

Education, Children and Young People Committee

3rd Meeting, 2023 (Session 6), Wednesday 25th January 2023

Subordinate legislation

Introduction

At its meeting on 18 January, the Committee considered the following negative instrument—

[Education \(Fees and Student Support\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2022.](#)

The purpose of these regulations, SSI 2022/362, is to make a number of amendments to the Education (Fees) (Scotland) Regulations 2022 (“the Fees regs”) and the Student Support (Scotland) Regulations 2022 (“the Student Support regs”—

- Regulation 2(4) amends the list of excepted students within schedule 1 of the Fees regs to include provision for EU nationals with protected rights under the terms of the Citizens’ Rights.
- Regulation 2(6) amends the list of excepted students within schedule 1 of the Fees regs and regulation 3(6) amends part 1 of schedule 1 (persons eligible for student support) of the Student Support regs to include an additional category for evacuated or assisted British nationals from Afghanistan.
- Regulation 2(8) amends the list of excepted students within schedule 1 of the Fees regs and Regulation 3(8) amends part 1 of schedule 1 of the Student Support regs to include an additional category for UK nationals who have left Ukraine in connection with the Russian invasion and have since arrived in the UK.

At the meeting, Members sought clarity as to the definition of an EU national within the scope of the regulations.

An EU national, as defined in the original regulations (SSI 2022/156) which this SSI is amending, is any person who is a national of any Member State of the European Union.

The Committee will consider the subordinate legislation again, at its meeting on 25 January.

Supporting information

The original paper, including the policy note from the Scottish Government is included in an Annexe.

**Education, Children and Young People Committee Clerking team
19 January 2023**

Annexe 1

Consideration of subordinate legislation by the Education, Children and Young People Committee

1. This note provides information about [the Education \(Fees and Student Support\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2022](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2022/362.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **8 December 2022**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [20 December 2022](#). No points were raised.
6. These regulations will be considered by the Education, Children and Young People Committee at its meeting on **25 January 2023**.
7. If the Committee wishes to produce a report on these regulations, it must do so by **30 January 2023**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations:

9. The purpose of these regulations is to make a number of amendments to the Education (Fees) (Scotland) Regulations 2022 (“the Fees regs”) and the Student Support (Scotland) Regulations 2022 (“the Student Support regs”).
10. A copy of the Scottish Government’s Policy Note is included in Annexe A.
11. The policy note states that Regulation 2(4) amends the list of excepted students within schedule 1 of the Fees regs to include provision for EU nationals with protected rights under the terms of the Citizens’ Rights.

12. Regulation 2(6) amends the list of excepted students within schedule 1 of the Fees regs and regulation 3(6) amends part 1 of schedule 1 (persons eligible for student support) of the Student Support regs to include an additional category for evacuated or assisted British nationals from Afghanistan.
13. Regulation 2(8) amends the list of excepted students within schedule 1 of the Fees regs and Regulation 3(8) amends part 1 of schedule 1 of the Student Support regs to include an additional category for UK nationals who have left Ukraine in connection with the Russian invasion and have since arrived in the UK.

Consultation

14. The policy states that a consultation was not deemed necessary due to the nature of the amendments.

Impact Assessment

15. The policy note states Equality Impact Assessments (“EQIA”) and Children’s Rights and Wellbeing Impact Assessments (“CRWIA”) have been carried out for the amendments relating to Evacuated or Assisted British Nationals from Afghanistan and for UK nationals from Ukraine. Impact assessments for the other amendments were not considered necessary due to the nature of the amendments.

Financial Impact

16. The policy note states that the Minister for Higher Education and Further Education, Youth Employment and Training confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Procedure

17. These regulations are being considered by the Education, Children and Young People Committee under the negative procedure.
18. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.
19. Rule 10.4 of the Scottish Parliament’s standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.

20. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).
21. If a motion to annul is lodged, the lead committee will consider this and then hold a vote. If the motion is disagreed to, then the regulations will remain in their current form.
22. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
23. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.
24. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
25. The Committee is invited to consider the instrument.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
10 January 2023

Annexe A

POLICY NOTE

The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022

SSI 2022/362

The above instrument was made in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980, section 1 of the Education (Fees and Awards) Act 1983 and section 14(1)(c) of the European Union (Withdrawal Agreement) Act 2020. The instrument is subject to negative procedure.

Policy Objectives

These Regulations make a number of amendments to the Education (Fees) (Scotland) Regulations 2022 (“the Fees regs”) and the Student Support (Scotland) Regulations 2022 (“the Student Support regs”). The policy objectives of the amendments are summarised below. All changes will come into force on 1 August 2023, unless otherwise stated.

EU nationals etc. with protected rights who have not been living in the UK for 3 years.

Regulation 2(4) amends the list of excepted students within schedule 1 of the Fees regs to include provision for EU nationals with protected rights under the terms of the Citizens’ Rights Agreements who have not been living in the UK for 3 years to be eligible for the home tuition fee rate and tuition fee support to study at Scottish institutions. This category allows those with protected rights to be ordinarily resident in the United Kingdom on the relevant date and be eligible for support from the Scottish Government to study at a Scottish institution. The inclusion of this paragraph is to correct an omission from the Fees regs and will come into force on 2 February 2023, allowing the change to be in operation for the remainder of the 2022/23 academic year and beyond.

Evacuated or assisted British nationals from Afghanistan

Regulation 2(6) amends the list of excepted students within schedule 1 of the Fees regs and regulation 3(6) amends part 1 of schedule 1 (persons eligible for student support) of the Student Support regs to include an additional category for evacuated or assisted British nationals from Afghanistan. The purpose of these amendments is to enable British nationals and their family members who have been evacuated or required assistance to leave Afghanistan during the period of operation known as ‘Operation Pitting’ to have access to student support and to have the status of ‘home

student' for tuition fee purposes. The addition of this category will ensure that these individuals and their family members are not subject to stricter rules for access to the home tuition fee rate and student support than individuals who have been relocated to the UK as part of the Afghan Relocation and Assistance Policy (ARAP) or the Afghan Citizens Resettlement Scheme, all of which have been implemented as a result of the UK's withdrawal from Afghanistan.

UK nationals who have evacuated Ukraine as a result of the Russian invasion

Regulation 2(8) amends the list of excepted students within schedule 1 of the Fees regs and Regulation 3(8) amends part 1 of schedule 1 of the Student Support regs to include an additional category for UK nationals who have left Ukraine in connection with the Russian invasion and have since arrived in the UK. The purpose of these amendments is to enable UK nationals and their family members in these circumstances to have access to student support and the status of 'home student' for tuition fee purposes. The addition of this category ensures that individuals and their family members in this category are not subject to stricter rules for access to the home tuition fee rate and student support than individuals who have arrived in the UK under one of the specific Ukrainian schemes, which would not necessarily be open to UK nationals.

Miscellaneous amendments

Regulation 2(3) also removes additional text within paragraph 2 of schedule 1 (EU nationals etc. with protected rights who have been living in the UK and Islands for three years) of the Student Support regs which limited the scope of the paragraph to disallow dual EU/UK nationals from relying on their EU nationality to access home tuition fee status in Scotland. The current drafting of this section limits eligibility to 'a person with protected rights' within Article 10 of the EU Withdrawal Agreement and therefore a separate limiting provision for dual nationals is not required.

Regulation 2(5) amends regulation 5 of schedule 1 of the Fees regs and Regulation 3(5) amends regulation 6 of schedule 1 of the Student Support regs, both relating to '*workers who benefitted from the Freedom of Movement for Workers Regulation*'. The amendment makes a change to both provisions to refer to rights under the Freedom of Movement of Workers regulation in the past tense so that individuals' rights under this regulation will remain even if it is removed from UK law. The addition of this provision is intended to protect the rights of those currently relying on eligibility under these paragraphs in the event that the UK Government disapplies paragraph 10 of the Freedom of Movement of Workers regulation.

Regulation 3(10) amends paragraph 2 of schedule 2 of the Student Support regs relating to the eligibility for tuition fee loan support for residents of Ireland. The amendment replaces the current sub-paragraph '(c)' which required resident of Ireland to have been ordinarily resident in the UK and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date with a new sub-paragraph '(c)' which requires them to have been ordinarily resident in the UK and Islands or Ireland

throughout the same period. This change reflects the policy intention that residents of Ireland have to have been ordinarily resident in the Common Travel Area (CTA) of the UK and Ireland and mirrors the changes that were introduced as part of the Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021 and also the guidance that has been issued to the sector on tuition fees for EU students following the UK's withdrawal from the EU.

Regulation 3(3) amends regulation 29 of the Student Support regs relating to the exercise of power to grant an education maintenance allowance (EMA). This change corrects a minor drafting error to ensure that eligibility for EMA payments is limited to individuals meeting the criteria in Part 1 of Schedule 1 of the Student Support regs. The previous drafting of this provision incorrectly extended eligibility to Part 2 of schedule 1 which is a section limiting support for tuition fees only.

Regulation 3(9) amends paragraph 21 of schedule 1 of the student support regs. This change has been made to ensure that the eligibility under this paragraph is limited to EU nationals etc. with protected rights who have not been ordinarily resident in the UK for 3 years.

Consultation

A consultation was not considered necessary due to the nature of the amendments.

Impact Assessments

Equality Impact Assessments ("EQIA") and Children's Rights and Wellbeing Impact Assessments ("CRWIA") have been carried out for the amendments relating to Evacuated or Assisted British Nationals from Afghanistan and for UK nationals from Ukraine. Impact assessments for the other amendments were not considered necessary due to the nature of the amendments.

Financial Effects

The Minister for Higher Education and Further Education, Youth Employment and Training confirms that no Business and Regulatory Impact Assessment ("BRIA") is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Advanced Learning and Science
December 2022