

Consideration of subordinate legislation by the Education, Children and Young People Committee

1. This note provides information about [The Education \(Fees\) \(Scotland\) Regulations 2022](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2022/156.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **6 May 2022**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **17 May 2022**. The Committee had no comments and the report produced by the Committee is [available here](#).
6. They will be considered by the Education, Children and Young People Committee at its meeting on **8 June 2022**.
7. If the Committee wishes to produce a report on these regulations, it must do so by **13 June 2022**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations

9. These Regulations consolidate The Education (Fees) (Scotland) Regulations 2011 (“the Fees Regulations”).
10. The Fees regulations have been in force for eleven years and subject to multiple amendments during that time. The consolidation provides an opportunity to review in detail the terms of the Fees Regulations and ensure that the new instrument is fit for purpose. The new instrument sets out the eligibility criteria for the assessment of fee status of students undertaking a course of higher education in Scotland.
11. A copy of the Scottish Government’s Policy Note is included in [Annexe A](#).

Consultation

12. The policy note states that there has been no formal consultation.

Impact Assessment

13. The policy note states that an Equality Impact Assessment (“EQIA”) has been carried out for the amendments relating to Afghan nationals, Ukrainian nationals, long residency, and extension to relevant connection to Scotland. EQIAs for the other amendments were not considered necessary due to the nature of the amendments

Financial Impact

14. The policy note states that a Business and Regulatory Impact Assessment was not required as it has no impact upon business, charities or voluntary bodies.

Procedure

15. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.

16. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.

17. Rule 10.4 of the Scottish Parliament’s standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.

18. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).

19. If a motion to annul is lodged, the lead committee will consider this and then hold a vote. If the motion is disagreed to, then the regulations will remain in their current form.

20. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.

21. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.

22. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

23. The Committee is invited to consider the instrument.

**Jane Davidson
Committee Assistant
Education, Children and Young People Committee
31 May 2022**

Annexe A

POLICY NOTE

THE EDUCATION (FEES) (SCOTLAND) REGULATIONS 2022 SSI 2022/156

The Education (Fees) (Scotland) Regulations 2022 are made in exercise of the powers conferred by section 1 of the Education (Fees and Awards) Act 1983.

The instrument is subject to negative procedure.

Policy Objectives

These Regulations consolidate The Education (Fees) (Scotland) Regulations 2011 (“the Fees Regulations”)

Purpose

The Fees regulations were in force for eleven years and subject to multiple amendments during that time. The consolidation provided an opportunity to review in detail the terms of the Fees Regulations and ensure that the new instrument was fit for purpose. The new instrument sets out the eligibility criteria for the assessment of fee status of students undertaking a course of higher education in Scotland.

The notable changes included are summarised in more detail below.

Relocated Afghan Nationals

Paragraph 12 of Schedule 1 has been included to extend eligibility for support to individuals relocated to the UK following the recent unrest in Afghanistan to enable them to have the status of ‘home student’ for the purposes of accessing further or higher education courses.

Afghan nationals who have been relocated to the UK and granted leave under the Afghan Citizens Resettlement Scheme or the Afghan Relocations and Assistance Policy Scheme will have access to home fee status. This will also be extended to the spouse, civil partner of the individual being granted leave on the same basis.

Ukrainian Nationals

The following changes have been introduced for individuals who have applied for leave to enter the United Kingdom following the Russian invasion of Ukraine on 24 February 2022 to enable them to have access to financial support in order to study courses of further or higher education.

Ukrainian nationals who have applied to the United Kingdom Home Office in terms of the Ukraine Family Scheme, Ukraine Sponsorship Scheme, Ukraine Extension Scheme or for leave outside the immigrations rules (as defined by section 33(1) of the Immigration Act 1971) where the person was residing in Ukraine immediately before 1 January 2022 and left Ukraine in connection with the Russian invasion, will have access to home fee status and student support.

Extension of criteria for relevant connection with Scotland

The eligibility criteria applied to students qualifying through their relevant connection with Scotland has been extended to provide parity with support previously provided to the family members (spouse, civil partner or child of an EU national). The extension includes the spouse, civil partner or child of a person settled in the UK within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date. Those individuals who meet the new criteria will be eligible for home tuition fee status.

Long Residency

The eligibility criteria in relation to long residency has been updated to ensure that individuals who were under 18 and eligible for support retain their funding entitlement once they reach the age of 18 and are undertaking a further period of study.

This update only applies to students who were in receipt of support in the academic year immediately preceding the relevant date.

The regulations also provide that the assessment date is the 'relevant date' as defined in the interpretation section. This provides four dates throughout the year in which the student may have their eligibility assessed against depending on their course start date.

Temporary Protection

Paragraph 7 (Temporary Protection) of Schedule 1 of the Fees Regulations has not been replicated in Schedule 1 of these regulations. The UK Government have confirmed that it has no plans to bring in a Temporary Protection status for the same or similar purposes as the EU Council Directive 2001/55/EC. The Regulations therefore, do not provide a provision for this particular status.

Explanation of the regulations

These Regulations consolidate the Fees Regulations and provide that it is lawful to charge certain students fees at a higher level than other students.

Consultation

A consultation was not considered necessary due to the nature of the amendments.

Impact Assessments

An Equality Impact Assessment ("EQIA") has been carried out for the amendments relating to Afghan nationals, Ukrainian nationals, long residency, and extension to relevant connection to Scotland. EQIAs for the other amendments were not considered necessary due to the nature of the amendments.

Financial Effects

A Business and Regulatory Impact Assessment (“BRIA”) is not necessary as the instrument has no impact upon business, charities or voluntary bodies.

Scottish Government
Directorate for Advanced Learning and
Science May 2022