

POLICY NOTE

THE EDUCATION (FEES AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/142

The above instrument was made in exercise of the powers conferred by sections 49(3), 73(f), 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.

Purpose of the instrument

These Regulations make a number of amendments to the Education (Fees) (Scotland) Regulations 2022 (“the Fees regs”) and the Student Support (Scotland) Regulations 2022 (“the Student Support regs”). The policy objectives of the amendments are summarised below. All changes will come into force on 1 August 2023.

Policy Objectives

Relevant Connection to Scotland

Regulation 2(2) amends regulation 3 (Relevant connection with Scotland) of the Fees Regs and regulation 3(5) amends paragraph 1 (Persons who are settled in the United Kingdom or have long residence) of schedule 1 of the Student Support regs to include a new provision for individuals who have been granted a form of leave to enter or remain in the UK. The new provision will replace the long residency provision which was considered to be unlawful in *Jasim v Scottish Ministers* ([2022csoh64.pdf \(scotcourts.gov.uk\)](https://scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2022csoh64.pdf?sfvrsn=3412ebe0_1)¹) and will allow individuals and their family members who meet the new eligibility criteria to be able to access the home tuition fee rate and tuition fee and living cost support. This provision has been developed following the Scottish Government consultation – *Changes to residency criteria for access to financial support in Further and Higher Education*, the analysis of the responses/stakeholder engagement and the Scottish Government response to the consultation.

Children of Asylum Seekers and Young Asylum Seekers

Regulation 2(3)(b) amends paragraph 18 (persons who are children of asylum seekers and young asylum seekers) in schedule 1 (fees-excepted students) of the Fees regs and regulation 3(5)(c) amends paragraph 22 (Persons who are children of asylum seekers or young asylum seekers) of Schedule 1 Part 2 (Persons eligible for tuition fee support only) of the Student Support regs. The purpose of the amendment is to extend the eligibility for the home tuition fee rate and tuition fee support to young unaccompanied asylum seekers and children of asylum seekers who were under 18 at the time of the application by removing the limiting text which refers to the application for asylum being made prior to the 1st of December 2006 and that students need to be under 25 on the relevant date. This provision has been updated following the Scottish Government consultation (noted above), the analysis of responses and stakeholder engagement which provided anecdotal evidence that the turnaround timescales for applications

¹ https://scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2022csoh64.pdf?sfvrsn=3412ebe0_1

can be three years or more which can be particularly detrimental to those who are wishing to continue with their education. This change will ensure that those asylum seekers who meet the new eligibility criteria in this paragraph will have the opportunity to continue on their educational journey at a key point in their life. At the current time we are not extending tuition fee support to asylum seekers who are 18 or over. A decision has been made to focus support to those under the age of 18 at the time of their asylum application as we consider that the educational journey of this group will be more significantly impacted. We also have to take into account the impact on public funds in the form of funded places at further and higher education level and to focus support on the most vulnerable group. We will however monitor this situation and have committed to looking into the overall support provided to asylum seekers more generally over the coming academic year.

Ukraine relevant date

Regulation 2(3) amends paragraph 13 (Ukrainian nationals) of schedule 1 (fees – excepted students) of the Fees regs and Regulation 3(5)(b) amends paragraph 14 (Ukrainian nationals) of schedule 1 (persons eligible for Student Support) of the Student Support regs. The purpose of this amendment is to include an eligibility requirement for individuals in this category to be ordinarily resident in Scotland on the relevant date. This change will bring this category in line with the eligibility requirements for most of other categories included in the Fees and Student Support regs. When this category was originally introduced into the Fees regs and Student Support regs it was considered necessary to allow for the fact that there was a large number of Ukrainian nationals and their family members fleeing Ukraine at the start of Russian invasion and that they would be continually arriving in the UK throughout this period. The relaxing of this provision was to allow Ukrainian nationals and their family members whose study had been interrupted to start courses in Scotland even if they had arrived after the relevant date for the particular course. This change was considered to be a temporary measure to ensure as little disruption as possible to the lives of Ukrainian nationals and their family members and to make allowance for the fluid nature of the situation. Although the invasion is ongoing, there does appear to be a steady reduction in the numbers of Ukrainians who are coming to the UK under the specific home office schemes and therefore to ensure a consistency of approach across the regulations, this temporary allowance is now being removed.

Postgraduate courses – rUK exclusion

Regulation 3(3) amends regulation 13 (designated courses for student loans) of the Student Support regs to extend the eligibility for student loan support to postgraduate courses undertaken at an institution outside of Scotland. This change will align the support at postgraduate level with the undergraduate provision where there is no restriction on the funding available if an equivalent course is available in Scotland. This will also ensure that Scottish domiciled students studying courses in the rest of the UK will be able to continue their studies to postgraduate level with the same institution where previously this may not have been an option if their chosen postgraduate course was available at a Scottish institution.

Education Maintenance Allowance

Regulation 3(4) amends regulation 29 (exercise of power to grant an education maintenance allowance) of the Student Support regs. The purpose of this amendment is to provide for the payment of education maintenance allowance to college students under the powers of the Student Support regs where it had previously been provided by way of a legal Determination

made under the Education (Access Funds) Regulations 1990. This also brings education maintenance allowance for further education into line with the provision at school level which is already included in these regulations. This will ensure a consistency of approach for any future eligibility changes and reduce the administrative burden of having to make changes to both the Student Support regs and the legal Determination.

Miscellaneous amendments

Ex-Gratia payment scheme

Regulation 3(2)(b) amends paragraph (3) of regulation 2 (interpretation) of the Student Support regs to include a provision that will allow students who were eligible for financial support under the ex-gratia Payment Scheme launched in December 2022 following the recent Judicial Review to continue to make applications and receive payments under the Student Support regs as amended.

Consultation

The Scottish Government undertook the following consultation – Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space (consult.gov.scot)² which ran from 24 January 2023 to 31 March 2023. Analysis of the responses to this consultation along with engagement with the other administrations of the UK and key sector stakeholders has informed the policy changes detailed above.

Impact Assessments

Equality Impact Assessments (“EQIA”) and Children’s Rights and Wellbeing Impact Assessments (“CRWIA”) have been undertaken for the amendments relating to the Relevant Connection to Scotland, Children of Asylum Seekers and Young Asylum Seekers and the Ukraine Relevant Date. An EQIA has been undertaken for the changes to Postgraduate Support for Scottish domiciled students undertaking courses in the rest of the UK.

Financial Effects

The Minister for Higher and Further Education, and Minister for Veterans confirms that no Business and Regulatory Impact Assessment (“BRIA”) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Lifelong Learning and Skills
May 2023

² <https://consult.gov.scot/higher-education-and-science/changes-to-residency-criteria-for-access/>