

2011 No. 87

EDUCATION, ENGLAND

**The Education (Student Fees, Awards and Support)
(Amendment) Regulations 2011**

Made - - - - - *17th January 2011*

Laid before Parliament *18th January 2011*

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 1 and 2 of the Education (Fees and Awards) Act 1983(a), sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998(b) and sections 24 and 47 of the Higher Education Act 2004(c) makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Student Fees, Awards and Support) (Amendment) Regulations 2011.

(2) These Regulations come into force on the 22nd day after these Regulations are laid before Parliament.

(3) These Regulations apply in relation to England(d).

Interpretation

2. In these Regulations—

“Fees Regulations” means the Education (Fees and Awards) (England) Regulations 2007(e);

“QCP Regulations” means the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007(f);

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- (a) 1983 c. 40; section 1 was amended by the Education Reform Act 1988 (c. 40), section 237 and Schedule 12; the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8; the Education Act 1994 (c. 30), section 24 and Schedule 2; the Education Act 1996 (c. 56), section 582(1) and Schedule 37; the Learning and Skills Act 2000, section 149 and Schedule 9; the Education Act 2002 (c. 32), section 215 and Schedule 21; the Education Act 2005, section 98 and Schedule 14; the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010 (S.I. 2010/1080), article 2 and Schedule 1 and the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 5 and Schedule 2. Section 2 was amended by the Teaching and Higher Education Act 1998 (c. 30), section 44 and Schedule 4.
- (b) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42, 43 and Schedule 7 and the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257(1) and (2). See section 43(1) of the 1998 Act for the definition of “prescribed” and “regulations”.
- (c) 2004 c. 8; section 24 was amended by the Education Act 2005, section 98, schedule 14.
- (d) In relation to Wales, the functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 were transferred to the Welsh Ministers under section 44 of the Higher Education Act 2004 except so far as they relate to the making of any provision authorised by subsection (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22.
- (e) S.I. 2007/779, as amended by S.I. 2007/1336 and S.I. 2007/2263.
- (f) S.I. 2007/778, as amended by S.I. 2007/1336, S.I. 2007/2263 and S.I. 2008/1640.

“SSR 2009” means the Education (Student Support) Regulations 2009(a).

Amendment to the Fees Regulations, QCP Regulations and SSR 2009

3. The Fees Regulations are amended in accordance with regulations 6 and 7.
4. The QCP Regulations are amended in accordance with regulations 8 and 9.
5. The SSR 2009 are amended in accordance with regulations 10 to 12.

Amendment of the Fees Regulations

6. For regulation 2(3) of the Fees Regulations, substitute—

“(3) For the purposes of these Regulations, “parent” includes a guardian and any other person having parental responsibility for a child and “child” is to be construed accordingly.”.

7. In Schedule 1—

- (a) in paragraph 1—

- (i) within the definition of “family member”, for (a)(ii), substitute—

“(ii) direct descendants of the person or of the person’s spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependents of the person or the person’s spouse or civil partner; or”;

- (ii) after the definition of “family member”, insert—

““person granted humanitarian protection” means a person—

(a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules as defined in section 33(1) of the Immigration Act 1971(b);

(b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002(c)); and

(c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain;”;

- (iii) omit the definition of “person with leave to enter or remain”;

- (b) for paragraph 5, substitute—

“Persons granted humanitarian protection and their family members

5.—(1) A person granted humanitarian protection who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

- (2) A person—

(a) who is the spouse or civil partner of a person granted humanitarian protection;

(b) who was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”); and

(a) S.I. 2009/1555, as amended by S.I. 2010/2546.

(b) 1971 c. 77.

(c) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), Schedule 2 and the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9.

- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (3) A person—
- (a) who is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
 - (b) who, on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
 - (c) who was under 18 on the asylum application date; and
 - (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.”.

Amendment of the QCP Regulations

8. In regulation 2 of the QCP Regulations, in the definition of “equivalent or lower qualification”, for “Education (Student Support) (No 2) Regulations 2008”, substitute “Education (Student Support) Regulations 2009(a).”

9. In the Schedule—

- (a) in paragraph 1(1)—
 - (i) within the definition of “family member”, for (a)(ii), substitute—
 - “(ii) direct descendants of the person or of the person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependents of the person or the person’s spouse or civil partner; or”;
 - (ii) after the definition of “overseas territories”, insert—
 - ““person granted humanitarian protection” means a person—
 - (a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules as defined in section 33(1) of the Immigration Act 1971(b);
 - (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002(c)); and
 - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain;”;
 - (iii) omit the definition of “person with leave to enter or remain”;
- (b) for paragraph 1(2), substitute—
 - “(2) For the purposes of this Schedule, “parent” includes a guardian and any other person having parental responsibility for a child and “child” is to be construed accordingly.”;
- (c) for paragraph 5, substitute—

“Persons granted humanitarian protection and their family members

5.—(1) A person granted humanitarian protection who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(2) A person—

(a) 2009/1555, as amended by S.I. 2010/2546.
 (b) 1971 c. 77.
 (c) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), Schedule 2 and the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9.

- (a) who is the spouse or civil partner of a person granted humanitarian protection;
 - (b) who was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”); and
 - (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (3) A person—
- (a) who is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
 - (b) who, on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
 - (c) who was under 18 on the asylum application date; and
 - (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.”.

Amendment of the SSR 2009

10. In regulation 2 of the SSR 2009 (interpretation)—

- (a) after the definition of “periods of work experience”, insert—
 - ““person granted humanitarian protection” means a person—
 - (a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules as defined in section 33(1) of the Immigration Act 1971^(a);
 - (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002^(b)); and
 - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain;”;
- (b) omit the definition of “person with leave to enter or remain”.

11. In each of the following regulations, for “person with leave to enter or remain”, substitute “person granted humanitarian protection”—

- (a) regulation 5(12)(a) and (b);
- (b) regulation 18(b);
- (c) regulation 82(2)(b);
- (d) regulation 92(2)(a);
- (e) regulation 116(12)(a) and (b);
- (f) regulation 117(4)(b);
- (g) regulation 133(11)(a) and (b);
- (h) regulation 134(3)(b);
- (i) regulation 150(13)(a) and (b); and
- (j) regulation 151(2)(b).

12. In Schedule 1—

- (a) for sub-paragraph (2) of paragraph 1, substitute—

(a) 1971 c. 77.
 (b) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), Schedule 2 and the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9.

“(2) For the purposes of this Schedule, “parent” includes a guardian and any other person having parental responsibility and “child” is to be construed accordingly.”;

(b) for paragraph 5, substitute—

“Persons granted humanitarian protection and their family members

5.—(1) A person granted humanitarian protection who—

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (b) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person—

- (a) who is the spouse or civil partner of a person granted humanitarian protection;
- (b) who was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”);
- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) A person—

- (a) who is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
- (b) who, on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
- (c) who was under 18 on the asylum application date;
- (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (e) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.”.

Transitional cases

13.—(1) The amendments made by regulations 6 to 9 of these Regulations do not apply in relation to a person—

- (a) where the first day of the first academic year of that person’s course is on or before 31st March 2011;
- (b) where sub-paragraph (a) applies, and the person subsequently transfers to another course; or
- (c) who, disregarding any intervening vacation, immediately after the course referred to in paragraph (a), begins an end-on course.

(2) The amendments made by regulations 10, 11 and 12 of these Regulations do not apply in relation to a person—

- (a) whose application for support is received by the Secretary of State before the date on which these Regulations come into force;

- (b) who, before the date on which these Regulations come into force was determined by the Secretary of State to be an eligible student falling within paragraph 5 of Part 2 of Schedule 1 to the SSR 2009; or
- (c) who, having satisfied the conditions set out in sub-paragraph (a) or sub-paragraph (b), commences an end-on course.

(3) In this regulation, “end-on course” has the meaning given in paragraph (d) of the definition of “end-on course” in regulation 2 of the SSR 2009.

17th January 2011

David Willetts
Minister of States for Universities and Science
Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Fees and Awards) (England) Regulations 2007 (S.I. 2007/779), as amended (the “Fees Regulations”), the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (S.I. 2007/778), as amended (the “QCP Regulations”), and the Education (Student Support) Regulations 2009 (S.I. 2009/1555), as amended (the “SSR 2009”).

Regulation 6 amends the definition of “parent” in regulation 2 of the Fees Regulations to remove the reference to “any person having care of a child”. Regulation 9(b) makes the corresponding change to the definition of “parent” in the Schedule to the QCP Regulations, and regulation 12(a) makes the corresponding change to the definition of “parent” in Schedule 1 of the SSR 2009.

Regulation 7(a) amends the definition of “family member” in Schedule 1 to the Fees Regulations to correspond with the amendment to SSR 2009 which was made by the Education (Student Support) Regulations 2009 (Amendment) Regulations 2010. This amendment replaces the reference to “child” with one that refers to direct descendants of the person or of the person’s spouse or civil partner who are under the age of 21 or dependants of the person or the person’s spouse or civil partner. Regulation 9(a)(i) makes the corresponding amendment in the QCP Regulations.

Regulations 7(a)(ii) and (iii) insert a new definition referring to a “person granted humanitarian protection” in Schedule 1 to the Fees Regulations, and remove the definition of “person with leave to enter or remain”. The new definition creates a narrower class of eligible person, by including only people who have been granted humanitarian protection, their spouses and children. The previous category also included certain people granted discretionary leave to remain and their spouses and children. Regulation 7(b) makes changes to paragraph 5 of Schedule 1 to the Fees Regulations to reflect the new definition of person granted humanitarian protection.

Regulations 9(a)(ii) and (iii) and 9(c) make the corresponding amendments to the QCP Regulations and regulations 10 and 12(b) make the corresponding amendments to the SSR 2009. In addition Regulation 11 makes consequential amendments throughout the SSR in relation to the new definition.

Regulation 8 amends the definition of “equivalent and lower qualification” in the QCP Regulations so that the definition in the SSR 2009 applies.

Regulation 13 concerns transitional cases.

The effect of the changes to the definition of person with leave to enter or remain and the related amendments is that people (and their family members) who would have fallen within the category of “person with leave to enter or remain” but who do not fall within the new category of people granted humanitarian protection will not be entitled to be charged tuition fees on the same basis as home students, will not be regarded as qualifying persons who benefit from fee controls and will not be eligible for tuition fee and maintenance support.

These changes will only apply to new students applying for support from the date the Regulations come into force and will not apply to existing students.

An impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the public sector. The impact on the public sector is minimal.

STATUTORY INSTRUMENTS

2011 No. 87

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