

Education, Children and Young People Committee
Wednesday 29 May 2024
17th Meeting, 2024 (Session 6)

Note by the Clerk on The Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2024 (SSI 2024/140)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 17 June 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Education \(Fees and Student Support\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2024 \(SSI 2024/140\)](#)

Laid under: [Education \(Scotland\) Act 1980](#) and [the Education \(Fees and Awards\) Act 1983](#)

Laid on: 9 May 2024

Procedure: Negative

Deadline for committee consideration: 10 June 2024

Deadline for Chamber consideration: 17 June 2024

Commencement: 1 August 2024

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 21 May 2024 and reported on it in its [37th Report 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

8. 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”).
9. The Policy Note accompanying the instrument is included in **Annexe A**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Evidence received

10. A letter from the Minister for Higher and Further Education and Minister for Veterans regarding the instrument is attached in **Annexe B**.

Committee consideration

11. So far, no motion recommending annulment has been lodged.
12. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

13. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
14. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Clerks to the Committee
May 2024**

Annexe A: Scottish Government Policy Note

POLICY NOTE

THE EDUCATION (FEES AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2024

SSI 2024/140

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 and section 1 of the Education (Fees and Awards) Act 1983. The instrument is subject to negative procedure.

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 2024.

Policy Objectives

Female Afghan students

Regulation 2(9) inserts paragraph 12B into schedule 1 of the Fees regs and regulation 3(13) inserts paragraph 13B into schedule 1 of the Student Support regs to include an additional provision for female Afghan students who have been prevented from continuing their studies in Afghanistan due to the Taliban regime and have been granted a student visa by the Home Office in order to complete their Higher Education in Scotland. These students would be eligible to access the home tuition fee rate and student financial support including tuition fees.

Provision is already contained within the Fees and Student Support regs for Afghan nationals wishing to undertake courses of Further and Higher Education in Scotland who have entered the UK through designated Home Office Schemes; however the Afghan Citizens Resettlement Scheme (ACRS), being one of the main routes is currently closed to new expressions of interest. This new provision within regulations extends support to female Afghan nationals who have been granted a student visa by the Home Office in order to enter the UK.

Government policy within Afghanistan is discriminating against women in the country by placing an indefinite ban on women and girls entering and undertaking secondary and tertiary education. If these students were to undertake and complete their Higher Education in Scotland then they are likely to enter and contribute to the Scottish economy.

In order to be eligible the female Afghan students had to be undertaking a course of study at a university or an equivalent institution before 31 August 2021 (the recognised withdrawal date of the US and UK forces from Afghanistan) and be residing in Afghanistan before 30 January 2024, this date reflecting the next calendar day after which Scottish Ministers approved access to support for this cohort of students.

Ukrainian nationals

Regulation 2(10) replaces paragraph 13 (Ukrainian nationals) of schedule 1 of the Fees Regs and regulation 3(14) replaces paragraph 14 (Ukrainian nationals) of schedule 1 of the Student Support Regs with updated paragraphs 13 and 14 respectively to provide for an additional Home Office scheme that will be introduced during the course of the 2024/25 Academic Year – *the Ukraine Permission Extension Scheme*.

The new scheme will provide an opportunity for anyone who had or has leave under one of the existing designated Home Office schemes for Ukrainian nationals to have their leave in the UK extended. This will allow for the fact that from the start of the 2024/25 Academic Year, two of the three current Home Office schemes (Ukraine Extension Scheme and Ukraine Family Scheme) will be closed to new applicants and the first grants under those schemes will expire before the conclusion of the 2024/25 Academic Year.

Domestic Violence and Domestic Abuse

Regulation 2(13) amends paragraph 16 of schedule 1 of the Fees regs and regulation 3(17) amends paragraph 17 of schedule 1 of the Student Support regs to extend access to support for students who have been granted leave to enter or remain in the UK under this category. The regulations also update the applicable immigration rules/ This provision has been updated in regards to transnational marriage abandonment (TMA), a form of domestic abuse where the abusive party abandons their partner overseas and their permission to stay in the UK expires and/or they are left without access to their passport/ immigration documents preventing them from returning to the UK. The Home Office changed their rules in this regard in December 2023 following a successful court challenge to include additional provision within the domestic violence rules to allow for those in that particular situation to be provided with Indefinite Leave to Enter to the UK. The amendment to the Fees regs and Student Support regs reflects these changes.

Regulation 2(14) inserts paragraph 16A into schedule 1 of the Fees regs and regulation 3(18) inserts paragraph 17A into schedule 1 of the Student Support regs. These new provisions provide access to home tuition fee rate and student financial support, including tuition fees for the children of those who have been granted 'leave to enter or remain' as a victim of domestic violence or domestic abuse. This provision has been introduced following clarification of the status in which children of domestic abuse or violence victims are provided with by the Home Office.

Access to Postgraduate student support

Regulation 3(3) amends regulation 11 (students eligible for student loans) of Part 4 of the Student Support regs by inserting sub-head (vi) which restricts access to postgraduate loan support for those students undertaking a social work course who are in receipt of bursary support through the Scottish Social Services Council (SSSC). The regulation ensures that postgraduate social work students have access to one type of student financial support to undertake their course.

Regulation 3(22) amends Part 1 (courses designated for student loans and student loans for tuition fees) of schedule 4 of the Student Support regs to include reference to taught courses leading to a postgraduate diploma, taught courses leading to a postgraduate masters degree and research course leading to a postgraduate masters degree. Regulation 3(23) amends Part 2 (courses designated for student loans only) of schedule 4 of the Student Support regs by removing reference to the above courses. This is technical change to clarify the student financial support package (tuition fee loan and student loan) for postgraduate students undertaking the above courses.

Timing of Payments

Regulation 3(5) amends regulation 22 (Payment of Loans) of Part 4 of the Student Support regs by omitting sub-head (4). This is to allow students the option of selecting whether to access their student loans over the duration of their course or evenly spread over twelve months. This change follows a successful trial with students who were in receipt of the Care Experienced Bursary in academic years 2022/23 and 2023/24.

Miscellaneous amendments

Regulation 2(2) inserts a definition of 'Higher Education' into Regulation 2 (interpretation) of the Fees regs. Regulation 3(2) inserts the same definition into Regulation 2 (interpretation) of the Student Support regs.

Regulation 2(3) and Regulation 3(7) substitute paragraphs 7 of schedule 1 of the Fees regs and paragraph 8 of schedule 1 of the Student Support regs respectively. This amendment aligns the regulations to Scottish Government policy to provide home fee status and student support to individuals in this category as soon as they are provided with a refugee status by removing the requirement for the person to have been ordinarily resident in Scotland on the relevant date.

Regulation 2(4) and regulation 3(8)(b) omit the word 'ordinarily' from paragraph 8(a)(iii) of schedule 1 of the Fees regs and paragraph 9(a) of schedule 1 of the Student Support regs respectively to remove the requirement for those persons to have been ordinarily resident in Scotland on the relevant date and align the regulations to Scottish Government policy to provide home fee status and student support to individuals in this category as soon as they are granted leave following a refugee claim.

Regulations 2(5) to (8) and 2(11) and 2(12) amend schedule 1 of the Fees regs and regulations 3(8) to (11) and 3(15) and 3(16) amend schedule 1 of the Student Support regs to omit reference to 'at all times' where it occurs to align with any travel or residence conditions attached to the leave to enter or remain and temporary absence rules already contained within regulations and to ensure consistency with the other categories listed in these schedules.

Regulation 2(15) amends paragraph 1 of schedule 2 of the Fees regs by inserting reference to 'schedule 1' to ensure that the provisions of ordinary residence captured in that paragraph equally apply to the categories of students noted.

Regulation 2(16) substitutes paragraph 2 of schedule 2 of the Fees regs (ordinary residence for specified period: general) to clarify the categories of students who are being captured under this provision and assist with the interpretation of the schedules in terms of the meaning of ordinary residence at a given time or place

Regulation 3(4) substitutes regulation 20 of the Student Support regs to correct a minor drafting error.

Regulation 3(6) amends the heading of paragraph 1 of schedule 1 of the Student Support regs to change the title of the provision. This was an oversight when long residence provisions were removed from regulations in 2023.

Regulation 3(19) amends paragraph 2 of schedule 2 of the Student Support regs (residents of Ireland) to ensure consistency of language used across the regulations where the term 'relevant date' is used and is defined in the interpretation section..

Regulation 3(20) amends paragraph 1(1) of schedule 3 (ordinary residence on relevant date) to ensure that the provisions of ordinary residence captured in that paragraph equally apply to the categories of students noted in schedules 1 and 2.

Regulation 3(21)(a) – (d) amends paragraph 2 of schedule 3 of the Student Support regs (ordinary residence for specified period: general and interpretation' to clarify the categories of students who are being captured under this provision and assist with the interpretation of the schedules in terms of the meaning of ordinary residence at a given time or place

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Scottish Government engaged with relevant stakeholders in regards to the changes to support for female Afghan students, access to Postgraduate student support and Timing of Payments. It was not felt necessarily to consult on the changes for Ukrainian nationals and Domestic Violence and Domestic Abuse as these provisions were reflecting updates made to categories of individuals who

could access leave to enter or remain through the Home Office. Consultation was not undertaken in regards to the miscellaneous amendments due to their nature of being minor technical amendments to provide clarification and/or ensure consistency of approach.

Impact Assessments

Equality Impact Assessments (“EQIA”) and Child Rights and Wellbeing Impact Assessments (“CRWIA”) have been undertaken for the amendments relating to female Afghan students, Timing of Payments and Domestic Violence and Domestic Abuse.

An EQIA only was undertaken in regards to access to Postgraduate Student Support given the cohort are likely to be older than the age range captured under CRWIA.

The EQIA and CRWIA previously undertaken in respect of Ukrainian nationals has been updated to reflect the new route that these individuals can access leave to enter or remain from the Home Office – the salient information contained within the initial impact assessments remains relevant and can be accessed at www.gov.scot/publications/eqia-residency-changes-ukrainian-students/

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 2024

Annexe B: Letter from the Minister for Higher and Further Education and Minister for Veterans to the Convener

10 May 2024

Dear Convener,

I am writing to confirm the notable changes we are bringing forward regarding the eligibility criteria applied to students who wish to undertake a course of study in Further Education (FE) or Higher Education (HE) in Scotland. These changes are contained in the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2024 which are subject to a negative procedure, and were laid in Parliament on 9 May 2024. The provisions contained will come into force on 1 August 2024 for the start of the 2024/25 Academic Year (AY).

Female Afghan Students

From the new academic year, the Scottish Government will provide an exception to our residency criteria to extend support to female Afghan students who have been prevented from continuing their studies in Afghanistan due to the restrictions imposed by the Taliban regime and have been granted a student visa by the Home Office in order to complete their Higher Education in Scotland.

This change is made in recognition of the unique position these students are experiencing as a result of the Taliban policy of discrimination, placing an indefinite ban on women and girls entering and undertaking secondary or tertiary education, and in the expectation that these students may, if able to undertake their Higher Education in Scotland, enter and contribute to Scotland's cultural and economic benefit.

Students qualifying under this exception will be eligible to home fees status and living cost support for the duration of their studies.

Ukrainian Nationals

From the forthcoming academic year, the Scottish Government will provide an additional exception to our residency criteria for those Ukrainian nationals moving onto the new Home Office scheme, the Ukrainian Permission Extension Scheme which is due to be shortly introduced.

Students studying in either Further or Higher Education who are granted leave under the new scheme will remain eligible to home fees status and living cost support for the duration of their studies. This change mirrors support that Ukrainian nationals can currently receive from the Scottish Government whilst studying who have been granted leave under the Homes for Ukraine, Ukraine Family and Ukraine Extension schemes.

Domestic Violence and Domestic Abuse

From the new academic year, the Scottish Government will amend the existing residency criteria regarding Victims of Domestic Violence and Domestic Abuse to extend access to support for students who have been granted leave to enter or remain in the UK under this category. This change is in response to a recent change the Home Office has made to their own rules to address the issue of transnational

marriage abandonment (TMA), a form of domestic abuse where the abusive party abandons their partner overseas and their permission to stay in the UK expires and/or they are left without access to their passport/immigration documents, preventing them from returning to the UK.

The Scottish Government has also introduced a change to our residency criteria to insert provision for children of those who have been granted leave to enter or remain as a victim of domestic violence or domestic abuse, following a clarification of the status in which these children are provided by the Home Office.

Students studying in either Further or Higher Education and qualify under this exception will be eligible to home fees status and living cost support for the duration of their studies.

Access to Postgraduate Student Support

From the new academic year, the Scottish Government will amend the eligibility criteria to ensure that students undertaking a postgraduate course in social work are able to access the standard postgraduate loan package from the Student Awards Agency Scotland (SAAS) if they are unable to qualify for bursary support from the Scottish Social Services Council (SSSC). This change will ensure that students undertaking this course of study will only be able to access one form of public funding to support their studies.

Timing of Student Financial Support Payments

From the new academic year, the Scottish Government will amend regulations to provide the option for eligible undergraduate students to receive their student financial support package over the duration of their course or evenly spread over twelve months, meaning they have access to financial support over the summer months. This change follows a successful trial with students who were in receipt of the Care Experienced Bursary (CEB) in academic years 2022/23 and 2023/24.

Further supplementary information can be found within the Policy Note and Equality Impact Assessments that accompany the regulations.

Yours sincerely,

GRAEME DEY MSP

Minister for Higher and Further Education; and Minister for Veterans