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Convenor  
Education Children and Young People Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

16 August 2022

Dear Convener

I am writing regarding the Education (Fees) (Scotland) Regulations 2022.

The Independent Monitoring Authority for the Citizens' Rights Agreements (IMA), the independent body which has been tasked with ensuring that the rights of EU, EEA and EFTA citizens living in the UK and Gibraltar are upheld following the UK's departure from the EU has reviewed these regulations and the Student Support (Scotland) Regulations 2022 to ensure that they are compliant with our obligations under the EU Withdrawal Agreement and the EEA/EFTA Separation Agreement ("the Citizens' Rights Agreements).

The IMA has identified that the Education (Fees) (Scotland) Regulations 2022 do not make clear a provision for a person with 'protected rights' who was living in the UK prior to the end of 2020 and who has lived in the UK for less than 3 years to be eligible to be charged the home tuition fee rate by Scottish institutions. Under the terms of the Citizens' Rights Agreements, students in this situation should be treated equally with UK nationals for fees purposes. This means that they should be treated as home students for tuition fee purposes.

A change to this effect was made in the Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021, which came into force on 1 August 2021. However this has not been transposed into the new Fees Regulations which came into force on 1 August this year. The policy intention has however not changed and a person with protected rights who has lived in the UK for less than 3 years should still be eligible for home fee status.

Students who will commence their studies in the 2022/23 academic year that fall into the above category should not be disadvantaged compared to UK nationals domiciled in Scotland. It is our understanding that Scottish institutions are not charging higher fees to this category but are in fact treating them as home students in line with the Scottish Government policy position. The latest version of the Student Awards Agency Scotland (SAAS) guidance on fee status assessments (issued for the 2021/22 academic year) makes it clear that home fee status should be awarded to EU nationals and their family members living in the UK before the end of 2020 or those who have been granted or applied for settled or pre-settled

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status, and who have lived in the UK, EEA or Switzerland for the past 3 years and are ordinarily resident in the UK on the relevant date.

The Scottish Government has also been in contact with the IMA to thank them for bringing this to our attention and we have proposed the following actions:

- Officials will write to the sector to confirm that the policy intention within the 2021 Regulations remains valid in that these students should be eligible for home fee status and that we will take forward amendments as soon as possible to the 2022 Regulations to properly put this on a statutory footing.
- We are making an amendment to the Education (Fees) (Scotland) Regulations 2022 as soon as is practicable to ensure that the correct policy intention is captured within the Regulations in time for the start of the 2023/24 academic year.

We are continuing to work closely with the IMA on this issue to ensure that appropriate action is taken and that no individuals in these circumstances are being treated unfairly. I look forward to the Committee's cooperation in taking this matter forward.

Yours sincerely



**JAMIE HEPBURN**

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