POLICY NOTE

THE EDUCATION (FEES AND STUDENT SUPPORT) (MISCELLANEOUS AMENDMENT AND REVOCATION) (SCOTLAND) REGULATIONS 2025

SSI 2025/136

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 2025.

Policy Objectives

Amendments to the Ordinary Residence schedule

Regulation 2(1) amends paragraph 1(2) of schedule 2 (ordinary residence) of the Fees regs and regulation 3(4)(a) amends paragraph 1(2) of Schedule 3 (ordinary residence) of the Student Support regs by replacing the current wording with amended text which better reflects the policy intention. There is no change in how ordinary residence will be assessed as a result of these amendments.

The assessment of ordinary residence on the relevant date considers whether someone has moved to Scotland for the purposes of undertaking a course of education and if so, they will be considered to be ordinarily resident in the area in which they moved from. However, if a student moved to Scotland for the purposes of education and is able to subsequently establish ordinary residence in Scotland on the relevant date then they will be assessed as being ordinarily resident in Scotland.

The current wording of paragraphs 1(2) of schedule 2 of the Fees regs and 1(2) of schedule 3 of the Student Support regs respectively includes a requirement to consider any period of residence in Scotland within 3 years of the relevant date where the purpose of such residence was wholly or mainly that of receiving full-time education. In practice, this assessment is not required when considering if a student was ordinarily resident in Scotland on the relevant date.

Regulation 2(2) omits paragraph 3(3) of schedule 2 (ordinary residence) of the Fees regs and regulation 3(4)(b) omits paragraphs 3(3) and 3(4) of Schedule 3 (ordinary residence) of the Student Support regs as they are considered unnecessary for the assessment of ordinary residence for the specified period. The policy intention around educational exclusion is already achieved through paragraph 3(1) of schedule 2 of the Fees regs and paragraph 3(1) of schedule 3 of the Student Support regulations respectively.

Changes to the definition of loan

Regulation 3(2) amends the definition of 'loan' in regulation 2 (interpretation) of the Student Support regs Regulations to correct a minor drafting error. It clarifies that all loans described in sub-paragraphs (a) to (e) of that definition are subject to interest accrual and relevant penalties/charges.

Changes to the refugee provisions

Regulations 3(3)(a) and (b) amends paragraph 8 (refugees) of schedule 1 of the Student Support regs. This change is made to better reflect how this provision is applied in practice. This will help to ensure that students who are waiting on a decision on their refugee status will continue to be able to access home fee status and student support as soon as refugee status is granted. This change does not constitute a change in policy but rather an amendment to the wording to provide consistency of approach and ensure that it is aligned with operational policy. The amendment clarifies that the spouse, civil partner or child of a refugee must have such relationship with the refugee at the date in which their application for student support is received by Scottish Ministers and ensures the process is followed without doubt or delay.

Miscellaneous amendments

Revocation of the Education (Fees and Awards) (Scotland) Regulations 2007

Regulation 4 and the schedule revoke the Education (Fees and Awards) (Scotland) Regulations 2007 ("the 2007 regulations") and their relevant amending enactments.

The 2007 regulations provided the eligibility criteria for access to the home tuition fee rate for UK students studying in Scotland prior to the increase in tuition fees by the UK Government in the 2012/13 academic year. At this point Scottish Ministers made the decision to limit access to the home tuition fee rate to Scottish domiciled students only. This was in response to Scotland becoming the cheapest destination in the UK for higher education and the potential increase in the number of students coming to Scotland from the rest of the UK to study which would have limited the places for Scottish domiciled students.

The introduction of the Education (Fees) (Scotland) Regulations 2011 ("2011 regulations") limited the home fee status to Scottish domiciled students. The provisions contained within the 2011 regulations applied to all new students commencing their studies from the 2012/13 academic year onwards. These regulations in effect gave institutions the power to charge higher tuition fees to new post 2011/12 students who did not have a relevant connection with Scotland or were not included in the list of excepted students. The 2007 regulations continued to apply to pre 2012-13 starters.

The 2011 regulations have now been superseded by the Fees regs which provide the most up-to-date provisions in respect of relevant connection to Scotland and excepted categories of students who can be considered as Scottish domiciled for the purposes of tuition fee assessments. The 2022 regulations made an amendment to the 2007 regulations which had the consequence of reviving aspects of those 2007 regulations in so far as the assessment of students for the rest of UK tuition fee rate. Although the 2007 regulations have not been revoked previously, the regulations have not been updated to reflect the current criteria and excepted groups that the Scottish Government would consider as having a relevant connection to the UK for the purposes of assessing eligibility for the rest of the UK tuition fee rate. Therefore although they are currently in force, they are not fit for purpose.

The Scottish Government have engaged with institutions via Universities Scotland to understand the use of the 2007 regulations for the purposes of assessing students studying in Scotland from the rest of the UK in regards to the rest of UK tuition fee rate. The majority of the institutions who responded, confirmed that they were not relying on the 2007 regulations for the purposes of their fee assessments but were instead utilising a combination of guidance issued to the sector by the Scottish Government following the UK's exit from the EU and information provided by the UK Council for International Student Affairs (UKCISA) which draws on the Fees regs.

In addition to the information and guidance that the sector are already using to support their decision making in regards to fee assessments for students studying in Scotland from elsewhere in the UK, the Scottish Government will provide supplementary guidance on eligibility criteria which institutions can consider when assessing students from the rest of the UK. Following feedback from the sector, this supporting guidance will be provided ahead of the forthcoming admissions cycle.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Education (Fees and Student Support) (Miscellaneous Amendment and Revocation) (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

Due to the nature of these changes, no consultation was considered necessary. Scottish Government have however engaged with university sector stakeholders regarding the revocation of the Education (Fees and Awards) (Scotland) Regulations 2007 and the potential impact this may have on tuition fee assessments for students coming to Scotland from the rest of the UK. We are aware following this engagement that these regulations are not widely used by institutions when determining the eligibility of students coming to Scotland to study from the rest of the UK. The Scottish Government will be issuing guidance to the sector to support institutions with undertaking tuition fee assessments on students from the rest of the UK coming to Scotland to study.

Impact Assessments

A Child Rights and Wellbeing Impact Assessments ("CRWIA") has been undertaken for this statutory instrument. An Equality Impact Assessment ("EQIA") was not considered necessary due to the nature of these changes.

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
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