

POLICY NOTE

THE EDUCATION (FEES AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2018

SSI 2018/171

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 who have been granted leave to remain in the UK under the Locally Employed Staff Ex-Gratia scheme (LES) or who have been recognised as stateless persons

Regulations 2(5), 3, 4, 5, 6(4) and 7 amend the eligibility criteria set out in the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the Loans Regulations, and the EMA Regulations. Regulation 8 amends the list of excepted students set out in the Fees Regulations. The purpose of the amendments is to enable a person or their spouse, civil partner, child or step child, who has been granted leave to remain in the UK under the LES operated by the Home Department ([Afghan LES Scheme](#)) to access student support and to have the status of ‘home students’ for the purposes of the level of tuition fees charged. The amendments reflect the policy announced by the Minister for Further Education, Higher Education and Science in the Scottish Parliament on 1 February 2018 ([Supporting people to study in Scotland](#)).

The amendments also have the purpose of enabling persons who are residing in the UK as a stateless person (plus their relevant family members) to access student support and to have the status of ‘home students’ for the purposes of the level of tuition fees charged.

The United Nations Convention Relating to the Status of Stateless Persons is ratified by the UK and the Office of the United Nations High Commissioner for Refugees has a mandate to work with governments to prevent and reduce statelessness and to identify and protect stateless persons.

In April 2013, the UK Government incorporated a new procedure under the Immigration Rules to enable stateless persons to be formally determined as stateless, and to be granted

leave to remain where they had no other right to remain under the Rules but could not be removed to the country of former habitual residence.

Leave to remain as a stateless person is granted in accordance with paragraph 405 of the Immigration Rules. Those granted leave to remain are entitled to take employment and have access to public funds (as defined in the UK Government Immigration Act).

Support for postgraduate students

Regulation 2(3), (4) and (6) remove references to postgraduate courses from the SLTF Regulations, reversing amendments introduced by the Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2012. The latest amendments remove scope for duplication of funding for postgraduate students between the SLTF Regulations and the Loans Regulations.

The SLTF Regulations will now only provide for tuition fee loans for eligible undergraduate students attending courses offered by an institution located in the UK but outside Scotland.

The Loans Regulations will continue to make provision for tuition fee loans for eligible full-time and part-time postgraduate students and maintenance loans for eligible full-time postgraduate and undergraduate students.

Regulation 6(2)(a) and (3) amends the Loans Regulations with the purpose of extending postgraduate tuition fee and living-cost support to students undertaking distance learning courses on the same basis as those undertaking campus based study, meeting the commitment laid out in the 2017 Scottish Government Commitment to ‘expand the postgraduate support package to ensure that financial support is available for those who undertake courses by distance and digital learning’.

In addition the amendments also clarify a number of conditions for eligibility for postgraduate funding.

The amendments qualify the maximum length of part-time postgraduate courses which are eligible for loan funding. Tuition fee loans will only be payable to postgraduate students who are undertaking a course on a part-time basis where the duration of study does not exceed twice the length of the full-time equivalent course. Where there is no full-time equivalent course, part-time courses which take up to three years to complete will be eligible for funding. All other part-time postgraduate courses are excluded. Part-time postgraduate students continue to be ineligible for maintenance loans. There is no eligibility for loan funding under the Loans Regulations or the SLTF Regulations for part-time undergraduate courses. This reflects the funding policy to date.

In addition, the amendments restrict eligible postgraduate courses to taught courses, defined as a course which requires a specified level of teaching or contact time between the student and the course provider. This replaces the previous terminology of “vocational” postgraduate courses, a term which was not defined. The change better reflects the terminology currently used in the higher education sector.

The Loans Regulations make provision for loan funding for courses undertaken in the whole of the UK. However, as a matter of policy there has never been funding available for any part-time courses undertaken at rUK institutions. The amendments put this exclusion on a statutory footing. Full-time courses at rUK institutions will continue to be available for

eligible students if there is no equivalent course provided at a Scottish institution. This also reflects the funding policy to date.

Miscellaneous amendments

Regulations 2(2), 6(2)(b) and 9 amend the SLTF Regulations and the Allowances Regulations to correct minor drafting errors in previous amendments made by the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017, which were highlighted by the Scottish Parliament's Delegated Powers and Law Reform Committee.

Consultation

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

Impact Assessments

Equality Impact Assessments have been carried out for the amendments relating to Stateless Persons, the LES and support for postgraduate distance learning and will shortly be published on the Scottish Government website. EQIAs for the other amendments were 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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