is to make it clear that Ministers have the power to pay different allowances for different purposes. This enables different allowances to be paid in respect of different groups of students with different terms and conditions being attached. This will enable additional support to be provided for particular groups of students.

Regulation 18 amends the Loans Regulations so that Ministers may also determine that a student in receipt of a particular allowance will no longer be eligible for a student loan.

Regulation 22 makes a minor amendment to the EMA Regulations in fulfilment of a commitment made to the Scottish Parliament in relation to SSI 2016/82.

Consultation

A consultation was not considered necessary due to the nature of the amendments.

Impact Assessments

An Equality Impact Assessment was not considered necessary due to the nature of the amendments.

Financial Effects

A BRIA is not necessary as the instrument has no impact upon business, charities or voluntary bodies.

Scottish Government
Directorate for Advanced Learning and Science
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