

EXPLANATORY MEMORANDUM TO
THE FURTHER EDUCATION LOANS (AMENDMENT) REGULATIONS 2022

2022 No. 354

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 Further Education Loans Regulations 2012 (S.I. 2012/1818) (“the 2012 Regulations”).

2.2 The 2012 Regulations provide for fees support for designated further education courses in England. This instrument replaces the definition of “fees”, amends the provision for students who transfer courses, clarifies a student’s “standard entitlement” where a programme of A Level study is followed, where loans are withheld, repaid, or cancelled in specified circumstances, and where a student transfers to a different institution because the institution where the student began a course is no longer publicly funded. A standard entitlement is the number of loans an eligible student may take out for designated further education courses.

2.3 The Department is adopting the free issue procedure in relation to this instrument for anyone who purchased S.I. 2016/238 because of defects in that amending instrument relating to a student’s standard entitlement in relation to AS and A level courses.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England.

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 amends the 2012 Regulations that provide for Advanced Learner Loans to pay for fees of designated further education courses in England. The Regulations update the definition of “fees” in regulation 2 of the 2012 Regulations, amend regulation 9 of the 2012 Regulations to provide for students who transfer to a course at a different institution to apply for a new loan in relation to the course at the new institution in all cases, substitute a new regulation 15 of the 2012 Regulations to clarify the standard loan entitlement where a programme of A Level study is followed, where loans are withheld, repaid, or cancelled in specified circumstances, and where a

student transfers to a different institution because the institution where the student began a course is no longer publicly funded, and amend regulation 18 of the 2012 Regulations (which provides for adjustment of the loan where a student transfers from one course to another) as a consequence of the amendment to regulation 9 and to clarify the procedure where a student transfers to a course at the same institution for which lower fees are payable.

7. Policy background

What is being done and why?

Definition of fees (regulation 2)

- 7.1 The current definition in the 2012 Regulations refers to the Higher Education Act 2004 that was repealed on the passing of the Higher Education and Research Act 2017. This instrument adopts the definition of “fees” set out in the Higher Education and Research Act 2017 that replaced the 2004 Act definition, because it was not provided for on the passing of the 2017 Act.

Additional loan application if transferring institution (regulation 9)

- 7.2 This instrument makes amendments so that a student must apply, should the student require the funding, for another loan if transferring to a course at another institution due to their original institution no longer being publicly funded. A student is not currently required under the existing Regulations to apply for another loan when transferring institutions in these circumstances.
- 7.3 We are removing this provision because it is not consistent with the Student Loans Company (SLC) processes. The SLC assessment process operates on defined start and end dates for a course, so it can schedule payments on behalf of a student and calculate loan interest accurately to support future repayment requirements and process. The SLC system does not recognise any prolonged periods where a student is not in study, for example if the student is seeking an alternative institution to continue a course. To minimise the risk that the student’s liability is calculated incorrectly, it is necessary for the student to apply for a new loan in these circumstances.
- 7.4 The application for another loan in these circumstances is largely an administrative matter and will not affect a student’s standard entitlement of four loans for courses. Amended regulation 15(9)(b) will provide for an additional loan in these circumstances.

Clarification of standard entitlement (regulation 15)

- 7.5 This instrument makes clear the number of fee loans a student is entitled to for the study of AS/A Levels. Currently, an eligible student who wishes to fund one or more AS Level or A Level may use only one loan to do so. However, the policy intent is that students are eligible for up to eight separate loans to undertake a programme of A Level study comprising up to four subjects. The programme may comprise AS Levels followed by A Levels, or A Levels alone, with each qualification requiring a separate loan.
- 7.6 Similarly, where a student has taken out a loan for a course, but that course was approved for grant funding on the first day of that course, and where the Secretary of State has withheld payment of all the loan or that loan has been fully repaid by the institution, that loan does not count towards the standard entitlement. This situation

may arise where an institution has not recognised that a student is eligible for grant funding and has instead received a loan from the Student Loans Company for that course. This instrument also makes it known that if the Secretary of State cancels a loan in full under regulation 25 (cancellation of fee loan) then that loan does not count towards a student's standard entitlement.

- 7.7 This instrument further confirms that, where a student requires an additional loan following a transfer to a course at another institution, due to their original institution no longer being publicly funded and the original loan is not cancelled in full under regulation 25, the student may qualify for additional loans in addition to their standard entitlement for the period of study caused by the transfer. This means a student is not put at a disadvantage in these circumstances.

Amount of fee loan for transferring students (regulation 18)

- 7.8 This instrument removes references in regulation 9 to increasing or decreasing a loan when the student transfers institution, as the amendments now require the student to apply for a new loan whenever the student transfers institutions, therefore no adjustment of the original loan is required. It also removes a reference in regulation 18 regarding a student applying to the Secretary of State for a loan to be reduced if the student transfers to a course within an institution under regulation 8, because that action is undertaken by the Student Loans Company on confirmation by the institution of a course transfer.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Department is currently considering the feasibility of consolidating the relevant legislation.

10. Consultation outcome

- 10.1 There is no statutory requirement to consult on these amendment regulations, nor has any consultation been undertaken because of the benefits to students of these amendments.

11. Guidance

- 11.1 Information setting out the changes made by this instrument will be made available to Institutions / providers on Student Finance England's (SFE) practitioners' website before the date these regulations come into force¹.
- 11.2 Guidance materials are being produced by SFE for students intending to apply for financial support for the 2022/23 academic year.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

¹ [Policy - SFE, Practitioners \(slc.co.uk\)](https://www.slc.co.uk/policy)

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business and this instrument relates to the maintenance of existing regulatory standards.
- 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 be monitoring the number of students who receive support. This information is published in the Student Loans Company's Statistical First Releases.
- 15. Contact**
- 15.1 Simon Wigfield at the Department for Education, email: simon.wigfield@education.gov.uk or 07384 521109 can be contacted with any queries regarding the instrument.
- 15.2 Paul Williams, Deputy Director Student Funding Policy, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Donelan, Minister of State for Higher and Further Education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.