

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT FEES, AWARDS AND SUPPORT) (AMENDMENT)
(NO. 2) REGULATIONS 2022

2022 No. 534

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 makes amendments to a number of regulations relating to finance for students in further and higher education.

2.2 These changes are being made to include two new eligibility categories in the Student Finance regulations for (A) British Nationals (i) evacuated under Operation Pitting or (ii) assisted by Her Majesty's Government to leave Afghanistan after Operation Pitting, with the assistance commencing before 6th January 2022 and (B) those granted leave to enter or remain in the United Kingdom under the Ukrainian Family Scheme, the Homes for Ukraine Sponsorship Scheme or the Ukraine Extension Scheme ("the Ukraine Schemes")

2.3 These amendments will allow individuals evacuated or assisted from Afghanistan to access student finance and home fee status without being subject to a three-year ordinary residence requirement and bring parity with other persons arriving from Afghanistan who have been identified by the Home Office as being at risk. It will also allow those awarded leave under the Ukrainian Schemes to qualify for home fees and student support in line with those in other protection-based categories.

2.4 Regulations 4(4) and 4(9) add cross references in regulations 38(8), 41(8), 45(11), 49A(2) and 147(8) of the Education (Student Support) Regulations 2011 (S.I. 2011/1986), which provides students with eligibility under the Afghan Citizens Relocations Scheme and Afghan Relocations and Assistance Policy Scheme to access grants for living costs, disability support allowance (full and part time), childcare grants and travel grants. This corrects an omission in S.I. 2021/1348 and 2022/57. The Department will not be adopting the free issue procedure in this instrument for anyone who purchased S.I. 2021/1348 or 2022/57, as eligibility for student finance under the two Afghanistan schemes is not available until 1st September 2022. The Department confirms that it has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar on the use of the free issue procedure in relation to this instrument.

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 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 makes amendments to Regulations governing student financial support (higher education, undergraduate and postgraduate, and further education). These are set out below:

6.2 [The Education \(Student Support\) Regulations 2011 \(S.I. 2011/1986\)](#) (“the Student Support Regulations”) provide for support for undergraduate students taking designated full-time and part-time undergraduate courses and also for certain postgraduate higher education courses. The support provided for under these regulations includes fee support, loans and grants for living costs, grants for other costs such as travel, grants for dependants and disabled students’ allowances.

6.3 [The Education \(Fees and Awards\) \(England\) Regulations 2007 \(S.I. 2007/779\)](#) (“the Fees and Awards Regulations”) provide that, in the circumstances described in the Regulations, it is lawful to discriminate between certain persons, meaning persons who do not have a specified connection with the United Kingdom can be charged higher fees than those who do. Those with the specified connection to the United Kingdom are referred to as having “home fee status”.

6.4 [The Education \(Student Support\) \(European University Institute\) Regulations 2010 \(S.I. 2010/447\)](#) (“the European University Institute Regulations”) set out the financial support available for students taking designated postgraduate courses at the European University Institute in Florence, Italy, in respect of an academic year beginning on or after 1st September 2010. These regulations make provision for grants for living and other costs, a disabled student’s allowance and a grant for dependants, for up to twenty eligible students.

6.5 [The Further Education Loans Regulations 2012 \(S.I. 2012/1818\)](#) (“Further Education Loans Regulations”) provide for fee loans for students taking designated further education courses which begin on or after 1st August 2013.

6.6 The Education [\(Postgraduate Master’s Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#) (“the Master’s Regulations”) provide for the making of loans to eligible students for designated postgraduate master’s degree courses beginning on or after 1st August 2016.

6.7 [The Higher Education \(Fee Limit Condition\) \(England\) Regulations 2017 \(S.I. 2017/1189\)](#) (“the Fee Limit Condition Regulations”) prescribe the category of higher education provider and set out the qualifying persons and courses to which/whom maximum fee limits for undergraduate courses apply.

6.8 [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”) provide for the making of loans to eligible students in connection with designated postgraduate doctoral degree courses that begin on or after 1st August 2018.

- 6.9 [The Higher Education Short Course Loans Regulations 2022 \(S.I. 2022/349\)](#) (the “HESC Regulations”) provide for fee loans for students taking designated higher education short courses which begin on or after 1st September 2022.
- 6.10 Together the Student Support Regulations, the Fees and Award Regulations, the European University Institute Regulations, the Master’s Regulations, the Fee Limit Condition Regulations, the Doctoral Regulations and the HESC Regulations are being referred to as “the Student Finance Regulations”.

7. Policy background

What is being done and why?

New eligibility category for British nationals evacuated or assisted in leaving Afghanistan

- 7.1 A new eligibility provision is being introduced in the Student Finance Regulations that apply to student finance for higher and further education so that British nationals evacuated under Operation Pitting or assisted by Her Majesty’s Government to leave Afghanistan with that assistance commencing before 6th January 2022, may qualify for student support in England, home fee status and are “qualifying persons” for the purposes of tuition fee limits for courses beginning on or after 1st August 2022 without requiring them to meet the normal three year ordinary residence requirement.
- 7.2 Operation Pitting was a British military operation, the purpose of which was to evacuate British nationals and Afghans from Afghanistan between 14th and 28th August 2021, following the Taliban offensive. Assistance was also provided to British nationals and Afghans by the UK Government to leave Afghanistan after Operation Pitting (with assistance starting by 6th January 2022 at the latest).
- 7.3 Legislative changes have already been made to create new eligibility categories for persons relocated to the United Kingdom under the Afghan Relocation and Assistance Policy (ARAP) (see [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No.3\) Regulations \(S.I. 2021/1348\)](#)¹ and the Afghan Citizens Resettlement Scheme (ACRS) (see [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations \(S.I. 2022/57\)](#)² to make them eligible for home fee status and student support.
- 7.4 The British nationals referred to in Sections 7.1 and 7.2 above are not eligible for bespoke resettlement support under the ARAP and ACRS immigration schemes as these schemes are primarily designed to grant rights of entry to, and residence in, the United Kingdom for third country nationals. For the purpose of the Regulations, British national encompasses a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under the British Nationality Act 1981 or a British protected person within the meaning of that Act
- 7.5 However, evidence suggests they have very similar needs to Afghans and their family members who were evacuated and relocated to the United Kingdom. As a consequence, the Cabinet Committee on Afghan Resettlement agreed that this group

¹ [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(legislation.gov.uk\)](#)

² [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2022 \(legislation.gov.uk\)](#)

of British nationals should receive equivalent operational and funding support to individuals resettled under ACRS and ARAP.

- 7.6 Under current legislation British nationals who are settled in the United Kingdom normally need to have been ordinarily resident in the United Kingdom and Islands for three full years prior to the first day of the first academic year of their course in order to qualify for student support and home fee status. The new eligibility category will remove this requirement enabling this specific group of British nationals to qualify for support and home fees for courses beginning on or after 1st August 2022. They will need to continue to show they have been ordinarily resident in the United Kingdom and Islands since they were evacuated or assisted from leaving Afghanistan.
- 7.7 This amendment will create parity for British nationals arriving from Afghanistan who have been identified by the Home Office as being at risk and put them on an equal footing with other protected categories (such as refugees).
- 7.8 This change will apply to new students starting full-time or part-time undergraduate further education and postgraduate courses from the 2022/23 academic year. We estimate there will be between 11 and 21 applicants under this category per academic year.

New eligibility category for those entering the United Kingdom under the Ukrainian Family Scheme, the Homes for Ukraine Sponsorship Scheme and the Ukraine Extension Scheme

- 7.9 We are also introducing a new eligibility category for persons entering the United Kingdom under the Ukraine Schemes. These schemes are a bespoke response to the international circumstances in Ukraine and reflect the need to provide a place to stay for people fleeing the war.
- 7.10 Under current legislation this group of individuals is not entitled to support or automatic home fee status until they have been awarded settled status and have been ordinarily resident in the United Kingdom and Islands for the three years prior to the first day of the first academic year of their course.
- 7.11 Including this as an eligibility category will allow this group immediate access to student support and home fee status bringing them in line with those in other protection-based categories, such as refugees and persons with humanitarian protection who are at risk if they return to their home country.
- 7.12 This change will apply to new and continuing students studying on full-time and part-time undergraduate further education and postgraduate courses and will come into effect from 1 August 2022.

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 for the academic year starting August 2023.

10. Consultation outcome

- 10.1 There is no statutory requirement to consult on these amendment regulations and no consultation was carried out.

11. Guidance

- 11.1 Information setting out the changes made by this instrument will be made available to universities, colleges and other higher education stakeholders on Student Finance England's (SFE) practitioners' website³ by 9 May 2022. Further information on changes for 2022/23 will be published for students on GOV.UK and SFE websites before 1st August 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 because there is no significant impact on business and this SI relates to 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 also be monitoring the number of students who receive fee loans and grants and loans for living costs. This information is published in the Student Loans Company's Statistical First Releases at the following link: [Statistics at SLC - Student Loans Company - GOV.UK \(www.gov.uk\)](#)

15. Contact

- 15.1 Serena Bryant at the Department for Education, Telephone: 07880 066728, email: serena.bryant@education.gov.uk or Gill Walden at the Department for Education, Telephone: 07384456781, email: gill.walden@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 Michelle Donelan, Minister of State for Higher and Further Education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

³ <https://www.practitioners.slc.co.uk/policy/>