

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT)**  
**REGULATIONS 2021**

**2021 No. 127**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by The Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Education (Student Support) Regulations 2011 (S.I. 2011/1986) (“the Student Support Regulations”) to make changes to eligibility for student finance support primarily to reflect the fact that the UK is no longer an EU member state or part of the European Economic Area (EEA). For courses starting in academic year 2021/22, EU, other EEA and Swiss nationals and their family members, and children of Turkish workers will no longer have access to student financial support unless they are covered by the citizens’ rights provisions of the EU Withdrawal Agreement, EEA EFTA Separation Agreement and Swiss Citizens’ Rights Agreement (‘the Withdrawal Agreements’). These eligibility changes do not apply to Irish citizens living in the UK or Ireland whose right to study and to access benefits and services will be preserved on a reciprocal basis for British and Irish citizens under the Common Travel Area arrangement.
- 2.2 This instrument makes corresponding amendments to:
- the Education (Fees and Awards) (England) Regulations 2007 (S.I. 2007/779) (“the Fees and Awards Regulations”);
  - the Education (Student Support) (European University Institute) Regulations 2010 (S.I. 2010/447) (“the European University Institute Regulations”);
  - Further Education Loans Regulations 2012 (S.I. 2012/1818) (“the Further Education Loans Regulations”);
  - the Education (Postgraduate Master’s Degree Loans) Regulations 2016 (S.I. 2016/606) (“the Master’s Regulations”);
  - the Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189) (“the Fee Limit Condition Regulations”);
  - the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No. 2) etc.) Regulations 2018 (S.I. 2018/599) (“the Doctoral Regulations”).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 Although the primary purpose of this instrument is to make changes to eligibility as a result of EU Exit, it also makes a number of small corrections. The Department for

Education has complied with the requirement stated within paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar on this matter. The Department for Education has taken the decision not to apply the free issue procedure on the basis that it would be disproportionate given the nature of the correcting provisions and the proportion that they represent of the whole instrument. The relevant corrections are:

- Regulation 4(a) of this instrument substitutes regulation 4(2) of the Student Support Regulations and at the same time clarifies that paragraph (2) is subject to all the following provisions of that regulation, not only to paragraph (3). Equivalent amendments are made in the European University Institute Regulations, the Master's Regulations, and the Doctoral Regulations.
- Regulation 25(2)(b) of this instrument amends paragraph 1 of Schedule 1 to the Student Support Regulations so as to specify that, for the purposes of that Schedule, references to "Member State" or "State" in Article 7 of Directive 2004/38 should be read as including the UK. Equivalent amendments are made to the other amended instruments.
- Regulation 48 of this instrument corrects regulation 5(1) of the Further Education Loans Regulations 2012 so that it cross-refers to termination of eligibility under regulation 3.
- Regulation 61(2)(a)(ii)(dd) of this instrument corrects an error in paragraph 1(e) of the Schedule to the Fee Limit Condition Regulations which wrongly refers to paragraph 9 when it should refer to paragraph 10. This is corrected at the same time as adding references to other, new paragraphs.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is limited to England only.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 This instrument makes amendments to the legislation governing home fee status and student financial support (higher education, undergraduate and postgraduate, and further education).
- 6.2 The Student Support Regulations provide for support for undergraduate students taking designated full-time and part-time undergraduate courses and also for certain postgraduate higher education courses. The regulations contain eligibility criteria, pursuant to which certain groups are eligible for student finance support. These groups include EU nationals, UK nationals who have exercised free movement rights

to reside elsewhere in the European Economic Area (“EEA”) or Switzerland, EEA and Swiss migrant and frontier workers and their family members, children of Swiss nationals, and children of Turkish workers. Subject to meeting the relevant residency requirements, these groups have been eligible for student finance support.

6.3 This instrument amends the eligibility categories in Schedule 1 to the Student Support Regulations and relevant Regulations. It also makes equivalent amendments to the following other statutory instruments:

- the Fees and Awards Regulations, which provide that it is lawful to charge higher fees to persons who do not fall within specified categories than to those that do (the latter are referred to as having “home fee status”), or to confine eligibility for certain awards to specified categories, and are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983;
- the European University Institute Regulations, which provide support for a small number of students taking designated postgraduate courses at the European University Institute in Florence, Italy, and are made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act (THEA) 1998;
- the Further Education Loans Regulations, which provide for the payment and repayment of loans for students taking designated further education courses, and are made under sections 22 and 42(6) of the THEA 1998;
- the Master’s Regulations, which provide for the payment and repayment of postgraduate master’s degree loans, and are made under sections 22 and 42(6) of the THEA 1998;
- the Fee Limit Condition Regulations, which prescribe the higher education providers, courses and persons to whom maximum fee limits apply, and are made under sections 10(1), (4)(b) and (6) and 119(3) and (5) of the Higher Education and Research Act 2017; and
- the Doctoral Regulations, which provide for the payment and repayment of postgraduate doctoral degree loans and are made under sections 22 and 42(6) of the THEA 1998 and sections 5 and 6 of the Sale of Student Loans Act 2008.

6.4 It should be noted that The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181) were laid on 29 October 2020 to provide continuity from the end of the transition period to the end of the 2020/21 academic year on 31 July 2021.

## **7. Policy background**

### ***What is being done and why?***

- 7.1 As a consequence of EU Exit, the Government will remove eligibility for home fee status and student financial support for courses in England starting in academic year 2021/22 from EU, other EEA and Swiss nationals who are not covered by the citizens’ rights provisions of the Withdrawal Agreements. The amendments made by this instrument will mean, therefore, that such persons will receive the same treatment as other international students.
- 7.2 Providers will be able to charge higher fees to EU, other EEA and Swiss nationals not covered by the Withdrawal Agreements than to domestic students. Similar provisions apply also in relation to the eligibility rules for awards such as those by research

councils, UKRI and others. The limit on fee levels that applies to undergraduate courses for approved (fee cap) providers is also removed in respect of such students.

- 7.3 Under existing rules, all persons with settled status in the UK and living in England are eligible for home fee status and student finance support (both tuition fee loans and maintenance support) on the basis of ordinary residence in the UK or Islands (Crown Dependencies) for at least 3 years immediately before the start of their course.
- 7.4 To comply with obligations under EU law as a Member State, the Government provided support to EU, other EEA and Swiss nationals on broadly the same basis as to UK nationals. EU nationals choosing to pursue a Higher Education (HE) or Further Education (FE) course were eligible for home fee status and student finance (tuition fee loans) from Student Finance England if they had been ordinarily resident in the UK, Gibraltar, EEA or Switzerland for at least three years immediately before the start of their course. They were eligible in addition for maintenance support (loans for living costs) if they had resided in the UK or Islands for at least 5 years immediately before the start of their course (or for 3 years if they were settled in the UK having acquired the right of permanent residence under EU law). EEA or Swiss migrant or frontier workers and their family members were eligible for maintenance support after 3 years' residence in the UK, Gibraltar, EEA and Switzerland.
- 7.5 These rights for EU, other EEA and Swiss nationals are being removed for courses starting in academic year 2021/22. Those who have started courses prior to 1 August 2021 and were eligible under an eligibility category applying before that date will continue to be eligible for the duration of their course. They will also be able to transfer onto one other designated course on the basis of that eligibility category, should they wish to do so.
- 7.6 The groups who will no longer be eligible for student finance for courses starting from academic year 2021/22, unless covered by citizens' rights (or eligible in another category), include:
- EU nationals and their family members living in the UK, Gibraltar, EEA, Switzerland (or overseas territories with regard to home fee status).
  - Other EEA and Swiss nationals, and their family members, coming to the UK for the purposes of work.
  - Children of Swiss nationals where the latter are living, but not working in the UK.
  - Children of Turkish workers where either or both arrive in the UK after the end of the transition period.
- 7.7 The Withdrawal Agreements preserve existing rights to non-discrimination and equal treatment for persons who have exercised their EU law rights to reside in the UK before the end of the transition period and others in scope of the citizens rights' provisions of those agreements. These amendments are intended to ensure that such persons with 'protected rights' will continue to be eligible for home fee status and student finance on broadly the same basis as domestic students from academic year 2021/22.
- 7.8 The groups with protected rights, who will continue to qualify for home fee status and student support on broadly the same basis as now, include:
- EEA and Swiss nationals (and their family members) with a right to reside in the UK arising from the Withdrawal Agreements who have obtained settled or

pre-settled status under the EU Settlement Scheme (EUSS). This is generally those who have exercised a right to reside in the UK under EU law before 11pm on 31 December 2020, and who continue to live in the UK after that.

- EEA and Swiss frontier workers who, whilst not residing in the UK, have exercised a right to work in the UK under EU law before 11pm on 31 December 2020, and who continue to work in the UK after that. Family members of such frontier workers are covered if they have a right to reside in the UK under the Withdrawal Agreements and obtain settled or pre-settled status under the EUSS.
- Irish citizens who are in scope of the EU Withdrawal Agreement, who do not need to apply to the EUSS because under the Common Travel Area arrangement they do not require leave to enter or remain in the UK.
- EEA and Swiss nationals (and their family members) with a right to reside in Gibraltar arising from the Withdrawal Agreements. This is generally those who have exercised a right to reside in Gibraltar under EU law before 11pm on 31 December 2020, and who continue to live there after that.
- EEA and Swiss nationals (and their family members) who are covered by the Withdrawal Agreements but have not yet been granted settled or pre-settled status, if they are still within the deadline of 30 June 2021 for making an application to the EUSS ('the grace period') or if they have an outstanding in-time application (including appeals). Once the deadline has passed, or their application has been finally rejected, such a person will no longer be covered by the Withdrawal Agreements and will no longer have protected rights. They will therefore lose eligibility for home fee status and student finance.

- 7.9 Family members of persons of Northern Ireland who obtain settled or pre-settled status under the EUSS will be treated as having protected rights. This group is not covered by the citizens' rights provisions of the EU Withdrawal Agreement but may apply to the EUSS. Those granted such status will have access to home fee status and student financial support on the same basis as family members of EU nationals covered by the Withdrawal Agreement. Under the Belfast (Good Friday) Agreement, the people of Northern Ireland have a unique birthright to identify, and be accepted as, Irish or British or both, as they may so choose. Amendments to eligibility rules for student finance reflect a change to immigration rules that allows family members of the people of Northern Ireland to apply for an immigration status on broadly the same terms as family members of Irish citizens.
- 7.10 EEA and Swiss nationals, and their family members, who qualify on the basis of having pre-settled status under the EUSS but who subsequently lose that status will lose their eligibility for home fee status and student finance from the start of the next academic year. The same applies to family members of the people of Northern Ireland who qualify on the basis of pre-settled status.
- 7.11 In certain circumstances, a student may become eligible during the course of an academic year, where an event occurs, and certain other conditions are met. For example, a student may qualify for support mid-year where their course becomes designated, or if they become a person described in one of the specified EU-related eligibility categories. From the academic year starting 1 August 2021, these events provisions are generally retained, where relevant, in relation to the EU-related eligibility categories that apply from 1 August 2021.

7.12 There are a number of other groups who continue to be eligible for home fee status and student finance and whose eligibility may be directly or indirectly affected by changes arising from EU Exit. We are therefore making amendments to ensure continuity and consistency and to meet wider Government policy objectives. These amendments include:

- Irish citizens will, in accordance with the Common Travel Area (CTA) arrangement, continue to have access to home fee status and tuition fee support on the basis of 3 years' residence in the UK, Islands and Ireland. This will apply to all persons with settled status in the UK. Irish citizens will additionally continue to have access to maintenance support on the basis of 3 years' residence in the UK and Islands, as do others with settled status in the UK. Under the CTA, British and Irish citizens have the right to access all levels of education in either state on terms no less favourable than those available to the citizens of that state.
- Family members of UK nationals, who qualified for home fee status and tuition fee support by being treated as family members of EU nationals, will continue to be eligible if they meet the residency criteria. The relevant residency area will change from the UK, Gibraltar, EEA and Switzerland (and, for home fee status, the overseas territories) to the UK and Islands (and, for home fee status, the British overseas territories).
- UK nationals and their family members living in the EEA (excluding the UK and Gibraltar) or Switzerland on 31 December 2020, or who have returned to live in the UK on or after 1 January 2018 following a period of ordinary residence in the EEA or Switzerland, will continue to be eligible for home fee status, tuition fee loans and maintenance support for courses commencing before 1 January 2028. This will ensure a substantial transition period for those UK nationals who had moved to the EEA or Switzerland prior to the end of the transition period.
- UK nationals and their family members living in Gibraltar will continue to be eligible for home fee status, and for tuition fee support if starting courses before 1 January 2028. This will also apply to EU nationals and their family members with a right to reside in Gibraltar arising from the EU Withdrawal Agreement.
- UK nationals and their family members living in the British overseas territories (other than Gibraltar) will remain eligible for home fee status when studying in England. The residency area will change from the UK, Gibraltar, EEA, Switzerland and the overseas territories to the UK, Islands and British overseas territories.
- To align with the position of UK nationals living in the EEA and Switzerland, UK nationals and their family members ordinarily resident in the EU overseas territories who meet the residency criteria will continue to be eligible for home fee status for courses starting in England before 1 January 2028.
- There is a change in the definition of "Erasmus year" so that it covers both the EU's Erasmus scheme and the UK's new domestic alternative to Erasmus, the Turing scheme. Students on either scheme will be entitled to the same levels of support.
- From the 2021/22 academic year the eligibility criteria applying to students from the Crown Dependencies are being extended to permit those who move

to the UK solely for the purposes of study to access home fee status. Currently, only students from the Crown Dependencies who move to the UK for purposes other than undertaking a course are considered to be ordinarily resident in England on the first day of their course and are eligible for home fee status. This change will also apply to those students already on courses that started before 1 August 2021, in respect of academic years from 2021/22 onwards.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU because EU nationals' rights to live and study in the UK have changed. The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 ensured the eligibility criteria continued to operate on the same basis after the end of the transition period so as to maintain continuity throughout the 2020/21 academic year. This instrument changes eligibility for students beginning study from the academic year beginning 1 August 2021. This instrument is made under existing powers in the Education (Fees and Awards) Act 1983, the Teaching and Higher Education Act 1998, and the Higher Education and Research Act 2017, which allow for these amendments to be made.

## **9. Consolidation**

- 9.1 The Department keeps the feasibility of consolidating the various sets of regulations relating to student finance under periodic review. It has no plans to do so before academic year 2022/23.

## **10. Consultation outcome**

- 10.1 There is no statutory requirement to consult on this instrument. However, DfE discussed the policy amendments with sector stakeholders such as Universities UK, the UK Council for International Student Affairs and Independent HE. As part of a quality review process the draft regulations were sent to stakeholders such as the Student Loans Company (SLC) and Office for Students to check that the changes met policy intent. As education is devolved, drafts of the regulations were also shared with the devolved administrations, with Crown Dependencies and with Gibraltar for information. DfE policy leads have continued to engage and work with the administrations more generally.

## **11. Guidance**

- 11.1 On 23 June 2020, the Government announced via a written ministerial statement changes to eligibility rules for EU, other EEA and Swiss nationals, and their family members, who wish to commence courses in England in the Academic Year starting in August 2021. Following this, guidance confirming the changes was published on gov.uk (<https://www.gov.uk/guidance/studying-in-the-uk-guidance-for-eu-students>) on 13 July 2020. This same guidance was revised in December 2020 adding information about student visa options and links to guidance for students returning or coming to the UK in January 2021. A more detailed policy document explaining the changes was published in December 2020 and updated in January 2021 (<https://www.gov.uk/government/publications/student-finance-eligibility-2021-to-2022-academic-year>), and a FAQ was published in January 2021

[\(https://dfemedia.blog.gov.uk/access-to-student-finance-from-academic-year-2021-22-faqs/\)](https://dfemedia.blog.gov.uk/access-to-student-finance-from-academic-year-2021-22-faqs/).

- 11.2 The SLC (who administer the government funded loans and grants to learners on behalf of Student Finance England) will revise their guidance on access to student finance support for prospective students and institutions as part of their standard communication updates. The changes to Further Education 19+ and Apprenticeships eligibility will be reflected in the Education & Skills Funding Agency's Adult Education Budget funding rules for 2021/22 and the apprenticeship funding rules for 2021/22 (both to be published at a later date). Advanced Learner Loan (ALL) changes will be referenced in the ALL funding and performance management rules for 2021 to 2022 (also to be published at a later date).

## **12. Impact**

- 12.1 The net present cost to business, charities or voluntary bodies of removing the fee cap for EU students not covered by the Withdrawal Agreements and removing access to student loans is estimated to be £800m over the next 10-years.
- 12.2 The net present cost to the economy of removing access to home fee status and tuition fee loans for EU students is estimated to be between £0.2bn to £5.5bn over the next 10-years, with a central cost of £2.6bn.
- 12.3 The net present benefit to the public sector is estimated to be £2.6bn over the next 10-years.
- 12.4 A full Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://legislation.gov.uk) website. An Equality Analysis of the amendments is being published on the .GOV.UK website in February 2021 after these Regulations have been laid.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 We will review the impact of revising eligibility for EU and EEA nationals in terms of access to student finance support more generally.
- 14.2 We will also continue to monitor the number of students who receive tuition fee loans and loans for living costs. This information is published in the SLC's Statistical First Releases.

## **15. Contact**

- 15.1 Simon Wigfield at the Department for Education email: [simon.wigfield@education.gov.uk](mailto:simon.wigfield@education.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Paul Williams, Deputy Director for Student Funding Policy at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State for Universities, Michelle Donelan MP, can confirm that this Explanatory Memorandum meets the required standard.