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Convener
Education, Children and Young People Committee
The Scottish Parliament
Edinburgh
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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Although those regulations had since been repealed, mirrored long residence rules were contained within current regulations.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

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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?

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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 ([SN01403.pdf \(parliament.uk\)](#)) 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.

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