

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (FEES AND AWARDS) (ENGLAND) REGULATIONS 2007
(AMENDMENT) REGULATIONS 2011**

2011 No. 1987

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend Schedule 1 to the Education (Fees and Awards) (England) Regulations 2007 (S.I. 2007/779 as amended) (“the Fees Regulations”). These Regulations remove the requirement for certain non-EU family members of EU nationals to satisfy a three year ordinary residency requirement in order to be eligible for home fee status.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Fees Regulations provide that it shall be lawful to charge higher tuition fees to persons who do not have a specified connection with the UK than to those who do. Such differentiation might otherwise not be lawful under the Race Relations Act 1976. The persons with the specified connection are those mentioned in Schedule 1 to the Regulations.

4.2 These amendments come into force on 1 September 2011.

5. Territorial Extent and Application

5.1 The Regulations apply to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Fees Regulations provide that, in the circumstances described in the Regulations, it shall be lawful to discriminate between some or all of those persons mentioned in Schedule 1 to the Regulations and any other person.

7.2 Following representation to the Department on the free movement of EU nationals and their family members, it has been agreed that, to remove any possibility of indirect discrimination against the non-EU family members of EU nationals, such

persons would no longer be required to satisfy a three year residency requirement, if the EU nationals from whom they derived their rights satisfy it.

7.3 This amendment does not apply to non-EU family members of UK nationals, in cases where the UK national has not exercised a right to freedom of movement under EU law. Family members of such UK nationals will continue to be required to satisfy the existing three year ordinary residence requirement.

- ***Consolidation***

7.4 Consolidating regulations are not currently scheduled

8. Consultation outcome

8.1 No consultation has been carried out in relation to this amendment.

9. Guidance

9.1 This change will be notified through Departmental and partner bodies' publications and websites, for example through the Student Support Information Notes that are disseminated to higher education institutions.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This minor change expands the categories of persons eligible for home fee status. No detrimental impact has been identified for affected students and therefore monitoring and reviews are not anticipated.

13. Contact

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