

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT**  
**ETC.) (EU EXIT) REGULATIONS 2020**

**2020 No. 1181**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by The Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Education (Student Support) Regulations 2011 (the “Student Support Regulations”) to ensure that students in higher education who are currently eligible to receive support for tuition, living and other costs continue to be eligible on the same basis after IP completion day (11pm on 31 December 2020, being the last day of the transition period). This will ensure continuity for students starting courses on or before the end of the 2020/21 academic year (31 July 2021). Substantive changes to the eligibility rules for those starting courses from the academic year 21/22 will be made in a subsequent instrument.

2.2 It also makes corresponding amendments to (i) the Education (Fees and Awards) (England) Regulations 2007, (ii) the Education (Student Support) (European University Institute) Regulations 2010, (iii) the Further Education Loans Regulations 2012, (iv) the Education (Postgraduate Master’s Degree Loans) Regulations 2016, (v) the Higher Education (Fee Limit Condition) Regulations 2017 and (vi) the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No.2) etc.) Regulations 2018.

2.3 The Education (Student Fees, Awards and Support) (Amendment) (EU Exit) Regulations 2019 are revoked following the laying of this Instrument.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument applies to England and Wales.

4.2 The territorial application of this instrument is limited to England only.

## **5. European Convention on Human Rights**

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

## **6. Legislative Context**

- 6.1 The Student Support Regulations 2011 and other regulations relating to student finance contain eligibility criteria, pursuant to which certain groups are eligible for student finance support. These groups include EU nationals, UK nationals who have exercised free movement rights to reside elsewhere in the European Economic Area (“EEA”) or Switzerland, and EEA and Swiss migrant workers and their family members. Subject to meeting the relevant residency requirements, these groups are eligible for student finance support and ‘home fee status’ – which means they must be charged the same tuition fees as domestic students.
- 6.2 From IP completion day, the UK will no longer be treated as an EU Member State nor part of the EEA for the purposes of these regulations, and UK nationals will no longer be EU nationals.
- 6.3 Technical amendments are therefore required to be made to student finance regulations for students in higher and further education. First, to ensure that the current eligibility rules continue to apply on and after IP completion day, until the end of the 2020/21 academic year when substantive changes to the eligibility of EU nationals and others are introduced. Second, to reflect the fact that from IP completion day the UK will no longer be treated as a member of the EU. The government has already provided assurances that EU nationals who start courses in the 2020/21 academic year or before will continue to be eligible for student finance support for the duration of their courses.
- 6.4 The policy for subsequent academic years will be specifically dealt with via a further regulatory change. These substantive changes will apply to courses that start on or after 1 August 2021. Among other changes, EU nationals who are not within scope of the EU withdrawal agreement will not be eligible for student support and home fee status. The policy announcements in relation to these changes are set out here: <https://www.gov.uk/guidance/studying-in-the-uk-guidance-for-eu-students>; <https://www.gov.uk/guidance/uk-nationals-in-the-eea-and-switzerland-access-to-higher-education-and-19-further-education>.
- 6.5 This instrument amends the Student Support Regulations, which prescribe the amount of and criteria for support for tuition, living and other costs for students taking designated higher education courses. The Student Support Regulations are made under sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (“THEA 1998”), which empowers the Secretary of State to make regulations to provide financial support for students in higher education.
- 6.6 This instrument broadly replicates the 2019 Regulations, to ensure continuity for academic year 20/21, with some modifications to reflect the Withdrawal Agreement.
- 6.7 The amendments made include:
- a. updating references to the EEA to include the UK and Gibraltar, as appropriate, to reflect the UK’s status after IP completion day, and so that these references continue to operate as they do now on and after IP completion day;

b. amending the eligibility category relating to EU nationals and their family members to ensure that students, such as UK Nationals resident in Gibraltar, who may have relied on this category before the end of the Implementation Period, can continue to access home fee status and student support on the same basis on and after IP completion day;

c. Amending the definition of ‘right of permanent residence’ which currently refers to a right arising under Directive 2004/38/EC<sup>1</sup> (the “Directive”). The Directive will no longer have force in the UK on and after IP completion day so the definition would otherwise be defective. In order to retain the same eligibility for the same description of students throughout the academic year, this definition is therefore amended to mean a right which arises under the residence scheme immigration rules (i.e. the EU settlement scheme) to reside in the United Kingdom permanently without restriction but only where, had the facts pertaining to the determination of that right fallen to be considered immediately before IP completion day, a right of permanent residence would have arisen under the Directive.

d. Amending the eligibility category relating to students who have the right of permanent residence to include students who have the right (under Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement, or Article 16(2) or (3) of the Swiss citizens’ rights agreement) to be treated as if they have settled status under the EU settlement scheme.

e. Updating references to “Member State” and “EEA State” to reflect the status of the UK on and after IP completion day, so that these references continue to operate appropriately after 31 December 2020.

f. Amending the eligibility category relating to students who are settled in the UK and have previously exercised a ‘right of residence’ in the EEA or Switzerland to reflect the fact that the Directive will no longer apply to the UK. This category will continue to apply to those who exercised this right before IP completion day.

6.8 This instrument also makes similar amendments to:

a. the Education (Fees and Awards) (England) Regulations 2007 (S.I. 2007/779), which provide that persons who do not have a specified connection with the UK can be charged higher fees than those that do, and are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983;

b. the Education (Student Support) (European University Institute) Regulations 2010 (S.I. 2010/447), which provide support for a small number of students taking designated postgraduate courses at the European University Institute in Florence, Italy, and are made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act (THEA) 1998;

c. the Further Education Loans Regulations 2012 (S.I. 2012/1818), which provide for the payment and repayment of loans for students taking designated further education courses, and are made under sections 22 and 42(6) of the THEA 1998;

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<sup>1</sup> The Directive will no longer have force in the UK on and after IP completion day and is replaced by rights under the EU withdrawal agreement, EEA EFTA separation agreement or Swiss citizens’ rights agreement, as implemented by the residence scheme immigration rules (as defined in section 17(1) of the European Union (Withdrawal Agreement) Act 2020).

- d. the Education (Postgraduate Master’s Degree Loans) Regulations 2016 (S.I. 2016/606), which provide for the payment and repayment of postgraduate master’s degree loans, and are made under sections 22 and 42(6) of the THEA 1998;
- e. the Higher Education (Fee Limit Condition) (England) Regulations 2017 (S.I. 2017/1189), and prescribe the higher education providers, courses and persons to whom maximum fee limits apply, and are made under sections 10(1), (4)(b) and (6) and 119(3) and (5) of the Higher Education and Research Act 2017; and
- f. the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No.2) etc.) Regulations 2018 (S.I. 2018/599), which provide for the payment and repayment of postgraduate doctoral degree loans and are made under sections 22 and 42(6) of the THEA 1998 and sections 5 and 6 of the Sale of Student Loans Act 2008.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Education (Student Fees, Awards and Support) (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) are revoked following the laying of this Instrument. The 2019 Regulations were laid to provide protection for students, by ensuring continuity, in the event of a No Deal EU Exit at the end of March 2019. The Withdrawal Agreement was however agreed with the EU in October 2019, and this instrument therefore addresses the changes that now need to be made from IP completion day. This instrument broadly replicates the 2019 Regulations, to ensure continuity for academic year 20/21, with some modifications to reflect the Withdrawal Agreement.
- 7.2 To help give certainty for those considering study in the UK in academic year 2020/21, the Government announced on 28 May 2019 that EU nationals (and their family members) who start a course in England in the 2020/21 academic year or before will continue to be eligible for ‘home fee’ status, undergraduate and postgraduate financial support and advanced learner loans from Student Finance England for the duration of their course, provided they meet the existing requirements. This includes those that start courses between 1 January 2021 and 31 July 2021, after IP completion day.
- 7.3 This instrument gives effect to that announcement so that EU nationals and others who meet the current eligibility requirements continue to be eligible for home fee status and student finance support for courses starting in the 2020/21 academic year on the same basis as now.
- 7.4 To comply with existing legal obligations under EU law as it currently applies, EU students benefit from home fee status, capped tuition fees, and tuition fee loans after three years’ residence in the EEA and Switzerland, and maintenance loans, after five years’ residence in the UK and Islands (unless they are EEA/Swiss migrant or frontier workers, self-employed persons or their family members, who require three years’ residence in the EEA and Switzerland only to access maintenance support). As education is devolved, the precise entitlement to student support differs across the different parts of the UK. These obligations will fall away at the end of the Implementation Period, which falls midway through the 2020/21 academic year.

- 7.5 Therefore, the amendments under this instrument are necessary to support the assurances the UK government made on 28 May 2019 to ensure EU nationals that wished to start a course in England in the 2020/21 academic year could do so as planned, with the confidence that they will be eligible for student finance support for the duration of their course. This assurance was made to give certainty to students, institutions and the Student Loans Company (“SLC”) (which, amongst other things, provides loans and grants to EU students at universities and colleges in England). Doing so allowed each of them to plan sensibly in advance of the 2020/21 academic year and make necessary related decisions (e.g. about place of study in the case of students, financial planning in the case of institutions, and about the appropriate operational rules and systems in the case of the SLC). In order to give effect to the assurances, these amendments are necessary to ensure those starting courses during academic year 20/21 (and those who have started previously) are able to do so and remain eligible for home fee status and student finance, when the UK will no longer be treated as part of the EU.
- 7.6 As noted in paragraph 6.4, the policy for subsequent academic years will be specifically dealt with via a further regulatory change and will apply to courses that start on or after 1 August 2021.
- 7.7 The amendments in this instrument to the references to the EEA to include Gibraltar (as outlined at 6.5a) and to the eligibility category relating to EU nationals (as outlined at 6.5b) are necessary because currently students from Gibraltar derive their entitlement to home fee status and tuition fee loans by virtue of being EU nationals. When the UK leaves the EU, they will no longer be able to rely on their EU national status. Accordingly, if these amendments were not made under this instrument there would be a risk that those with British citizenship resident in Gibraltar would lose their existing rights when commencing a course in England, potentially subjecting them to higher university fees.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU because it ensures that the eligibility criteria in the amended student finance regulations continue to operate on the same basis on and after IP completion day. This instrument is made under existing powers in the Education (Fees and Awards) Act 1983, the Teaching and Higher Education Act 1998, and the Higher Education and Research Act 2017, which allow for these amendments to be made.

## **9. Consolidation**

- 9.1 None.

## **10. Consultation outcome**

- 10.1 There is no statutory requirement to consult on this instrument. However, DfE discussed with sector stakeholders such as the Russell Group and Universities UK. They were highly supportive of the Government’s policy position for the 2020/21 academic year as they wished to give their members as much notice as possible to amend current business models in the event of any major policy change. Further, as part of a quality review process the draft amendment regulations were sent to

stakeholders such as the SLC and Office for Students to check that the amendments met policy intent. As the status quo will be maintained under the instrument both stakeholders were content with the suggested amendments. As education is devolved, a draft of the regulations was also shared with the devolved administrations, with Crown Dependencies and with Gibraltar for information. DfE policy leads have continued to engage the administrations more generally.

## **11. Guidance**

- 11.1 On 28 May 2019, the Government announced assurances on access to student finance support for EU nationals commencing a course in England in the 2020/21 academic year. This was confirmed in a Written Ministerial Statement on 4th June 2019.
- 11.2 The SLC (who administer the government funded loans and grants to learners on behalf of Student Finance England) will revise their guidance on access to student finance support for prospective students and institutions as part of their standard communication updates.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. An equality analysis determined that the amendments made by this instrument would ensure that EU nationals and others currently eligible for student finance support will continue to be eligible for the 2020/21 academic year. As such, we do not expect any changes to the current equalities position.
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment has not been published. The instrument maintains the current position in terms of access to home fee status and student finance support. However, as part of the Public Sector Equality Duty, an Equality Analysis<sup>2</sup> of the amendments has been fully scoped and considered by the Secretary of State for Education.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 We will review the impact of maintaining the status quo in terms of access to student finance support more generally. Further amendments for future academic years 2021/22 and beyond will be captured in a further set of regulations in due course.
- 14.2 We will also continue to monitor the number of students who receive tuition fee loans and loans for living costs. This information is published in the SLC's Statistical First Releases.

## **15. Contact**

- 15.1 Simon Wigfield at the Department for Education Telephone: 07384 521109 or email: [simon.wigfield@education.gov.uk](mailto:simon.wigfield@education.gov.uk) can be contacted with any queries regarding the instrument.

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<sup>2</sup> A copy of this Equality Analysis is available from Simon Wigfield at the Department for Education. Email: [simon.wigfield@education.gov.uk](mailto:simon.wigfield@education.gov.uk)

- 15.2 Paul Williams, Deputy Director for Student Funding Policy at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State for Universities, Michelle Donelan MP, can confirm that this Explanatory Memorandum meets the required standard.