
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 362

EDUCATION

**The Education (Fees and Student Support)
(Miscellaneous Amendment) (Scotland) Regulations 2022**

Made - - - - 6th December 2022
Laid before the Scottish
Parliament - - - - 8th December 2022
Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(1), section 1 of the Education (Fees and Awards) Act 1983(2), section 14(1) of the European Union (Withdrawal Agreement) Act 2020(3) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022 and come into force for the purposes of regulations 2(4), 2(5) and 3(5) on 2 February 2023 and for all other purposes on 1 August 2023.

Amendment of the Education (Fees) (Scotland) Regulations 2022

- 2.—(1) The Education (Fees) (Scotland) Regulations 2022(4) are amended as follows.
(2) In regulation 2(1) (interpretation), after the definition of “European Economic Area”, insert—

-
- (1) 1980 c. 44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”), section 29(1), and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”), section 3(2). Section 73B was inserted by the 1998 Act, section 29(2), and was amended by the 2001 Act, section 3(3), by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), schedule 6, Part 2, paragraph 149, by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 34(1) and by the Bankruptcy (Scotland) Act 2016 (asp 21), schedule 8, paragraph 8. Section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), section 82(1) and schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) (“the Scotland Act”).
- (2) 1983 c. 40. Section 1 was relevantly amended by the Education Reform Act 1988 (c. 40), section 237(1) and schedule 12, paragraph 91, by the Further and Higher Education Act 1992 (c. 13), section 93(1) and schedule 8, paragraph 19 and by the Further and Higher Education (Scotland) Act 1992 (c. 37), section 62(2) and schedule 9, paragraph 8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.
- (3) 2020 c. 1.
- (4) S.S.I. 2022/156.

““evacuated or assisted British national from Afghanistan” means a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under the British Nationality Act 1981(5) or a British protected person within the meaning of that Act who was either—

- (a) evacuated from Afghanistan by or on behalf of the United Kingdom, a North Atlantic Treaty Organisation member state, Pakistan, Uzbekistan, Tajikistan, Iran or Qatar during the period of the operation known as Operation Pitting, which began on 14 August 2021 and ended on 28 August 2021, or
- (b) assisted by or on behalf of the United Kingdom, after 28 August 2021 and before 6 January 2022, to leave Afghanistan.”.

(3) In paragraph 1 of schedule 1 (EU nationals etc. with protected rights who have been living in the UK for three years) omit sub-paragraphs (2)(a) and (b).

(4) After paragraph 1 of schedule 1 insert—

“EU nationals etc. with protected rights who have not been living in the UK for 3 years

1A. A student is an excepted student if that student is a person with protected rights who—

- (a) is either an EU national or the family member of an EU national,
- (b) has not been ordinarily resident in the United Kingdom throughout the period of 3 years immediately preceding the relevant date,
- (c) is undertaking a course of education at an establishment in Scotland, and
- (d) is ordinarily resident in the United Kingdom on the relevant date.”.

(5) In paragraph 5 of schedule 1 (workers who benefitted from the Freedom of Movement for Workers Regulation), after “has” where it appears in sub-paragraph (a), insert “or had”.

(6) After paragraph 12 of schedule 1 (relocated Afghan citizens) insert —

“Evacuated or Assisted British nationals from Afghanistan

12A. A student is an excepted student if that student—

- (a) is an evacuated or assisted British national from Afghanistan who—
 - (i) has been ordinarily resident in the United Kingdom since they were evacuated from or otherwise left Afghanistan, and
 - (ii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.”.

(7) In paragraph 13 of schedule 1 (Ukrainian nationals), for sub-paragraph (1)(b) substitute—

- “(b) has been ordinarily resident in the United Kingdom since their arrival in the United Kingdom after leaving Ukraine, and
- (c) is ordinarily resident in Scotland on the relevant date.”.

(8) After paragraph 13 of schedule 1 insert—

“United Kingdom nationals from Ukraine

13A. A student is an excepted student if that student—

- (a) is a United Kingdom national who—

- (i) was residing in Ukraine immediately before 1 January 2022,
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022,
 - (iii) has been ordinarily resident in the United Kingdom since their arrival in the United Kingdom after leaving Ukraine, and
 - (iv) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.”.

Amendment of the Student Support (Scotland) Regulations 2022

- 3.—(1) The Student Support (Scotland) Regulations 2022⁽⁶⁾ are amended as follows.
- (2) In regulation 2(1) (interpretation), after the definition of “European Economic Area”, insert—
- ““evacuated or assisted British national from Afghanistan” means a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under the British Nationality Act 1981⁽⁷⁾ or a British protected person within the meaning of that Act who was either—
- (a) evacuated from Afghanistan by or on behalf of the United Kingdom, a North Atlantic Treaty Organisation member state, Pakistan, Uzbekistan, Tajikistan, Iran or Qatar during the period of the operation known as Operation Pitting, which began on 14 August 2021 and ended on 28 August 2021, or
 - (b) assisted by or on behalf of the United Kingdom, after 28 August 2021 and before 6 January 2022, to leave Afghanistan,”.
- (3) In regulation 29 (exercise of power to grant an education maintenance allowance), before “schedule 1” where it appears in paragraph (1)(c), insert “Part 1 of”.
- (4) In paragraph 2 of schedule 1 (EU nationals etc. with protected rights who have been living in the UK and Islands for three years), omit sub-paragraphs (2)(a) and (b).
- (5) In paragraph 6 of schedule 1 (workers who benefitted from the Freedom of Movement for Workers Regulation), after “is” where it appears in sub-paragraph (a), insert “or was”.
- (6) After paragraph 13 of schedule 1 (relocated Afghan citizens) insert—

“ Evacuated or Assisted British nationals from Afghanistan

- 13A.** A person who—
- (a) is an evacuated or assisted British national from Afghanistan who—
 - (i) has been ordinarily resident in the United Kingdom and Islands since they were evacuated from or otherwise left Afghanistan, and
 - (ii) is ordinarily resident in Scotland on the relevant date, or
 - (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.”.
- (7) In paragraph 14 of schedule 1 (Ukrainian nationals), for sub-paragraph (1)(b) substitute—
- “(b) has been ordinarily resident in the United Kingdom and Islands since their arrival in the United Kingdom after leaving Ukraine, and
 - (c) is ordinarily resident in Scotland on the relevant date.”.

⁽⁶⁾ S.S.I. 2022/157.

⁽⁷⁾ 1981 c. 61.

(8) After paragraph 14 of schedule 1 (Ukrainian nationals) insert—

“United Kingdom nationals from Ukraine

14A. A person who—

- (a) is a United Kingdom national who—
 - (i) was residing in Ukraine immediately before 1 January 2022,
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022,
 - (iii) has been ordinarily resident in the United Kingdom and Islands since arriving in the United Kingdom after leaving Ukraine, and
 - (iv) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.”.

(9) In paragraph 21 of schedule 1 (EU nationals etc with protected rights who have not been living in the UK and Islands for 3 years), after sub-paragraph (a) insert—

“(ab) has not been ordinarily resident in the United Kingdom for the period of 3 years immediately preceding the relevant date,”

(10) In paragraph 2 of schedule 2 (residents of Ireland), for sub-paragraph (c) substitute—

“(c) has been ordinarily resident in the United Kingdom and Islands or Ireland throughout the period of 3 years immediately preceding the relevant date, and”.

St Andrew’s House,
Edinburgh
6th December 2022

JAMIE HEPBURN
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Fees) (Scotland) Regulations 2022 (“the Fees Regulations”) and the Student Support (Scotland) Regulations 2022 (“the Student Support Regulations”).

These Regulations amend the eligibility categories in schedule 1 of both the Fees Regulations and the Student Support Regulations to insert new eligibility categories for United Kingdom nationals who were evacuated from Afghanistan under Operation Pitting and United Kingdom nationals who fled Ukraine following the Russian invasion in February 2022.

Amendments to both the Fees Regulations and the Student Support Regulations are also made to remove unnecessary drafting following EU Exit and to clarify the home fee status of EU nationals and their family members who have been living in the United Kingdom for less than 3 years.