

POLICY NOTE

THE EDUCATION (FEES AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2024

SSI 2024/140

The above instrument was made in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980 and section 1 of the Education (Fees and Awards) Act 1983. The instrument is subject to negative procedure.

Purpose of the instrument

These Regulations make a number of amendments to the Education (Fees) (Scotland) Regulations 2022 (“the Fees regs”) and the Student Support (Scotland) Regulations 2022 (“the Student Support regs”). The policy objectives of the amendments are summarised below. All changes will come into force on 1 August 2024.

Policy Objectives

Female Afghan students

Regulation 2(9) inserts paragraph 12B into schedule 1 of the Fees regs and regulation 3(13) inserts paragraph 13B into schedule 1 of the Student Support regs to include an additional provision for female Afghan students who have been prevented from continuing their studies in Afghanistan due to the Taliban regime and have been granted a student visa by the Home Office in order to complete their Higher Education in Scotland. These students would be eligible to access the home tuition fee rate and student financial support including tuition fees.

Provision is already contained within the Fees and Student Support regs for Afghan nationals wishing to undertake courses of Further and Higher Education in Scotland who have entered the UK through designated Home Office Schemes; however the Afghan Citizens Resettlement Scheme (ACRS), being one of the main routes is currently closed to new expressions of interest. This new provision within regulations extends support to female Afghan nationals who have been granted a student visa by the Home Office in order to enter the UK.

Government policy within Afghanistan is discriminating against women in the country by placing an indefinite ban on women and girls entering and undertaking secondary and tertiary education. If these students were to undertake and complete their Higher Education in Scotland then they are likely to enter and contribute to the Scottish economy.

In order to be eligible the female Afghan students had to be undertaking a course of study at a university or an equivalent institution before 31 August 2021 (the recognised withdrawal date of the US and UK forces from Afghanistan) and be residing in Afghanistan before 30 January 2024, this date reflecting the next calendar day after which Scottish Ministers approved access to support for this cohort of students.

Ukrainian nationals

Regulation 2(10) replaces paragraph 13 (Ukrainian nationals) of schedule 1 of the Fees Regs and regulation 3(14) replaces paragraph 14 (Ukrainian nationals) of schedule 1 of the Student Support Regs with updated paragraphs 13 and 14 respectively to provide for an additional Home Office scheme that will be introduced during the course of the 2024/25 Academic Year – *the Ukraine Permission Extension Scheme*.

The new scheme will provide an opportunity for anyone who had or has leave under one of the existing designated Home Office schemes for Ukrainian nationals to have their leave in the UK extended. This will allow for the fact that from the start of the 2024/25 Academic Year, two of the three current Home Office schemes (Ukraine Extension Scheme and Ukraine Family Scheme) will be closed to new applicants and the first grants under those schemes will expire before the conclusion of the 2024/25 Academic Year.

Domestic Violence and Domestic Abuse

Regulation 2(13) amends paragraph 16 of schedule 1 of the Fees regs and regulation 3(17) amends paragraph 17 of schedule 1 of the Student Support regs to extend access to support for students who have been granted leave to enter or remain in the UK under this category. The regulations also update the applicable immigration rules/ This provision has been updated in regards to transnational marriage abandonment (TMA), a form of domestic abuse where the abusive party abandons their partner overseas and their permission to stay in the UK expires and/or they are left without access to their passport/immigration documents preventing them from returning to the UK. The Home Office changed their rules in this regard in December 2023 following a successful court challenge to include additional provision within the domestic violence rules to allow for those in that particular situation to be provided with Indefinite Leave to Enter to the UK. The amendment to the Fees regs and Student Support regs reflects these changes.

Regulation 2(14) inserts paragraph 16A into schedule 1 of the Fees regs and regulation 3(18) inserts paragraph 17A into schedule 1 of the Student Support regs. These new provisions provide access to home tuition fee rate and student financial support, including tuition fees for the children of those who have been granted ‘leave to enter or remain’ as a victim of domestic violence or domestic abuse. This provision has been introduced following clarification of the status in which children of domestic abuse or violence victims are provided with by the Home Office.

Access to Postgraduate student support

Regulation 3(3) amends regulation 11 (students eligible for student loans) of Part 4 of the Student Support regs by inserting sub-head (vi) which restricts access to postgraduate loan support for those students undertaking a social work course who are in receipt of bursary support through the Scottish Social Services Council (SSSC). The regulation ensures that postgraduate social work students have access to one type of student financial support to undertake their course.

Regulation 3(22) amends Part 1 (courses designated for student loans and student loans for tuition fees) of schedule 4 of the Student Support regs to include reference to taught courses leading to a postgraduate diploma, taught courses leading to a postgraduate masters degree and research course leading to a postgraduate masters degree. Regulation 3(23) amends Part 2 (courses designated for student loans only) of schedule 4 of the Student Support regs by

removing reference to the above courses. This is technical change to clarify the student financial support package (tuition fee loan and student loan) for postgraduate students undertaking the above courses.

Timing of Payments

Regulation 3(5) amends regulation 22 (Payment of Loans) of Part 4 of the Student Support regs by omitting sub-head (4). This is to allow students the option of selecting whether to access their student loans over the duration of their course or evenly spread over twelve months. This change follows a successful trial with students who were in receipt of the Care Experienced Bursary in academic years 2022/23 and 2023/24.

Miscellaneous amendments

Regulation 2(2) inserts a definition of ‘Higher Education’ into Regulation 2 (interpretation) of the Fees regs. Regulation 3(2) inserts the same definition into Regulation 2 (interpretation) of the Student Support regs.

Regulation 2(3) and Regulation 3(7) substitute paragraphs 7 of schedule 1 of the Fees regs and paragraph 8 of schedule 1 of the Student Support regs respectively. This amendment aligns the regulations to Scottish Government policy to provide home fee status and student support to individuals in this category as soon as they are provided with a refugee status by removing the requirement for the person to have been ordinarily resident in Scotland on the relevant date.

Regulation 2(4) and regulation 3(8)(b) omit the word ‘ordinarily’ from paragraph 8(a)(iii) of schedule 1 of the Fees regs and paragraph 9(a) of schedule 1 of the Student Support regs respectively to remove the requirement for those persons to have been ordinarily resident in Scotland on the relevant date and align the regulations to Scottish Government policy to provide home fee status and student support to individuals in this category as soon as they are granted leave following a refugee claim.

Regulations 2(5) to (8) and 2(11) and 2(12) amend schedule 1 of the Fees regs and regulations 3(8) to (11) and 3(15) and 3(16) amend schedule 1 of the Student Support regs to omit reference to ‘at all times’ where it occurs to align with any travel or residence conditions attached to the leave to enter or remain and temporary absence rules already contained within regulations and to ensure consistency with the other categories listed in these schedules.

Regulation 2(15) amends paragraph 1 of schedule 2 of the Fees regs by inserting reference to ‘schedule 1’ to ensure that the provisions of ordinary residence captured in that paragraph equally apply to the categories of students noted.

Regulation 2(16) substitutes paragraph 2 of schedule 2 of the Fees regs (ordinary residence for specified period: general) to clarify the categories of students who are being captured under this provision and assist with the interpretation of the schedules in terms of the meaning of ordinary residence at a given time or place

Regulation 3(4) substitutes regulation 20 of the Student Support regs to correct a minor drafting error.

Regulation 3(6) amends the heading of paragraph 1 of schedule 1 of the Student Support regs to change the title of the provision. This was an oversight when long residence provisions were removed from regulations in 2023.

Regulation 3(19) amends paragraph 2 of schedule 2 of the Student Support regs (residents of Ireland) to ensure consistency of language used across the regulations where the term ‘relevant date’ is used and is defined in the interpretation section..

Regulation 3(20) amends paragraph 1(1) of schedule 3 (ordinary residence on relevant date) to ensure that the provisions of ordinary residence captured in that paragraph equally apply to the categories of students noted in schedules 1 and 2.

Regulation 3(21)(a) – (d) amends paragraph 2 of schedule 3 of the Student Support regs (ordinary residence for specified period: general and interpretation’ to clarify the categories of students who are being captured under this provision and assist with the interpretation of the schedules in terms of the meaning of ordinary residence at a given time or place

EU Alignment Consideration

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Consultation

The Scottish Government engaged with relevant stakeholders in regards to the changes to support for female Afghan students, access to Postgraduate student support and Timing of Payments. It was not felt necessarily to consult on the changes for Ukrainian nationals and Domestic Violence and Domestic Abuse as these provisions were reflecting updates made to categories of individuals who could access leave to enter or remain through the Home Office. Consultation was not undertaken in regards to the miscellaneous amendments due to their nature of being minor technical amendments to provide clarification and/or ensure consistency of approach.

Impact Assessments

Equality Impact Assessments (“EQIA”) and Child Rights and Wellbeing Impact Assessments (“CRWIA”) have been undertaken for the amendments relating to female Afghan students, Timing of Payments and Domestic Violence and Domestic Abuse.

An EQIA only was undertaken in regards to access to Postgraduate Student Support given the cohort are likely to be older than the age range captured under CRWIA.

The EQIA and CRWIA previously undertaken in respect of Ukrainian nationals has been updated to reflect the new route that these individuals can access leave to enter or remain from the Home Office – the salient information contained within the initial impact assessments remains relevant and can be accessed at www.gov.scot/publications/eqia-residency-changes-ukrainian-students/

Financial Effects

The Minister for Higher and Further Education; and Minister for Veterans confirms that no Business and Regulatory Impact Assessment (“BRIA”) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Lifelong Learning and Skills
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