

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT)
(AMENDMENT) (No. 2) REGULATIONS 2007**

2007 No. 2263

1. This Explanatory Memorandum has been prepared by the Department for Innovation, Universities and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend three sets of Regulations – the Education (Student Support) Regulations 2007 (SI 2007/176, as amended) (“SSR2007”), the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (SI 2007/ 778) (the “QCP Regulations”) and the Education (Fees and Awards (England) Regulations 2007 (SI 2007/779) (the “Fees Regulations”).

2.2 The SSR 2007 are amended principally to make provision for the payment of support to students who are undertaking designated distance learning courses in England. Paragraph 7 details the further amendments that are being made to the SSR 2007.

2.3. The QCP and Fees Regulations are being amended to enable residence in the Overseas Territories to be treated as qualifying residence in certain cases and to make clear that students who move from the Islands (the Channel Islands or the Isle of Man) to the United Kingdom for the purposes of completing their course will be treated as being ordinarily resident in the Islands.

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

3.1 None.

4. Legislative Background

4.1 These Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983, sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998 and sections 24 and 27 of the Higher Education Act 2004 (“the HE Act 2004”). They will amend:

- The Fees Regulations which provide that it shall be lawful to charge higher education tuition fees to persons who do not have a specified connection with the UK than to those who do. They also enable rules of eligibility to be adopted for making awards for undertaking education or research, which confine awards to persons having the

specified connection with the UK. Such differentiation might otherwise not be lawful under the Race Relations Act 1976;

- The QCP Regulations which define qualifying courses and students for the purposes of the HE Act 2004 in order that the fee controls imposed by the Act may apply to them; and
- The SSR 2007 which provide for support for students taking designated higher education courses in respect of an academic year beginning on or after 1st September 2007.

5. Extent

5.1 These Regulations apply to England.

6. European Convention on Human Rights

6.1 As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

Amendments to the SSR 2007

7.1 These Regulations insert a new Part into the SSR 2007 to make provision for the payment of support to students who are undertaking designated full-time distance learning courses in England. The Secretary of State may, under new regulation 109C, designate full-time distance learning courses as designated distance learning courses. A student undertaking a designated distance learning course may qualify for the support payable under this Part if he is an eligible distance learning student and he satisfies the relevant qualifying conditions for that support. The amount of support actually payable to an eligible distance learning student is determined in accordance with new regulations 109E and 109H. The support payable to eligible distance learning students consists of grant in respect of fees, grant in respect of books, travel and other expenditure, and disabled distance learning students' allowance.

7.2. Students who were previously in receipt of disabled students' allowances under Part 5 of the SSR 2007 in connection with undertaking a designated course but who are not attending or not treated as attending that course will have their status as eligible students converted to the status of eligible distance learning students provided that the conditions in regulation 109M are met. This provision will also apply to students who were previously determined to be eligible students but who did not qualify for student support solely because they were not in attendance on a designated course.

7.3. These Regulations make a technical amendment to the SSR 2007 to make it clear that an old system student (defined in regulation 2 of the SSR 2007) who is attending a course at the Guildhall School of Music and Drama

or at Heythrop College cannot qualify for a grant for fees which exceeds the actual fees that he is required to pay.

7.4 These Regulations also make a technical amendment to the SSR 2007 to make it clear that an eligible student may qualify for a grant for dependants where the relevant dependant is either dependent on the eligible student only or dependent upon the eligible student and his or her partner together.

7.5 These Regulations also amend the SSR 2007 to enable part-time students who become eligible part-time students during the course of the academic year as a result of an event listed in regulation 111 to potentially qualify for disabled part-time students' allowance.

Amendments to the QCP Regulations and the Fees Regulations

7.6 These Regulations amend both the QCP and Fees Regulations in order to clarify existing policy on students who live in the Channel Islands and the Isle of Man ("The Islands"). The policy intention is that students who are ordinarily resident in the United Kingdom as a result of moving from the Islands for the purposes of undertaking a course should be considered to be ordinarily resident in the Islands. The amendment to the QCP Regulations and the Fees Regulations serves to confirm that this continues to be the case.

7.7. These Regulations also amend both sets of Regulations to enable family members of nationals of the Overseas Territories ("OT") to potentially qualify for home fee status on the same basis as nationals of the OT.

7.8. In addition, amendments have been made to both sets of Regulations to ensure that in cases other than those covered by paragraph 7.7 a student's residence in the OT is, where appropriate, treated as qualifying residence for the purpose of determining whether that student qualifies for home fee status..

7.9. The QCP Regulations as originally drafted did not specifically give home fee status to EC students who moved to the UK from within the EEA and Switzerland and had lived in the UK for three years prior to the start of their course for the purposes of receiving full-time education. These Regulations accordingly amend the QCP Regulations in order to grant such students home fee status provided that prior to the three year period in question the student was ordinarily resident in the territory comprising the European Economic Area, Switzerland or the OT. This reflects the policy intention and brings the QCP Regulations into line with the Fees Regulations.

8. Impact

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

8.2 The impact on the public sector is minimal.

9. Contact

Karen Duncan at the Department for Innovation, Universities and Skills (Tel: 01325 391092) can answer queries regarding the amendments to the SSR 2007 Regulations relating to the provision of support for full-time distance learning students. Kathryn Symms at the Department for Innovation, Universities and Skills (Tel: 01325 391187) can answer queries regarding the amendments to the QCP Regulations and the Fees Regulations.