

EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 929

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

2. Purpose of the instrument

- 2.1 This instrument amends the [Education \(Student Support\) Regulations 2011 \(S.I. 2011/1986\)](#) (“the Student Support Regulations”) and other related student finance statutory instruments. It updates provisions relating to eligibility for support for settled persons who have been ordinarily resident in the Common Travel Area (United Kingdom (UK), Crown Dependencies and Ireland), and for family members of UK nationals who have been ordinarily resident in the UK and Crown Dependencies. It further ensures that the rights of persons covered by the Withdrawal Agreements (the EU withdrawal agreement, the EEA-EFTA separation agreement and the Swiss citizens’ rights agreement) are fully reflected, and ensures that the UK’s commitments under the Common Travel Area (CTA) arrangement are met in relation to Irish citizens living in the EEA or Switzerland on or before 31 December 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Amendments to regulations are necessary to make updates that reflect the Department’s policy position and the UK’s international commitments.
- 3.2 The relevant amendments in relation to those who have been resident within the CTA and those moving from the Crown Dependencies are:
 - that settled persons who move to England for the purpose of study from the Crown Dependencies are not eligible for student support;
 - that the family members of UK nationals who move to England for the purpose of study from the Crown Dependencies are not eligible for student support;
 - that persons who have spent all or part of the last three years in Ireland, and who are settled in the UK, are eligible for support if they arrive on or before the day on which the first term of their first academic year actually begins.
- 3.3 Updates to the definition of a person with protected rights are required to ensure that the Regulations fully reflect the requirements of:
 - article 18(3) of the EU Withdrawal Agreement (and corresponding articles in the other withdrawal agreements), which confer protections on a person, including a person who has submitted a late application under article 18(1)(d),

while their application is pending and during any appeal against a refusal of their application (equivalent updates are also made to the eligibility category covering those with settled status under the EUSS);

- article 18(2) of the EU Withdrawal Agreement (and corresponding articles in the other withdrawal agreements), which confer protections on a person within the deadline for making an application, including a person purporting to be a joining family member during the initial 3 months following their arrival in the UK.

3.4 Updates to the rights of Irish citizens living in the EEA or Switzerland at the end of the transition period are required to:

- make such Irish citizens eligible for home fee status and tuition fee support if starting courses in England on or before 31 December 2027.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is 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 This instrument is being laid to ensure that the legislation that regulates eligibility for fees payable at the home rate ('home fee status') and student financial support in England fully reflects the policy intent.

6.2 The Student Support Regulations provide for support for undergraduate students taking designated full-time and part-time undergraduate courses, and for certain postgraduate higher education courses. They prescribe categories of eligible students who qualify for student finance support. These groups include persons who are settled in the UK, family members of UK nationals, and EU nationals and their family members protected by the EU Withdrawal Agreement.

6.3 Equivalent updates are made as appropriate to the following statutory instruments:

- [The Education \(Fees and Awards\) \(England\) Regulations 2007 \(S.I. 2007/779\)](#) ("the Fees and Awards Regulations"), which provide that it is lawful to charge higher fees to persons who do not fall within specified categories than to those that do (the latter are referred to as having "home fee status"), or to confine eligibility for certain awards to specified categories;
- [The Education \(Student Support\) \(European University Institute\) Regulations 2010 \(S.I. 2010/447\)](#) ("the European University Institute Regulations"), which provide support for a small number of students taking designated postgraduate courses at the European University Institute in Florence, Italy;
- [The Further Education Loans Regulations 2012 \(S.I. 2012/1818\)](#) ("the Further Education Loans Regulations"), which provide for the payment and repayment of loans for students taking designated further education courses;

- [The Education \(Postgraduate Master’s Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#) (“the Master’s Regulations”), which provide for the payment and repayment of postgraduate master’s degree loans;
- [The Higher Education \(Fee Limit Condition\) \(England\) Regulations 2017 \(S.I. 2017/1189\)](#) (“the Fee Limit Condition Regulations”), which prescribe the higher education providers, courses, and persons to whom maximum fee limits apply; and
- [The Education \(Postgraduate Doctoral Degree Loans and the Education \(Student Loans\) \(Repayment\) \(Amendment\) \(No. 2\) etc.\) Regulations 2018 \(S.I. 2018/599\)](#) (“the Doctoral Regulations”), which provide for the payment and repayment of postgraduate doctoral degree loans.

6.4 It should be noted that The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127) made changes to eligibility for student finance support primarily to reflect the fact that the UK is no longer an EU member state or part of the European Economic Area (EEA). This instrument is now being laid to provide additional clarity and updates, following the changes made by those Regulations, in line with the policy intent and commitments under the Withdrawal Agreements and CTA arrangement.

7. Policy background

What is being done and why?

- 7.1 Amendments to the Student Support Regulations, and related sets of Regulations, are required to update provisions relating to eligibility for tuition fee support for settled persons who have been ordinarily resident in the CTA (UK, Crown Dependencies and Ireland), and for family members of UK nationals who have been ordinarily resident in the UK and Crown Dependencies in order to reflect the policy intent that, if they are coming to England from the Crown Dependencies solely for the purpose of study, they should be eligible for home fee status but not student support. Students coming from the Crown Dependencies for the purpose of study have not to date been eligible for either home fee status or financial support from Student Finance England. A policy change for academic year 2021/22, implemented by S.I. 2021/127, means that home fee status is now extended to this group, but not financial support.
- 7.2 This instrument further provides that eligible persons holding settled status when in the UK and whose residency area comprises the UK, Crown Dependencies and Ireland, with part of that period having been spent in Ireland, should be settled here on the day on which the first term of the first academic year actually begins rather than the first day of the first academic year of the course. This is to ensure that those covered by the CTA arrangement with Ireland are eligible if they arrive in the UK on the first day of the first term of the course or before, if the date of their arrival would otherwise be after the first day of the first academic year of the course.
- 7.3 This instrument makes additional provision as regards eligibility for home fee status and student finance for persons covered by the EU Withdrawal Agreement. Specifically, it ensures that the Regulations fully reflect the requirements of:
- article 18(3) of the EU Withdrawal Agreement (and corresponding articles in the other withdrawal agreements), which confer protections on a person, including a person who has submitted a late application under article 18(1)(d), while their application is pending and during any appeal against a refusal of

their application (equivalent updates are also made to the eligibility category covering those with settled status under the EUSS); and

- article 18(2) of the EU Withdrawal Agreement (and corresponding articles in the other withdrawal agreements), which confer protections on a person within the deadline for making an application, including a person purporting to be a joining family member during the initial 3 months following their arrival in the UK.

- 7.4 It makes corresponding updates for persons covered by equivalent provisions in the EEA-EFTA separation agreement and the Swiss citizens' rights agreement.
- 7.5 Lastly, this instrument makes Irish citizens living in the EEA or Switzerland at the end of the transition period eligible for home fee status and tuition fee support for courses starting in England on or before 31 December 2027. This does not affect those Irish citizens living in Ireland, who are already eligible for home fee status and tuition fee support. The CTA arrangement with Ireland is a long-standing political understanding which provides for British and Irish citizens to enjoy reciprocal rights and privileges in each other's state. This includes rights to home fee status, and to higher and further education student support, subject to meeting the eligibility criteria on terms no less favourable than those for British citizens.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it makes updates to the legislation that regulates eligibility for home fee status and student financial support arising from our withdrawal from the EU.

9. Consolidation

- 9.1 The Department keeps the feasibility of consolidating the various sets of regulations relating to student finance under periodic review, and will consider in due course.

10. Consultation outcome

- 10.1 There is no statutory requirement to consult on this instrument and a consultation was not considered appropriate as its purpose is to update existing legislation to reflect current policy.

11. Guidance

- 11.1 DfE will ensure that guidance reflecting current policy is up to date as these regulations come into force.
- 11.2 The Student Loans Company (SLC) (who administer the government funded loans and grants to learners on behalf of Student Finance England) will update their guidance on access to student finance support for prospective students and institutions as part of their standard communication updates. The changes to Further Education 19+ and Apprenticeships eligibility will be reflected in the Education & Skills Funding Agency's Adult Education Budget funding rules for 2021/22 and the apprenticeship funding rules for 2021/22. Advanced Learner Loan (ALL) changes will be referenced in the ALL funding and performance management rules for 2021 to 2022.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument which updates existing provisions to reflect the current policy intent and to meet our commitments under the Withdrawal Agreements and the CTA arrangement.

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 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 email: simon.wigfield@education.gov.uk can be contacted with any queries regarding the instrument.
- 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.