

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT)
REGULATIONS 2011**

2011 No. 87

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend three sets of Regulations: the Education (Student Support) Regulations 2009 (S.I. 2009/1555, as amended) (“the SSR 2009”), the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (S.I. 2007/778, as amended) (“the QCP Regulations”) and the Education (Fees and Awards) (England) Regulations 2007 (S.I. 2007/779 as amended) (“the Fees Regulations”). These Regulations provide for amendments across the three sets of linked Regulations, to ensure consistency in interpretation and application of the regulations. The amendments remove eligibility for student support or regulated fees and home fee status for holders of Discretionary Leave to enter or remain, until they are awarded settled status; introduce a new definition of ‘parent’; and introduce a new definition of ‘family member’ for EEA workers/self-employed persons.

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

3.1 None

4. Legislative Context

4.1 The SSR 2009 make provision for the payment of grants and loans to eligible students in connection with their undertaking and/or attending designated higher education courses. The QCP Regulations prescribe qualifying courses and class of qualifying persons and the Fees Regulations provide for lawful discrimination in relation to the fees charged for such courses; the Fees and QCP Regulations are amended periodically to maintain alignment with the SSR 2009.

4.2 These amendments come into force 22 days after the amending regulations are laid before Parliament.

5. Territorial Extent and Application

5.1 The Regulations apply to England.

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 SSR 2009 provide for support for students taking designated higher education courses in respect of an academic year beginning on or after 1 September 2010. The QCP Regulations prescribe the qualifying courses and class of qualifying persons for the purposes of the Higher Education Act 2004 so that the fee controls imposed by that Act apply to them. The Fees Regulations provide that, in the circumstances described in the Regulations, it shall be lawful to discriminate between some or all of those persons mentioned in Schedule 1 to the Regulations and any other person.

7.2 These Regulations make amendments to the three sets of regulations to provide clarity to definitions within the regulations and to confirm that refugees and those awarded Humanitarian Protection are the only classes of persons with temporary leave to enter or remain in the UK who are to be considered eligible to receive support, or to benefit from regulated fees and home fee status. Those with Discretionary Leave to enter or remain will no longer be eligible for student support or regulated fees and home fee status until they are awarded settled status.

The policy changes effected by the Regulations are set out below:

7.3 Defining a family member in line with Article 2 of EU Directive 2004/38

Schedule 1 to the SSR 2009 defines various classes of persons who may be eligible for elements of the student support package; the Schedule to the Fees Regulations prescribes the class of persons who are entitled to be charged fees on the same basis as home students; and Schedule 1 of the QCP Regulations prescribes the class of persons eligible to be charged regulated fees.

In relation to European Economic Area (EEA) workers and self-employed persons, Schedule 1 of the SSR 2009 refers to a child of that person or the child of that person's spouse or civil partner. An amendment to paragraph 1 to that Schedule 1 (made by S.I. 2010/2546) amended the definition of a "family member" to replace references to 'a child' with one that refers to direct descendants of the person or of the person's spouse or civil partner who are under the age of 21 or dependent on the person or person's spouse or civil partner. The change aligned the definition of a family member for EEA workers/self-employed persons with the definition of a family member in Article 2 of EU Directive 2004/38.

The amendments in these Regulations align the definition in the QCP Regulations and the Fees Regulations with the amended definition in the SSR 2009.

7.4 Technical amendment to ensure that the term 'parent' is restricted to those with a legal status of parent.

The SSR 2009, QCP Regulations and Fees Regulations provide that for the purpose of prescribing the class of persons eligible to receive student support, regulated fees and home fee status, children of certain persons may also qualify.

The definition of 'parent' in regulation 2 of the Fees Regulations is amended to remove the reference to "any person having care of a child". A corresponding

amendment is made to the definition of “parent” in the Schedule to the QCP Regulations, and in Schedule 1 of the SSR 2009. For the purposes of regulation 2 of the Fees Regulations and the Schedules to the QCP Regulations and SSR 2009, ‘parent’ will be defined to mean a legal guardian and any other person having parental responsibility only.

The term ‘parent’ will no longer include other persons having care of a child.

7.5 Replacing the category of ‘persons with leave to enter or remain in the UK’ with a new category of ‘person granted Humanitarian Protection’.

Persons with certain temporary awards of leave to enter or remain in the UK, as a result of a claim for asylum, have historically been eligible to receive fee support and maintenance support. Those awarded Discretionary Leave as a result of a claim to asylum were included under this provision. Recent representations to the Department have further extended the category under which those with temporary leave could be considered eligible for support to include those granted Discretionary Leave on human rights grounds. Further representations have also been received on behalf of persons holding other forms of leave to remain.

The amendments made in these Regulations restrict eligibility for student support, regulated fees and home fee status to those awarded refugee status or Humanitarian Protection only. Persons holding other forms of temporary leave to enter or remain will no longer be classed as qualifying persons for student support or home fee/regulated fee status. Such persons will be required to have been awarded ‘settled’ status within the meaning given by section 33(2A) of the Immigration Act 1971, before the first day of the first academic year of the course in order to be considered as an eligible person. This restriction of eligibility for support has been introduced to manage increased pressures on the student support budget. Transitional arrangements are made to ensure that students currently assessed as eligible under existing regulations will continue to receive the support they have been awarded.

7.6 Excluding students who already hold an honours degree from receiving fee and maintenance grant support for a further degree course.

Full-time students studying for a first degree are eligible to apply for fee and maintenance grant support as well as loans for living costs. However, students are not entitled to receive fee and maintenance grant support to pursue a qualification at a level that is equivalent to or lower than one they already hold, referred to as an equivalent or lower qualification (ELQ). For example, the policy intention is to prevent a student who already has a qualification at honours degree level from receiving fee and maintenance grant support to take a second undergraduate degree course.

Regulation 2 (5) of the 2009 Regulations allows the Secretary of State to determine that a qualification is an ELQ where a qualification already held by the student is of a level equivalent to or higher than the level of the qualification to which the current course leads. Regulation 2 was amended (by S.I. 2010/2546) to make explicit that this will apply where a student holds a UK honours degree. The amendments in these Regulations align the definition in the QCP Regulations with the amended definition in the SSR 2009.

- ***Consolidation***

7.7 The Department intends to consolidate these amendments to the SSR 2009 if a full set of Regulations are laid for the 2012/13 academic year. Amendments to the QCP Regulations and Fees Regulations will not be consolidated.

8. Consultation outcome

8.1 The Refugee Council (in England) has received prior notification of the change detailed at 7.5.

9. Guidance

9.1 These changes for 2010/11 will be notified through Departmental and partner bodies' publications and websites. For example, students will be informed of changes through the respective guides to full-time and part-time financial support. These will be available in hard copy and electronic formats. In addition, on-line guidance chapters will be updated to reflect changes for 2010/11.

10. Impact

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

10.2 The impact on the public sector is minimal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Regulations will be kept under review and in particular we will be monitoring the views of stakeholders. We will also be monitoring the number of students who receive grants and loans. This information is published in the Student Loans Company's Statistical First Releases.

13. Contact

Elaine Underwood at the Department for Business, Innovation and Skills Tel: 0114 2075295 or email: Elaine.underwood@bis.gsi.gov.uk can answer queries regarding the instrument.