

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT)
REGULATIONS 2022

2022 No. 57

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 makes amendments to a number of regulations relating to finance for students in further and higher education.
- 2.2 These changes are being made to include a new eligibility category for persons who have been granted leave under the Afghan Citizens Resettlement Scheme and to clarify existing provisions on the Secretary of State's right to recover overpayments of fee loans from academic authorities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Although this instrument is necessary to introduce further and higher education student finance changes for the 2022/23 academic year, it also makes a number of corrections to come into force as part of this Instrument.
- 3.2 Regulations 3(1)(b)(iii), 20(1)(b)(iii), 23(1)(b)(iii), 26(1)(b)(iii) and 28(1)(b)(iii) makes corrections by substituting references to paragraphs 276BJ1 and 276BO1 for 276BJ2 and 276BO2 of the Immigration Rules in each regulation 2 of the [Education \(Student Support\) Regulations 2011](#), the [Further Education Loans Regulations 2012](#), the [Education \(Postgraduate Master's Degree Loans\) Regulations 2016](#), the [Higher Education \(Fee Limit Condition\) \(England\) Regulations 2017](#), the [Education \(Postgraduate Doctoral Degree Loans and the Education \(Student Loans\) \(Repayment\) \(Amendment\) \(No. 2\) etc.\) Regulations 2018](#).
- 3.3 Regulations 16(1)(b)(iii) and 18(2)(b)(iii) makes corresponding corrections to Schedule 1, Part 1 of the [Education \(Fees and Awards\) \(England\) Regulations 2007](#) and the [Education \(Student Support\) \(European University Institute\) Regulations 2010](#).
- 3.4 In light of these corrections, the Department is adopting the free issue procedure in relation to this instrument for anyone who purchased S.I. 2021/1348. The Department confirms that it has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult the SI Registrar on the use of the free issue procedure in relation to this instrument.

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 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 legislation governing undergraduate and postgraduate student funding in England.
- 6.2 The Education (Student Support) Regulations 2011 (S.I. 2011/1986) (“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 support provided for under these Regulations includes fee support, loans and grants for living costs, grants for other costs such as travel, grants for dependants and disabled students’ allowances.
- 6.3 The Education (Postgraduate Master’s Degree Loans) Regulations 2016 (S.I. 2016/606) (“the Master’s Regulations”) provide for the making of loans to eligible students for designated postgraduate master’s degree courses beginning on or after 1st August 2016.
- 6.4 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”) provide for the making of loans to eligible students in connection with designated postgraduate doctoral degree courses that begin on or after 1st August 2018.
- 6.5 The Education (Student Support) (European University Institute) Regulations 2010 (S.I. 2010/447) (“the European University Institute Regulations”) set out the financial support available for students taking designated postgraduate courses at the European University Institute in Florence, Italy, in respect of an academic year beginning on or after 1st September 2010. These Regulations make provision for grants for living and other costs, a disabled student’s allowance and a grant for dependants, for up to twenty eligible students.
- 6.6 The Further Education Loans Regulations 2012 (S.I. 2012/1818) (“Further Education Loans Regulations”) provide for fee loans for students taking designated further education courses which begin on or after 1st August 2013.
- 6.7 The Education (Fees and Awards) (England) Regulations 2007 (S.I. 2007/779) (“the Fees and Awards Regulations”) provide that, in the circumstances described in the Regulations, it is lawful to discriminate between certain persons, meaning persons who do not have a specified connection with the UK can be charged higher fees than those who do. Those with the specified connection to the UK are referred to as having “home fee status”.
- 6.8 The Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189) (“the Fee Limit Condition Regulations”) prescribe the category of higher education provider and set out the qualifying persons and courses to which/whom maximum fee limits for undergraduate courses apply.

7. Policy background

What is being done and why?

Introducing a new Eligibility Category in Regulations for the Afghan Citizens Resettlement Scheme.

- 7.1 A new eligibility provision is being introduced in all of the Regulations mentioned in Section 6 above that apply to student finance for higher and further education so that persons resettled in the UK under the Afghan Citizens Resettlement Scheme and certain family members may qualify for student support in England, home fee status and are “qualifying persons” for the purposes of tuition fee limits. This means they can access student support on the same basis as persons within other protection-based categories.
- 7.2 The Afghan Citizens Resettlement Scheme will provide those put at risk by recent events in Afghanistan with a route to safety and will prioritise:
- those who have assisted the UK efforts in Afghanistan and stood up for values such as democracy, women’s rights and freedom of speech, rule of law; and
 - vulnerable people, including women and girls at risk, and members of minority groups at risk (including ethnic and religious minorities and LGBT).¹
- 7.3 The Afghan Citizens Resettlement Scheme is in addition to the Afghan Relocations and Assistance Policy Scheme which has been introduced as an eligibility category for the 2022/23 academic year, with the latter providing entry for current or former locally employed staff who are assessed to be under serious threat to life on the basis they were former or current employees of the UK government. These changes will ensure those granted leave under the Afghan Citizens Resettlement Scheme are placed on an equal footing with those who have been granted leave under the Afghan Relocations and Assistance Policy Scheme and other protection-based categories (such as refugees).
- 7.4 Students who are in this category will not need to satisfy a three-year ordinary residence requirement. This category of student will need, however, to have been ordinarily resident in the UK and Islands since the grant of such leave.
- 7.5 This change will apply to new students starting full-time or part-time undergraduate and postgraduate courses in the 2022/23 academic year.

Changes to overpayments regulations

- 7.6 An amendment is being made to existing provisions of the Student Support Regulations concerning the recovery of fee loan overpayments. The amendments clarify the Secretary of State’s existing powers to recover overpayments (i.e. amounts in excess of entitlement) of tuition fee support paid to academic authorities on behalf of students. The amendment does not constitute a change in policy, but is a clarification of existing powers in light of a High Court decision (in the case of Secretary of State for Education v CCP Graduate School Limited [2021] EWHC 2432(QB)), in which Mrs Justice May made obiter comments questioning the circumstances under which the government can recover fee loan overpayments from academic authorities. Equivalent changes are being made to the Master’s Regulations,

¹ [Afghan citizens resettlement scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/schemes/afghan-citizens-resettlement-scheme)

Doctoral Regulations and Further Education Loans Regulations to be consistent with the Student Support Regulations.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Department is currently considering the feasibility of consolidating the relevant legislation for the academic year starting August 2023.

10. Consultation outcome

- 10.1 There is no statutory requirement to consult on these amendment regulations.

11. Guidance

- 11.1 Information setting out the changes made by this instrument will be made available to universities, colleges and other higher education stakeholders on Student Finance England's (SFE) practitioners' website² by Spring 2022. Further information on changes for 2022/23 will be published for students on GOV.UK and SFE websites before 1 August 2022.
- 11.2 Guidance materials are being produced by SFE for students intending to apply for financial support for the 2022/23 academic year.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on business and this SI relates to maintenance of existing regulatory standards.

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 also be monitoring the number of students who receive fee loans and grants and loans for living costs. This information is published in the Student Loans Company's Statistical First Releases at the following link: [Statistics at SLC - Student Loans Company - GOV.UK \(www.gov.uk\)](https://www.practitioners.slc.co.uk/policy/).

15. Contact

- 15.1 Serena Bryant at the Department for Education, Telephone: 07880 066728 or email: serena.bryant@education.gov.uk can be contacted with any queries regarding the instrument.

² <https://www.practitioners.slc.co.uk/policy/>

- 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 Michelle Donelan, Minister of State for Higher and Further Education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.