

2018 No. 171

EDUCATION

**The Education (Fees and Student Support) (Miscellaneous
Amendments) (Scotland) Regulations 2018**

Made - - - - *22nd May 2018*

Laid before the Scottish Parliament *24th May 2018*

Coming into force - - *1st August 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(a), section 1 of the Education (Fees and Awards) Act 1983(b), and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2018 and come into force on 1st August 2018.

Amendment of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006

2.—(1) The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006(c) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2 (interpretation)—

- (a) in paragraph (4)(b)(i), for “that person is not an independent student”, substitute “the person who is undertaking a course of education is not an independent student”;
- (b) at the beginning of paragraph (4)(b)(ii), insert “the”; and
- (c) in paragraph (9)(a), for “paragraph 2(4)(b)” substitute “paragraph (4)(b)”.

(3) In regulation 3(3) (eligible students), omit sub-paragraph (b) and the preceding “or”.

(4) In regulation 4(1)(b) (designated courses), omit from “except” to “degree,”.

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- (a) 1980 c.44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c.30) (“the 1998 Act”), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”), section 3(2). Section 73B was inserted by the 1998 Act, section 29(2) and was amended by the 2001 Act, section 3(3); by the Income Tax (Earnings and Pensions) Act 2003 (c.1), schedule 6, Part 2, paragraph 149; by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 34(1); and by the Bankruptcy (Scotland) Act 2016 (asp 21), schedule 8, paragraph 8. Section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 82(1) and schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
 - (b) 1983 c.40. Section 1 was relevantly amended by the Education Reform Act 1988 (c.40), section 237(1) and schedule 12, paragraph 91; by the Further and Higher Education Act 1992 (c.13), section 93(1) and schedule 8, paragraph 19; and by the Further and Higher Education (Scotland) Act 1992 (c.37), section 62(2) and schedule 9, paragraph 8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.
 - (c) S.S.I. 2006/333, relevantly amended by S.S.I. 2007/158, S.S.I. 2007/503, S.S.I. 2009/188, S.S.I. 2009/189, S.S.I. 2009/309, S.S.I. 2010/300, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2015/212, S.S.I. 2016/82, S.S.I. 2017/180 and S.I. 2010/1010.

(5) After paragraph 6B of schedule 1 (eligible students), insert—

“6C.

A person who—

- (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department(a);
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or
- (b) is the spouse, civil partner, child or stepchild of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the first day of the first academic year of the course.

6D.

A person who—

- (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or
- (b) is the spouse, civil partner, child or stepchild of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the first day of the first academic year of the course.”.

(6) In schedule 2 (designated courses), omit paragraphs 8 and 9.

Amendment of the Education Authority Bursaries (Scotland) Regulations 2007

3. After paragraph 6B of schedule 1 (persons eligible for bursaries) of the Education Authority Bursaries (Scotland) Regulations 2007(b), insert—

“6C.

A person who—

- (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department;
- (ii) has been ordinarily resident in the British Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in the area of the education authority on the qualifying day, or seeks a bursary in respect of a course of education at an educational establishment in the area of the education authority; or

(a) The current Home Office guidance is available here: <https://www.gov.uk/government/publications/afghanistan-locally-employed-staff-ex-gratia-scheme/afghanistan-locally-employed-staff-ex-gratia-scheme-further-information-on-eligibility-criteria-and-offer-details>.

(b) S.S.I. 2007/149, amended by S.S.I. 2007/503, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82 and S.S.I. 2017/180.

- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who meets the residence requirement specified in sub-paragraph (a)(iii).

6D.

A person who—

- (a)
 - (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
 - (ii) has been ordinarily resident in the British Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
 - (iii) is ordinarily resident in the area of the education authority on the qualifying day, or seeks a bursary in respect of a course of education at an educational establishment in the area of the education authority; or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who meets the residence requirement specified in sub-paragraph (a)(iii).”.

Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007

4. After paragraph 6B of schedule 1 (persons eligible for allowances) of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(a), insert—

“6C.

A person who—

- (a)
 - (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
 - (iii) is ordinarily resident in Scotland on the relevant date; or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

6D.

A person who—

- (a)
 - (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
 - (iii) is ordinarily resident in Scotland on the relevant date; or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.”.

(a) S.S.I. 2007/151, amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82 and S.S.I. 2017/180.

Amendment of the Students' Allowances (Scotland) Regulations 2007

5. After paragraph 6B of schedule 1 (persons eligible for allowances) of the Students' Allowances (Scotland) Regulations 2007(a), insert—

“6C.

A person who—

- (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department;
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in Scotland on the relevant date; or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

6D.

A person who—

- (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in Scotland on the relevant date; or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.”.

Amendment of the Education (Student Loans) (Scotland) Regulations 2007

6.—(1) The Education (Student Loans) (Scotland) Regulations 2007(b) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation)—

- (a) in paragraph (1), in the definition of “loan”, in sub-paragraphs (a) and (aa), for “vocational course” in each place that it occurs substitute “taught course”; and
- (b) in paragraph (8)(a), for “paragraph 2(4)(b)” substitute “paragraph (4)(b)”.

(3) In regulation 4 (designated courses)—

- (a) for paragraph (1)(b), substitute—

“(b) either—

- (i) in relation to a taught course leading to a Postgraduate Diploma or to a Postgraduate masters degree, a full-time course or a part-time course; or
- (ii) in relation to any other course, a full-time course or a sandwich course;”;

(a) S.S.I. 2007/153, amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82 and S.S.I. 2017/180.

(b) S.S.I. 2007/154, relevantly amended by S.S.I. 2007/503, S.S.I. 2008/205, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/189, S.S.I. 2009/309, S.S.I. 2010/300, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2015/212, S.S.I. 2016/82 and S.S.I. 2017/180.

- (b) at the end of paragraph (1)(d), insert—
- “, but in relation to a taught course leading to a Postgraduate Diploma or to a Postgraduate masters degree, excluding—
- (i) part-time courses wholly provided by an educational institution or institutions outside Scotland; and
 - (ii) full-time courses wholly provided by an educational institution or institutions outside Scotland, unless there is no equivalent course provided by any Scottish institution or institutions.”;

- (c) after paragraph (4), insert—

“(4A) For the purposes of these Regulations, a taught course:

- (a) means a course which requires a minimum amount of teaching or contact time between the student and teaching staff at the institution, in the form of lectures, tutorials or seminars, and
- (b) includes a course which is delivered by distance learning, where the sole or principal method of teaching by the institution does not require the student to attend on campus, but instead where lessons or classes are conducted remotely via digital or electronic means and where course work is submitted by correspondence.

(4B) For the purposes of these Regulations, a part-time course means a course where the normal period for completion of the total number of credits required for the course when studied at a full-time pace is extended over a longer period of time, but where—

- (a) the duration of the course does not exceed twice the usual duration of the full-time equivalent course leading to the same qualification; or
- (b) in the absence of any full-time equivalent for the course in question, it is ordinarily possible to complete the course on a part-time basis in up to three academic years.”.

- (4) In schedule 1 (eligible students)—

- (a) after paragraph 6B, insert—

“6C.

A person who—

- (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department;
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or
- (b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the first day of the first academic year of the course.

6D.

A person who—

- (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and

(iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or

(b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the first day of the first academic year of the course.”; and

(b) in paragraph 8A, subparagraph (1)(c), for the word “vocational” substitute “taught”.

(5) In schedule 2 (designated courses), in paragraphs 8 and 9, for “vocational” substitute “taught”.

Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007

7. After paragraph 6B of schedule 1 (persons eligible for education maintenance allowances) of the Education Maintenance Allowances (Scotland) Regulations 2007(a), insert—

“6C.

A person who—

- (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department;
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in Scotland on the qualifying date; or
- (b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the qualifying date.

6D.

A person who—

- (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
- (iii) is ordinarily resident in Scotland on the qualifying date; or
- (b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the qualifying date.”.

Amendment of the Education (Fees) (Scotland) Regulations 2011

8. After paragraph 6A of schedule 1 (fees-excepted students) of the Education (Fees) (Scotland) Regulations 2011(b), insert—

“6B.

A post 2011/12 student is an excepted student if that post 2011/2012 student—

- (a) is an Afghan national who—
 - (i) has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department;

(a) S.S.I. 2007/156, relevantly amended by S.S.I. 2007/503, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2011/261, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82 and S.S.I. 2017/180.

(b) S.S.I. 2011/389, relevantly amended by S.S.I. 2012/72, S.S.I. 2013/80 and S.S.I. 2016/82.

- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
 - (iii) is ordinarily resident in Scotland on the relevant date; or
- (b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the relevant date.

6C.

A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
 - (iii) is ordinarily resident in Scotland on the relevant date; or
- (b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the relevant date.”.

Amendment of the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017

9.—(1) The Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017(a) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 10(1)(b) (amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007)—

- (a) for “(5)(b)” substitute “5(b)” and for “(6)(a)(iii) and (b)” substitute “6(a)(iii) and (b)”.

(3) In regulation 22 (amendment of the Education Maintenance Allowances (Scotland) Regulations 2007), for “regulation 2(3) and (4)” substitute “regulation 2(2) and (3)”.

St Andrew’s House,
Edinburgh
22nd May 2018

S SOMERVILLE
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2017/180.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend, the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the Tuition Fees Loans Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing 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”), the Education (Fees) (Scotland) Regulations 2011 (“the Fees Regulations”) and the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (“the 2017 Regulations”).

Amendments relating to the eligibility of Afghan interpreters

Regulations 2(5), 3, 4, 5, 6(4), 7 and 8 extend to former Afghan employees of the British armed forces and their families eligibility for access to student funding and restrictions on the level of fees that may be charged under the Tuition Fees Loans Regulations, the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the Loans Regulations, the EMA Regulations and the Fees Regulations. To be eligible, Afghan nationals must have been granted limited leave to remain in the UK under the Locally Employed Staff Ex-Gratia Scheme (LES); have been ordinarily resident in the UK and Islands at all times since they were granted leave under the LES; and be ordinarily resident in Scotland on the first day of the first academic year of their course. Support is also extended to any spouse, civil partner or child of a person granted leave under the LES, subject to the same condition of ordinary residence in Scotland at the commencement of the course.

Amendments relating to the eligibility of stateless persons

Regulations 2(5), 3, 4, 5, 6(4), 7 and 8 extend to stateless persons and their families eligibility for access to student funding and restrictions on the level of fees that may be charged under the Tuition Fees Loans Regulations, the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the Loans Regulations, the EMA Regulations and the Fees Regulations. To be eligible, individuals must have been granted limited leave to remain in the UK as a stateless person under the Home Office immigration rules; have been ordinarily resident in the UK and Islands at all times since they were first granted such leave to remain; and be ordinarily resident in Scotland at the commencement of their course. Support is also extended to any spouse, civil partner or child of a stateless person, subject to the same condition of ordinary residence in Scotland at the commencement of the course.

Amendments relating to tuition fee loans for postgraduate students

Regulations 2(3), (4) and (6) remove references to postgraduate courses from the Tuition Fees Loans Regulations, reversing amendments introduced by the Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2012.

The Tuition Fees Loans Regulations will now only provide for tuition fee loans for eligible undergraduate students attending courses offered by an institution located in the UK but outside Scotland.

The Loans Regulations will continue to make provision for tuition fee loans for eligible full-time and part-time postgraduate students and maintenance loans for eligible full-time postgraduate and undergraduate students.

Amendments relating to student loan funding for postgraduate students

Regulation 6(3) amends the eligibility criteria in the Loans Regulations applying to specific types of postgraduate courses.

The amendments qualify the maximum length of part-time postgraduate courses which are eligible for loan funding. Tuition fee loans will only be payable to postgraduate students who are undertaking a course on a part-time basis where the duration of study does not exceed twice the length of the full-time equivalent course. Where there is no full-time equivalent course, part-time courses which take up to three years to complete will be eligible for funding. All other part-time postgraduate courses are excluded.

In addition, the amendments clarify that eligible postgraduate courses include taught courses, defined as a course which requires a specified level of teaching or contact time between the student and the course provider. This replaces the previous terminology of “vocational” postgraduate courses, a term which was not defined.

The definition of taught courses also makes specific provision for courses undertaken by distance and digital learning. Tuition fee and living cost loans will be made available to eligible students on full-time and part-time distance learning postgraduate courses under the same terms and conditions and on the same basis as they are made to eligible students on full-time or part-time campus-based postgraduate courses.

Miscellaneous amendments

Regulations 2(2), 6(2)(b) and 9 correct minor drafting errors in previous amendments made under the 2017 Regulations.

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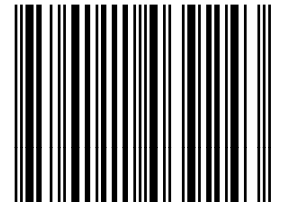
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