

EXPLANATORY MEMORANDUM TO
THE EDUCATION (FEES AND AWARDS) (AMENDMENT) REGULATIONS 2006

2006 No.483

1. 1.1 This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations amend the Education (Fees and Awards) Regulations 1997 (“the 1997 Regulations”) to implement the provisions of EC Directive 2004/38 and give effect to changes made to the Teacher Training Agency by the Education Act 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 It would have been desirable to make consolidated regulations rather than amending regulations. This has proved difficult as the Secretary of State’s functions under the Fees and Awards Act 1983 are currently only partially devolved to Wales. Section 1 of that Act, which relates to the charging of tuition fees, is not devolved. Proposals to transfer the functions under that remaining section in relation to Wales are underway. On the basis that the transfer of functions is approved, the Department will revoke the 1997 Regulations in relation to England and bring forward consolidated regulations in relation to England only. It is hoped this will be completed by the end of 2006.

4. Legislative Background

4.1 These Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983, and amend the Education (Fees and Awards) Regulations 1997.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The 1997 Regulations provide that it shall be lawful to charge higher tuition fees to persons who do not have a specified connection with the United Kingdom than to those who do. They also enable rules of eligibility to be adopted for making awards for undertaking education or research which confine the awards to persons having the specified connection with the United Kingdom. Such differentiation might otherwise be unlawful under the Race Relations Act 1976. The persons who have that specified connection with the United Kingdom are those mentioned in the Schedule to the 1997 Regulations.

7.2 Regulation 4 of the 1997 Regulations relates to the charging of tuition fees and is made under section 1 of the 1983 Act. The Secretary of State for Education and Skills

exercises those functions in relation to England and Wales. Regulations 5 to 7 of the 1997 Regulations relate to the making of awards and are made under section 2 of the 1983 Act. Those functions under section 2 are exercised by the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales. In amending the 1997 Regulations in order to implement Directive 2004/38 the Secretary of State is not able to make changes under regulations 5 to 7 in relation to Wales.

7.3 Tuition fees at higher education institutions in England and Wales are directly controlled by way of a condition imposed under section 24 of the Higher Education Act 2004 in relation to England and currently under section 26 of the Teaching and Higher Education Act 1998 in relation to Wales. The 1997 Regulations do not make lawful the charging of a higher tuition fee which would be unlawful by reason of a condition imposed under those Acts.

7.4 The changes to Regulation 4 of the 1997 Regulations reflect the renaming of the Teacher Training Agency to the Training and Development Agency for Schools under the Education Act 2005. The substitution of new Regulation 6A also reflects the changes made by the Education Act 2005 in relation to England.

Changes to the Schedule of the 1997 Regulations including the implementation of Directive 2004/38/EC (see Annex A for the transposition note)

7.5 A new Schedule has been substituted. The terms of the pre-existing Schedule have been substantively changed by the substitution in relation to England and in relation to Wales for the purpose of Regulation 4 only (charging of tuition fees), to implement EU Directive 2004/38 on the rights of EC nationals and their families to move and reside in other Member States.

7.6 The changes introduce new categories of students eligible for equal treatment in respect of tuition fees charged, tuition fee awards and awards for maintenance. These include:

- EC nationals and their family members who acquire the right of permanent residence in the UK (after a continuous period of five years residence in the UK) (tuition fees charged, tuition fee awards and maintenance awards);
- Family members of economically inactive EC nationals who have yet to acquire the right of permanent residence (tuition fees charged and tuition fee awards only);
- European Economic Area (EEA) or Swiss self-employed persons and their family members (tuition fees charged, tuition fee awards and maintenance awards);
- Dependent direct relatives in the ascending line of EEA or Swiss migrant workers (tuition fees charged, tuition fee awards and maintenance awards);
- "Frontier" workers and "frontier" self-employed persons (tuition fees charged, tuition fee awards and maintenance awards);
- Children, spouses or civil partners of Swiss nationals (tuition fees charged, tuition fee awards and maintenance awards).

Scrutiny History for Directive 2004/38/EU

7.7 The Commission's draft of the Directive (reference 11807/05 (24795)) was deposited in Parliament on 1 August 2003. The Parliamentary Under-Secretary of State at the Home Office sent the Scrutiny Committees an Explanatory Memorandum on 28 August 2003. The Commons Scrutiny Committee regarded the document as politically important and cleared it from scrutiny (see HC 63-xxxii (2002-03), paragraph 30 (17 September 2003)).

Consultation

7.8 There is no statutory requirement to consult on these Regulations. However, the following consultation was undertaken. We have consulted colleagues in the Welsh Assembly Government and in UKCOSA (The Council for International Education) on the amending regulations. The latter is the body which provides advice to institutions and students on how to interpret the regulations. In addition, the changes that will be implemented here draw heavily from the Student Support Regulations 2006 (SI 2006 No. 119) on which there was extensive consultation. These consultations are listed below.

7.9 DfES held a number of workshops with key stakeholders in the Higher Education sector during Spring and Summer 2005 to give them an overview of policy changes for 2006 and also provide them with an opportunity to give feedback. Through this, DfES officials were able to address concerns and answer questions from Student Finance Officers in particular those resulting from workshops held at the annual Local Education Authority (LEA) Conference.

7.10 As part of a quality review process in Autumn 2005, the draft 2006 Regulations were sent to stakeholders in the HE sector such as the National Union of Students (NUS), the National Association of Student Money Advisers (NASMA), Higher Education Institutions (HEIs), the Student Loans Company (SLC) and Local Education Authorities (LEAs) and they were given the opportunity to comment.

7.11 As part of the consolidation exercise, DfES will be consulting extensively with interested parties.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal.

9. Contact

9.1 Tricia Hammond at the Department for Education and Skills. Tel: 020 7925 5333 or e-mail: tricia.hammond@dfes.gsi.gov.uk; can answer any queries regarding the instrument.

TRANSPOSITION NOTE

DIRECTIVE 2004/38/EC OF 29 APRIL 2004 ON THE RIGHT OF CITIZENS OF THE UNION AND THEIR FAMILY MEMBERS TO MOVE AND RESIDE FREELY WITHIN THE TERRITORY OF THE MEMBER STATES

Directive 2004/38/EC lays down the conditions governing the exercise of the right of free movement within the territory of the Member States by Union citizens and their family members, the right of permanent residence in the territory of the Member States for Union citizens and their family members and the limits placed on these rights on grounds of public policy, public security or public health.

The Home Office has lead responsibility for implementation of Directive 2004/38/EC. The Department for Education and Skills has made the necessary transposition arrangements in respect of equal treatment for tuition fees in relation to England and Wales and for awards made by education authorities in respect of England only. This implements the right to equal treatment in Article 24 of the Directive and the derogation, in respect of maintenance support only, in Article 24(2).

The Education (Fees and Awards) (Amendment) Regulations 2006 make the changes required to implement Article 24 of the Directive in the area of fees and awards for which the Department for Education and Skills has responsibility.

The following table sets out the main objectives of Article 24 of the Directive in the areas of fees and awards for which the Department for Education and Skills has responsibility and how these have been implemented in the Education (Fees and Awards) (Amendment) Regulations 2006.

Article	Objectives	Implementation	Responsibility
Article 24(1) and (2)	Article 24(1) establishes a right to equal treatment and a derogation is provided in Article 24(2). By way of derogation from the right to equal treatment in Article 24(1), a Member State is not obliged to grant maintenance aid for studies prior to the acquisition of the right of permanent residence to persons other than workers, self-employed persons, persons who retain such status and members of their families.	As part of the Education (Fees and Awards) (Amendment) Regulations 2006. The Regulations set out the categories of person to whom it is lawful to charge a higher tuition fee. They are the persons not mentioned in the Schedule. The Regulations also set out the categories of person for whom it is lawful to confine eligibility for maintenance awards. They are the persons mentioned in the Schedule unless a person only falls into paragraphs 3, 4 or 5.	Secretary of State

		<p>The following categories of person have been added to the Schedule:</p> <p>(a) persons with a permanent right of residence in the United Kingdom (paragraph 1(4));</p> <p>(b) workers, self-employed persons, persons who have retained their status as such and their family members (paragraph 6); and</p> <p>(c) EC nationals and their family members (paragraph 5(2))</p> <p>Persons mentioned only in paragraph 5 of the Schedule qualify for equal treatment in respect of tuition fees only.</p>	
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