

POLICY NOTE

THE EDUCATION (FEES, AWARDS AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2013

SSI 2013/80

The Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2013 (“the 2013 Regulations”) are made in exercise of the powers conferred by sections 49(3), 73(c) and (f), 73B and 74(1) of the Education (Scotland) Act 1980 and section 1 of the Education (Fees and Awards) Act 1983. The 2013 Regulations are subject to negative procedure.

Policy Objectives

The 2013 Regulations amend the Education (Access Funds) (Scotland) Regulations 1990 (“the Access Funds Regulations”), the Repayment of Student Loans (Scotland) Regulations 2000 (“the Repayment Regulations”), the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the SLTF Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing Regulations”), the Education (Fees and Awards) (Scotland) Regulations 2007 (“the 2007 Fees Regulations”), the Students’ Allowances (Scotland) Regulations 2007 (“the Allowances Regulations”), the Education (Student Loans) (Scotland) Regulations 2007 (“the Loans Regulations”), the Education Maintenance Allowances (Scotland) Regulations 2007 (“the EMA Regulations”) and the Education (Fees) (Scotland) Regulations 2011 (“the 2011 Fees Regulations”).

The following amendments are made to all of the above instruments, with the exception of the Access Funds Regulations, and the Repayment Regulations:

- The existing definition of “family member” in each of the instruments is replaced with a revised and simplified definition of “family member”.
- Amendments are made to reflect the fact that Council Regulation (EEC) No.1612/68 on the freedom of movement of workers has been repealed and replaced by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

The following amendments are made to all of paragraph 9 of Schedule 1 to the Bursaries Regulations, paragraph 9 of Schedule 1 to the Nursing Regulations, paragraph 9 of Schedule 1 to the 2007 Fees Regulations, paragraph 9 of Schedule 1 to the Allowances Regulations paragraph 8A of Schedule 1 to the Loans Regulations and paragraph 10 of Schedule 1 to the 2011 Fees Regulations:

- To clarify that, in addition to student who is a national of a European Union Member State, these paragraphs will apply in the case of a student who is a family member of a national of a European Union Member State “accompanying or joining” that national in the United Kingdom.
- To update the circumstances in which a United Kingdom national will be considered to have “utilised a right of residence” for the purposes of these paragraphs. In addition to circumstances in which a United Kingdom national has exercised a right under

Article 7 of Directive 2004/38 (right of residence in a European Union Member State of which a person is not a national) or any equivalent right under the EEA agreement or the Switzerland agreement, a UK national will have “utilised a right of residence” if the person resides in another EU Member State of which the person is also a national in circumstances in which, had he or she not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland agreement. This amendment is made in connection with the policy announced in Scottish Government Learning & Justice Circular 2012/005 <http://www.scotland.gov.uk/Resource/0041/00415203.pdf>.

The Access Funds Regulations are amended to ensure that they encompass all of the colleges of further education in relation to whom the Scottish Ministers wish to make ‘access funds’ available under the Regulations.

Technical amendments are made to the Repayment Regulations, some of which reflect similar amendments to those recently made by the Secretary of State to the Education (Repayment of Student Loans) Regulations 2009.

The Loans Regulations are amended to clarify that the Scottish Ministers may, though are not obliged to, ‘means test’ the amount of any loan. This allows for the new simplified student support package where the basic loan of £4,500 is available to all eligible students without the requirement for a means test.

The Allowances Regulations are amended to provide that a person will not be eligible for an allowance if they have, in the opinion on the Scottish Ministers, shown themselves to be unfitted to receive an allowance.

Finally, amendments are made to both the Allowances Regulations and the 2011 Fees Regulations to make clear that in the case of students who have refugee status, students who have been refused refugee status but given leave to remain, certain Iraqi national students and students granted temporary protection, those who move to Scotland from another part of the UK or the Channel Islands or the Isle of Man for the purposes of undertaking a course of education, will not be considered to be ordinarily resident in Scotland on the relevant date for the purposes of determining eligibility for home fees and student support. This brings the treatment of such students into line with the treatment of other students normally resident in another part of the UK or the Channel Islands or the Isle of Man and who come to Scotland to study.

Consultation

A consultation was not considered necessary in order to make the technical changes contained in this amending legislation.

Impact Assessments

An Equality Impact Assessment was not considered necessary.

Financial Effects

The Cabinet Secretary for Education & Lifelong Learning confirms that no BRIA is necessary as the instrument has no financial impact on the Scottish Government, local government or on business.

Scottish Government
Employability, Skills & Lifelong Learning Directorate

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