

Education, Children and Young People Committee

18th Meeting, 2023 (Session 6), Wednesday 7 June 2023

Subordinate Legislation

Introduction

At its meeting this morning, the Committee will consider subordinate legislation, under the negative procedure, [SSI 2023/142: Education \(Fees and Student Support\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#).

These regulations will amend the Education (Fees) (Scotland) Regulations 2022 and the Student Support (Scotland) Regulations 2022 to include a new provision for individuals who have been granted a form of leave to enter or remain in the UK.

The Committee will take evidence from Graeme Dey MSP, Minister for Higher and Further Education; and Minister for Veterans, to assist its consideration.

Supporting information

A paper on the [Education \(Fees and Student Support\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#) has been prepared by the clerking team. This is included at **Annexe A**.

Correspondence between the Committee and the Minister for Higher and Further Education; and the Minister for Veterans, Graeme Dey MSP, in respect of the regulations is included at **Annexe B**.

A SPICe briefing is provided at **Annexe C**.

Education, Children and Young People Committee Clerking Team
1 June 2023

Annexe A

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

This note provides information about the [Education \(Fees and Student Support\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#).

These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2023/142.

These regulations are being considered under the negative procedure.

Timeline for Consideration

These regulations were laid before the Scottish Parliament on **11 May 2023**.

They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [23 May 2023](#). No points were raised.

These regulations will be considered by the Education, Children and Young People Committee at its meeting on **7 June 2023**.

If the Committee wishes to produce a report on these regulations, it must do so by **12 June 2023**.

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

No.

Purpose of the regulations:

1. 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.

A copy of the Scottish Government’s Policy Note is included in [Annexe 1](#).

Policy Objectives

Relevant Connection to Scotland

2. Regulation 2(2) amends regulation 3 (Relevant connection with Scotland) of the Fees Regs and regulation 3(5) amends paragraph 1 (Persons who are settled in the United Kingdom or have long residence) of schedule 1 of the Student Support regs to include a new provision for individuals who have been granted a form of leave to enter or remain in the UK.

Children of Asylum Seekers and Young Asylum Seekers

3. Regulation 2(3)(b) amends paragraph 18 (persons who are children of asylum seekers and young asylum seekers) in schedule 1 (fees-excepted students) of the Fees regs and regulation 3(5)(c) amends paragraph 22 (Persons who are children of asylum seekers or young asylum seekers) of Schedule 1 Part 2 (Persons eligible for tuition fee support only) of the Student Support regs.

Ukraine relevant date

4. Regulation 2(3) amends paragraph 13 (Ukrainian nationals) of schedule 1 (fees – excepted students) of the Fees regs and Regulation 3(5)(b) amends paragraph 14 (Ukrainian nationals) of schedule 1 (persons eligible for Student Support) of the Student Support regs.

Postgraduate courses – rUK exclusion

5. Regulation 3(3) amends regulation 13 (designated courses for student loans) of the Student Support regs to extend the eligibility for student loan support to postgraduate courses undertaken at an institution outside of Scotland.

Education Maintenance Allowance

6. Regulation 3(4) amends regulation 29 (exercise of power to grant an education maintenance allowance) of the Student Support regs.

Consultation

7. The Scottish Government undertook the following consultation – [Changes to residency criteria for access to financial support in Further and Higher Education](#) which ran from 24 January 2023 to 31 March 2023.
8. Analysis of the responses to this consultation along with engagement with the other administrations of the UK and key sector stakeholders has informed the policy changes detailed above.

Impact Assessments

9. Equality Impact Assessments (“EQIA”) and Children’s Rights and Wellbeing Impact Assessments (“CRWIA”) have been undertaken for the amendments relating to the Relevant Connection to Scotland, Children of Asylum Seekers and Young Asylum Seekers and the Ukraine Relevant Date. An EQIA has been undertaken for the changes to Postgraduate Support for Scottish domiciled students undertaking courses in the rest of the UK.

Financial Effects

10. The Minister for Higher and Further Education, and Minister for Veterans 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

These regulations are being considered by the Education, Children and Young People Committee under the negative procedure.

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.

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.

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).

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.

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.

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.

In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

The Committee is invited to consider the instrument.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
1 June 2023

Annexe 1

POLICY NOTE

THE EDUCATION (FEES AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/142

Purpose of the instrument

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.

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

Policy Objectives

Relevant Connection to Scotland

Regulation 2(2) amends regulation 3 (Relevant connection with Scotland) of the Fees Regs and regulation 3(5) amends paragraph 1 (Persons who are settled in the United Kingdom or have long residence) of schedule 1 of the Student Support regs to include a new provision for individuals who have been granted a form of leave to enter or remain in the UK. The new provision will replace the long residency provision which was considered to be unlawful in [Jasim v Scottish Ministers](#) and will allow individuals and their family members who meet the new eligibility criteria to be able to access the home tuition fee rate and tuition fee and living cost support. This provision has been developed following the Scottish Government consultation – *Changes to residency criteria for access to financial support in Further and Higher Education*, the analysis of the responses/stakeholder engagement and the Scottish Government response to the consultation.

Children of Asylum Seekers and Young Asylum Seekers

Regulation 2(3)(b) amends paragraph 18 (persons who are children of asylum seekers and young asylum seekers) in schedule 1 (fees-excepted students) of the Fees regs and regulation 3(5)(c) amends paragraph 22 (Persons who are children of asylum seekers or young asylum seekers) of Schedule 1 Part 2 (Persons eligible for tuition fee support only) of the Student Support regs. The purpose of the amendment is to extend the eligibility for the home tuition fee rate and tuition fee support to young unaccompanied asylum seekers and children of asylum seekers who were under 18 at the time of the application by removing the limiting text which refers to the application for asylum being made prior to the 1st of December 2006 and that students need to be under 25 on the relevant date. This provision has been updated following the Scottish Government consultation (noted above), the

analysis of responses and stakeholder engagement which provided anecdotal evidence that the turnaround timescales for applications can be three years or more which can be particularly detrimental to those who are wishing to continue with their education. This change will ensure that those asylum seekers who meet the new eligibility criteria in this paragraph will have the opportunity to continue on their educational journey at a key point in their life. At the current time we are not extending tuition fee support to asylum seekers who are 18 or over. A decision has been made to focus support to those under the age of 18 at the time of their asylum application as we consider that the educational journey of this group will be more significantly impacted. We also have to take into account the impact on public funds in the form of funded places at further and higher education level and to focus support on the most vulnerable group. We will however monitor this situation and have committed to looking into the overall support provided to asylum seekers more generally over the coming academic year.

Ukraine relevant date

Regulation 2(3) amends paragraph 13 (Ukrainian nationals) of schedule 1 (fees – excepted students) of the Fees regs and Regulation 3(5)(b) amends paragraph 14 (Ukrainian nationals) of schedule 1 (persons eligible for Student Support) of the Student Support regs. The purpose of this amendment is to include an eligibility requirement for individuals in this category to be ordinarily resident in Scotland on the relevant date. This change will bring this category in line with the eligibility requirements for most of other categories included in the Fees and Student Support regs. When this category was originally introduced into the Fees regs and Student Support regs it was considered necessary to allow for the fact that there was a large number of Ukrainian nationals and their family members fleeing Ukraine at the start of Russian invasion and that they would be continually arriving in the UK throughout this period. The relaxing of this provision was to allow Ukrainian nationals and their family members whose study had been interrupted to start courses in Scotland even if they had arrived after the relevant date for the particular course. This change was considered to be a temporary measure to ensure as little disruption as possible to the lives of Ukrainian nationals and their family members and to make allowance for the fluid nature of the situation. Although the invasion is ongoing, there does appear to be a steady reduction in the numbers of Ukrainians who are coming to the UK under the specific home office schemes and therefore to ensure a consistency of approach across the regulations, this temporary allowance is now being removed.

Postgraduate courses – rUK exclusion

Regulation 3(3) amends regulation 13 (designated courses for student loans) of the Student Support regs to extend the eligibility for student loan support to postgraduate courses undertaken at an institution outside of Scotland. This change will align the support at postgraduate level with the undergraduate provision where there is no restriction on the funding available if an equivalent course is available in Scotland. This will also ensure that Scottish domiciled students studying courses in the rest of the UK will be able to continue their studies to postgraduate level with the same institution where previously this may not have been an option if their chosen postgraduate course was available at a Scottish institution.

Education Maintenance Allowance

Regulation 3(4) amends regulation 29 (exercise of power to grant an education maintenance allowance) of the Student Support regs. The purpose of this amendment is to provide for the payment of education maintenance allowance to college students under the powers of the Student Support regs where it had previously been provided by way of a legal Determination made under the Education (Access Funds) Regulations 1990. This also brings education maintenance allowance for further education into line with the provision at school level which is already included in these regulations. This will ensure a consistency of approach for any future eligibility changes and reduce the administrative burden of having to make changes to both the Student Support regs and the legal Determination.

Miscellaneous amendments

Ex-Gratia payment scheme

Regulation 3(2)(b) amends paragraph (3) of regulation 2 (interpretation) of the Student Support regs to include a provision that will allow students who were eligible for financial support under the ex-gratia Payment Scheme launched in December 2022 following the recent Judicial Review to continue to make applications and receive payments under the Student Support regs as amended.

Consultation

The Scottish Government undertook the following consultation – [Changes to residency criteria for access to financial support in Further and Higher Education](#) - which ran from 24 January 2023 to 31 March 2023. Analysis of the responses to this consultation along with engagement with the other administrations of the UK and key sector stakeholders has informed the policy changes detailed above.

Impact Assessments

Equality Impact Assessments (“EQIA”) and Children’s Rights and Wellbeing Impact Assessments (“CRWIA”) have been undertaken for the amendments relating to the Relevant Connection to Scotland, Children of Asylum Seekers and Young Asylum Seekers and the Ukraine Relevant Date. An EQIA has been undertaken for the changes to Postgraduate Support for Scottish domiciled students undertaking courses in the rest of the UK.

Financial Effects

The Minister for Higher and Further Education, and Minister for Veterans 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 Lifelong Learning and Skills
May 2023

Annexe B

Letter from Education, Children and Young People Committee to Minister for Higher and Further Education; and Minister for Veterans

Graeme Dey MSP

T3.60

Minister for Higher and Further Education;
and Minister for Veterans

The Scottish Parliament

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24 May 2023

Dear Minister,

SSI 2023/142 The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023

I am writing on behalf of the Education, Children and Young People Committee in relation to SSI 2023/142 The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023.

I note your letter of 11 May setting out some background information on the proposed changes, set out in the SSI, to eligibility criteria applied to students who wish to undertake a course of study in Further Education or Higher Education in Scotland.

At its meeting on 24 May 2023 the Committee agreed to write to the Scottish Government seeking further information in advance of its formal consideration of the regulations under the negative procedure.

To aid that consideration, the Committee would ask you to provide information on the following points—

- Could the Minister set out further detail on the legal basis for the proposed changes to eligibility criteria?

- For the purposes of these regulations, what is the definition of ‘ordinarily resident’?
- How many Ukrainian students are currently attending colleges and universities in Scotland?
- Has the UK Government provided any dedicated funding to support Ukrainian refugees studying in Scotland?
- How many individuals does the Scottish Government anticipate being eligible for student support funding as a result of these regulations?
- Does the Scottish Government anticipate that any increase in the number of students who are eligible for tuition fee support will be accommodated within the existing funding to cover tuition for domiciled students in Scotland?
- Would students qualifying for home tuition fee rate and tuition fee support as a result of the provisions in these regulations count towards the cap on places for Scottish-domiciled students? Would applications from students qualifying under the revised criteria be considered under the widening access provisions?

The Committee would be grateful to receive a response by Thursday 1 June 2023 to allow sufficient time for this information to be taken into account prior to its formal consideration of the regulations.

Yours sincerely,

Sue Webber MSP
Convener

Letter from Minister for Higher and Further Education; and Minister for Veterans to Education, Children and Young People Committee

31 May 2023

Dear Convener

SSI 2023/142 The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023

Thank you for your letter of 25 May 2023 seeking clarification on a number of points regarding the above SSI ahead of formal consideration by the Committee.

1. Could the Minister set out further detail on the legal basis for the proposed changes to eligibility criteria?

Committee members may be aware that following a judicial review hearing at the Court of Session, the Court issued a decision in September 2022 declaring the long residence rules contained within the Students' Allowances (Scotland) Regulations 2007 to be unlawful.

Although those regulations had since been repealed, mirrored long residence rules were contained within current regulations. Scottish Ministers gave an undertaking to review the residency eligibility criteria in advance of the 2023/24 Academic Year (AY).

A public consultation was launched in January 2023 and ran until 31 March 2023 in which 131 responses were received. Those responses along with stakeholder engagement carried out helped to shape the residency changes now before the Committee.

Turning to the legal basis for the changes, section 1(1) of the Education (Fees and Awards) Act 1983 enables the Scottish Ministers to make regulations requiring or authorising the charging of fees which are higher in the case of students not having such connection with the United Kingdom or any part of it as may be specified in the regulations than in the case of students having such a connection.

The regulations may provide for exceptions and make different provision for different cases or purposes (s.1(2)). The Education (Fees) (Scotland) Regulations 2022 were made under this power and the amending regulations rely on this power to include this new residency provision.

Section 73(f) of the Education (Scotland) Act 1980 provides the legal basis for Scottish Ministers to make regulations for the purposes of paying allowances or loans to or in respect of persons undertaking or who have undertaken courses of education. Ministers have relied on this power (along with s.49(3), 73B and 74(1) of that Act) to make the Student Support (Scotland) Regulations 2022 which have also

been amended by these amending regulations in order for student support to be extended to this cohort.

2. For the purposes of these new regulations, what is the definition of 'ordinarily resident'?

These regulations amend the Education (Fees) (Scotland) Regulations 2022 and the Student Support (Scotland) Regulations 2022.

Schedule 2 of the Education (Fees) (Scotland) Regulations 2022 and schedule 3 of the Student Support (Scotland) Regulations 2022 set out the criteria as to whether a person should be deemed as ordinarily resident for the purposes of student support.

3. How many Ukrainian students are currently attending colleges and universities in Scotland?

There have been under 500 applications for tuition fee and/ or living cost support to the Student Awards Agency Scotland (SAAS) from Ukrainian students in 2022/23 AY. The number of funded students will be available on the publication of the Higher Education Student Support statistical publication in early Autumn. Data on HE enrolment for 2022/23 AY is not yet available.

The Scottish Funding Council (SFC) does not collect data on student applications to college. At the conclusion of the academic year, SFC will have data on the number of students who have enrolled on FE courses at college during 2022/23 AY.

4. Has the UK Government provided any dedicated funding to support Ukrainian refugees studying in Scotland?

The UK Government has not provided any dedicated funding to support Ukrainian nationals who have arrived in Scotland under the Home Office designated schemes and are undertaking a course of study in Further (FE) or Higher Education (HE). It should be noted that all four nations of the UK have provisions in place to support Ukrainian nationals wishing to undertake courses of FE/ HE.

5. How many individuals does the Scottish Government anticipate being eligible for student support funding as a result of these regulations?

As eligibility for home fee status and/ or living cost support is based on a number of factors, it is difficult to quantify the number of additional students who may be eligible under these changes.

However, following the outcome of the Judicial Review, the Student Awards Agency Scotland (SAAS) has been operating a Payment Scheme for 2021/22 and 2022/23 AY students who were affected by the now unlawful long residence provisions. The eligibility criteria for the Payment Scheme are in a similar vein to the changes contained within the SSI and to date, there have been under 80 HE students in each of the year groups identified as being eligible. There is no comparable data available for FE as the Scottish Funding Council (SFC) does not collect data on student applications.

During the policy development, it was not possible to secure data specific to the number of Young Unaccompanied Asylum Seekers and children of asylum seekers who are HE/ FE students. [UK Parliamentary research](#) published in March 2023 set out that as of December 2022, the Scottish Government rehomed 7 asylum seekers for every 10,000 Scottish residents but this data is not broken down further by age.

6. Does the Scottish Government anticipate that any increase in the number of students who are eligible for tuition fee support will be accommodated within the existing funding to cover tuition for domiciled students in Scotland?

Yes, those students, for the purposes of the regulations who are considered as Scottish-domiciled are eligible for the home fee rate and tuition fee support, with the funding provided by the Scottish Government.

7. Would students qualifying for home tuition fee rate and tuition fee support as a result of the provisions in these regulations count towards the cap on places for Scottish-domiciled students? Would applications from students qualifying under the revised criteria be considered under the widening access provisions.

Students who are eligible for home tuition fee rate and tuition fee support are considered for the purposes of these regulations as Scottish domiciled students and therefore have access to a funded place. The number of students able to access a funded place is not unlimited due to the level of control over the higher education budget. If a student, who is considered as Scottish-domiciled, meets the widening access criteria set by the individual college or university then they could be considered under this provision.

GRAEME DEY MSP

Annexe C

The logo for SPICe, featuring the text 'SPICe' in white on a purple and blue gradient background.

The Information Centre
An t-Ionad Fiosrachaidh

Education, Children and Young People Committee

Wednesday 7 June (Session 6)

SSI 2023/142: The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023

Background

The Committee will consider SSI 2023/142: [The Education \(Fees and Student Support\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#).

The regulations make amendments to the [Education \(Fees\) \(Scotland\) Regulations 2022](#) and the [Student Support \(Scotland\) Regulations 2022](#).

The changes are in relation to:

- Individuals with a 'relevant connection to Scotland';
- Children of Asylum Seekers and Young Asylum Seekers;
- Ukrainian nationals;
- Support for postgraduate courses studied elsewhere in the UK.

In addition, the regulations also: propose to bring payment of education maintenance allowance for college students under the same powers as provision for the allowance at school level; and provide for students eligible to apply for financial support under the [ex-gratia Payment Scheme launched in December 2022](#) to continue to make applications and receive payments.

The proposed changes to residency eligibility criteria came about following a Judicial Review of a decision of the Student Awards Agency Scotland (SAAS) not to award

student Ola Jasim tuition fee support as she did not meet the residency criteria for those granted a form of leave to remain. Last year, the [Court of Session ruled these criteria to be unlawful](#).

Following the ruling, the Scottish Government consulted on changes and [announced plans to amend residency eligibility criteria](#) for those with a relevant connection to Scotland and young unaccompanied Asylum Seekers and children of Asylum Seekers.

The Committee wrote to the Minister for Higher and Further Education; and Minister for Veterans, Graeme Dey, on 31 May 2023 seeking further information on:

- The legal basis for the proposed changes;
- The definition of ‘ordinarily resident’;
- The number of Ukrainian students attending colleges and universities in Scotland;
- Whether the UK Government has provided dedicated funding for Ukrainian refugees studying in Scotland;
- How many people will be eligible for student support as a result of these regulations;
- Whether the increase in number of students eligible for tuition fee support will be accommodated within existing funding to cover tuition for students domiciled in Scotland;
- Whether students qualifying for home tuition fee rate and tuition fee support as a result of the regulations count toward the cap on places for Scottish-domiciled students; and
- Whether applications from students qualifying under the revised criteria be considered under the widening access provisions.

The Committee received a response from the Minister on 1 June 2023. Extracts of the response are referred to under the relevant headings throughout this briefing.

Eligibility for student support

General residence conditions

The Student Awards Agency Scotland (SAAS) assesses applications for student support. SAAS can provide tuition fees, student loans, bursary and living cost grants. The support available to an individual student depends on whether they meet certain eligibility criteria. Information about current fee, bursary and loan amounts is [available on the SAAS website](#).

The [current general residence conditions](#) an applicant must meet to be eligible for support are:

- Ordinary residence in Scotland;
- Ordinary residence in the United Kingdom throughout the period of 3 years immediately preceding the relevant date; and be one of the following:
 - settled in the United Kingdom within the meaning given by section 33(2A) (Interpretation) of the Immigration Act; or
 - a person (who has not applied for refugee status) but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that is thought right to allow you to enter or remain in the United Kingdom and been granted leave to enter or remain accordingly which has not expired; or
 - the spouse, civil partner or child of a person described in the two preceding sub-paragraphs above.

The 'relevant date' is usually the first day of the first academic year of a course.

Definition of Ordinary Residence

Ordinarily Resident means to have 'habitual and normal residence in one place'.

The Scottish Government expects someone who is ordinarily resident in Scotland to have made their home in Scotland with the intention of staying and living here, and not just to undertake a course of study. Students will **not be considered** to be ordinarily resident in Scotland **if their main purpose of being here is for full-time study**.

There is no set time someone needs to be in Scotland to establish ordinary residence, but the normal 3-year rule in the UK applies in most cases.

In cases where it was considered appropriate to do so, SAAS may write to applicants seeking specific details as to why someone had resided in Scotland. Examples of further information SAAS might request are details on property ownership or employment contracts.

Changes to the criteria for ordinary residence are explored in further detail in the **'Widening the definition of 'relevant connection to Scotland'** section of this briefing under the **'Existing legislation and proposed amendments'** heading.

Widening the definition of 'relevant connection to Scotland'

The changes will **remove the need** for a person with a form of limited leave to remain who has been resident in Scotland for three years prior to and on the first day

of the first academic year of the course **to also be** under 18 and have lived in the UK for seven years prior to the start of the course or aged 18 and above and lived in the UK for either half their life or 20 years.

The expanded eligibility will include all students who:

- Are ordinarily resident in the UK for three years prior to the relevant date;
- Are ordinarily resident in Scotland on the relevant date; **and**
- Have been granted a form of leave to enter or remain in the UK, where that leave has not expired.

Forms of leave covered by this rule include: Limited Leave to Remain (LLR), Leave outside of the rules, and other forms of Leave to Remain, such as 5/10 year Parent/Partner routes.

Existing legislation and proposed amendments

Currently, the **Education (Fees) (Scotland) Regulations 2022 regulation 3** sets out the residency rules for those with a relevant connection to Scotland.

In order to access tuition fee and living cost support via the Student Awards Agency Scotland (SAAS) a student has a relevant connection with Scotland if that student on the relevant date:

- a) is ordinarily resident in Scotland
- b) Has been ordinarily resident in the United Kingdom and Islands throughout the immediately preceding 3-year period; and
- c) Is –
 - i. Settled in the United Kingdom within the meaning given by section 33(2A) (interpretation) of the Immigration Act 1971
 - ii. Under the age of 18 and has lived in the United Kingdom and Island throughout the seven-year period preceding the relevant date
 - iii. Aged 18 or above and, preceding the relevant date, has lived in the United Kingdom and Islands throughout either half their life or a period of twenty years
 - iv. Aged 18 or above and received support by virtue of sub-paragraph (ii) for the academic year immediately preceding the relevant date; or
 - v. Is the spouse, civil partner or child of a person described in sub-paragraphs (i) to (iv)

Sub-paragraph (c)(ii) and (c)(iii) set above out the limited window known as the 'Long Residence criteria' in which a student not otherwise qualifying may be eligible for support. It was these provisions that were found to be unlawful in court.

The Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023 will replace sub-paragraphs (ii) to (v) in paragraph (c) above with:

- ii) a person (other than a person who has applied for refugee status) who has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that they have been granted leave to enter or remain in the United Kingdom and whose leave has not expired, or
- iii) the spouse, civil partner or child of a person described in sub-paragraphs (i) or (ii)."

Impact of the changes

The Scottish Government's Equality Impact Assessment (EQIA) on the amendments to relevant connection to Scotland states that it is not possible to forecast the number of additional students eligible for support because of these changes.

In his response to the Committee's letter, the Minister for Higher and Further Education; and Minister for Veterans Graeme Dey stated that, following the establishment of the SAAS ex-gratia payment scheme for 2021/22 and 2022/23 Academic Year students affected by the unlawful long residence provision, under 80 HE students in each of the year groups had been identified as eligible. No data on FE is available as this is not collected.

The Scottish Government does not provide a prediction of the financial implications of the change. However, the EQIA acknowledges that that: "it may potentially change the proportion of overall students accessing the higher levels of financial support".

In his response to the Committee, the Minister confirmed that students eligible for home fee status as a result of these changes will be accommodated within existing funding. In response to the Committee's question of whether students qualifying for home tuition fee rate and tuition fee support i) count toward the cap on places for Scottish domiciled students, and ii) would be considered under widening access provisions, the Minister stated:

Students who are eligible for home tuition fee rate and tuition fee support are considered for the purposes of these regulations as Scottish domiciled students and therefore have access to a funded place. The number of students able to access a funded place is not unlimited due to the level of control over the higher education budget. If a student, who is considered as Scottish-domiciled, meets the widening access criteria set by the individual college or university then they could be considered under this provision. – **Scottish Government correspondence, 1/06/23**

Support entitlements following the change

The change will grant home fee status to these individuals (i.e., free tuition). These students will also be eligible to apply for living cost support (i.e., loans and bursaries).

The change will also extend to dependents of those with a form of limited leave to remain.

Young Unaccompanied Asylum Seekers and Children of Asylum Seekers

Previously, application for asylum had to be made prior to 1 Dec 2006 for students to qualify for tuition fee support. This had been due to a backlog in asylum claims at the time. At the present time, the Scottish Government has described waiting times for asylum claims to be heard as “significant”.

Currently, Young Unaccompanied Asylum Seekers and Children of Asylum Seekers would usually be considered as international students for the purpose of fee assessments. Some universities do have scholarship schemes. There is nothing to stop further and higher education institutions waiving fees for such students, but they would not receive Scottish Government funding for the student in the event of a fee waiver.

Eligibility under the new criteria means a student must be:

- A child of an asylum seeker or a young asylum seeker;
- Resident in Scotland on the relevant date (first day of the first academic year of the course);
- Under 18 years old on the date when the application for asylum was made.

In his response to the Committee’s letter, the Minister stated data on numbers of Young Unaccompanied Asylum Seekers and children of asylum seekers studying in higher or further education is not available. However, he [highlighted UK Parliamentary research](#) published in March 2023 which stated that as of December 2022, the Scottish Government rehomed 7 asylum seekers for every 10,000 Scottish residents. This data is not broken down further by age.

Existing legislation and proposed amendments

Regulation 2(3)(b) amends paragraph 18 (persons who are children of asylum seekers and young asylum seekers) in schedule 1 (fees-excepted students) of the Education (Fees) (Scotland) Regulations 2022 and regulation 3(5)(c) amends paragraph 22 (Persons who are children of asylum seekers or young asylum seekers) of Schedule 1 Part 2 (Persons eligible for tuition fee support only) of the Student Support (Scotland) Regulations 2022.

Support entitlements following the change

As a result of the new proposals, Young Unaccompanied Asylum Seekers and Children of Asylum Seekers will be eligible for home tuition fee status and tuition fee support but not cost of living support (i.e., student loan). They will not, therefore, be eligible for bursary support but will be eligible to apply for discretionary funding from their institution (e.g., hardship funding etc).

The EQIA notes that not having access to cost-of-living support may impact students' ability to take up places offered to them. For example, a student resettled in the Highlands may be unable to commute to or afford accommodation costs at a university in Central Scotland.

Asylum seekers are [provided accommodation and financial support by the Home Office](#). Most asylum seekers are [not allowed to work whilst their claim is being considered](#), though if an applicant has not received a decision on their claim within 12 months they can request permission to work. If the Home Office grants this permission, any job taken up must be included on the UK Visas and Immigration list of shortage occupations. Further information on this is set out in the [Scottish Government's Welcome Pack for New Scots](#).

The EQIA states that the Scottish Government is analysing anecdotal claims that providing asylum seekers with cost-of-living support would have a negative impact on an applicant's asylum claim.

Bright Line Rule

To be eligible for support under this category, application for asylum must have been made to the Home Office when the applicant was under 18 years old. The Scottish Government's EQIA refers to this as the 'Bright Line Rule' and states the policy intention of this is to target support at asylum seekers who arrive in the UK as children, in recognition of the disruption faced to their learning journey and to enable them to continue their studies into further and higher education.

The EQIA states that those who are over 18 at the time of their asylum application will never be eligible for support:

...in other residency exceptions a student must meet three years ordinary residence in the UK which is a Bright Line Rule; a student who did not meet this requirement initially would only need to wait until the three years had been met, but for adult asylum seekers they will always be ineligible based on their age at the time of their asylum claim. – [Scottish Government EQIA](#)

The 'Bright Line Rule' is intended to give SAAS and institutions a clear cut-off date for eligibility and avoid pressure to make decisions on applicants falling outside the eligibility criteria by a matter of days, weeks or months. However, the EQIA notes there are other opportunities available to adult asylum seekers, including

employment and volunteering opportunities. In addition, once granted a form of leave, former asylum seekers will become eligible for support:

...it remains the case that those asylum seekers receiving some form of status within the UK (that is to say, those asylum seekers not denied asylum and then forced to leave the UK) will typically be eligible for support immediately upon receiving a decision, based on existing residency exceptions targeted at this group. - [Scottish Government EQIA](#)

Applying the Relevant Date Requirement to Existing Support for Ukrainian Students Resettled in Scotland Through the Three Home Office Schemes

Regulation 2(3) amends paragraph 13 (Ukrainian nationals) of schedule 1 (fees – excepted students) of the Education (Fees) (Scotland) Regulations 2022 and Regulation 3(5)(b) amends paragraph 14 (Ukrainian nationals) of schedule 1 (persons eligible for Student Support) of the Student Support (Scotland) Regulations 2022.

This proposed change aligns the eligibility criteria for Ukrainian nationals with the general rules on relevant connection to Scotland, whereby the individual must be ordinarily resident in Scotland on the relevant date.

The current rules for Ukrainians were brought in when the war in Ukraine began. The rules enabled Ukrainians living in Scotland to apply for student support without having lived in Scotland for the period required to qualify under residency criteria. This was to allow Ukrainians whose study had been interrupted by the war the opportunity to start courses after the course start date.

The changes will mean that Ukrainian nationals applying for support must now be ordinarily resident in Scotland on the 'relevant date' – this is usually the first day of the first academic year of a course.

The Scottish Government EQIA states:

Although the invasion is ongoing, there does appear to be a steady reduction in the numbers of Ukrainians who are coming to the UK under the specific home office schemes and therefore to ensure a consistency of approach across the 2022 Regulations, we are now proposing to remove this temporary allowance. – [Scottish Government EQIA](#)

The Minister's response to the Committee's letter states that in 2022/23 there have been under 500 applications for tuition fee and/or living cost support to SAAS from Ukrainian students. Data on the number of funded students and HE enrolment for 2022/23 is not yet available. Data on student applications to college is not collected by the Scottish Funding Council (SFC), but enrolment data for 2022/23 will be available at the end of the academic year.

The Minister's response also states that the UK Government has not provided any dedicated funding for Ukrainian nationals arriving in Scotland under Home Office schemes who are now in further or higher education.

Postgraduate study in England, Wales and Northern Ireland – introduction of financial support package

Regulation 3(3) amends regulation 13 (designated courses for student loans) of the Student Support (Scotland) Regulations 2022 to extend the eligibility for student loan support to postgraduate courses undertaken at an institution outside of Scotland.

Currently, eligible full-time students domiciled in Scotland and studying elsewhere in the UK are only eligible for student support if their course is not available in Scotland. These proposed changes will mean any eligible full-time Scots domiciled student will be able to receive support when studying in the rest of the UK. Funding is not being made available for part-time study.

The Scottish Government's EQIA on the proposal states HESA data shows there were 2,020 full-time and 2,560 part-time Scottish domiciled postgraduate enrolments at rUK Higher Education (HE) Providers in Academic Year 2020/21. Given there are more Scottish domiciled students studying part-time courses than full-time courses, the [Scottish Government EQIA](#) recognises the policy could be seen to disadvantage those choosing to study part-time due to their personal circumstances. The EQIA suggests a wider review of part-time study should be conducted.

Funding available

The [current postgraduate support package](#) for a full-time student is a loan of £10,000 (£5,500 fees and £4,500 living costs) for any taught or research postgraduate course at a Scottish institution up to full Masters level. For students on full-time two-year postgraduate courses, this funding is split across the two years of their course.

From 2023/24, the tuition fee loan amount will increase to £7,000, meaning the total postgraduate support package for full-time students will rise to £11,500.

For [Scottish domiciled students studying part-time post graduate courses in Scotland](#), cost of living support is not provided. The tuition fee loan at the amounts set out above (£5,500 rising to £7,000 from 2023/24) is available.

Fee levels for postgraduate courses are not regulated by the Scottish Government. Institutions set their own fee levels for courses, and in some instances these fees may be higher than the fee loan amount.

Other proposed amendments

Education Maintenance Allowance

Regulation 3(4) amends regulation 29 (exercise of power to grant an education maintenance allowance) of Student Support (Scotland) Regulations 2022.

Currently, payment is made to college students by way of a legal Determination made under the Education (Access Funds) Regulations 1990. The proposed amendment brings payment of education maintenance allowance for college students under the same powers as provision for the allowance at school level.

The Scottish Government Policy Note states:

This will ensure a consistency of approach for any future eligibility changes and reduce the administrative burden of having to make changes to both the Student Support regs and the legal Determination. – [Scottish Government Policy Note](#)

Ex-Gratia payment scheme

Regulation 3(2)(b) amends paragraph (3) of regulation 2 (interpretation) of the Student Support (Scotland) Regulations 2022 to include a provision that will allow students who were eligible for financial support under the [ex-gratia Payment Scheme launched in December 2022](#) following the recent Judicial Review to continue to make applications and receive payments under the Student Support regs as amended.

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