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 than 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