
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 156

EDUCATION

The Education (Fees) (Scotland) Regulations 2022

<i>Made</i>	- - - -	<i>4th May 2022</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th May 2022</i>
<i>Coming into force</i>	- -	<i>1st August 2022</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1 of the Education (Fees and Awards) Act 1983⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Education (Fees) (Scotland) Regulations 2022 and come into force on 1 August 2022.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020⁽²⁾,

“Directive 2004/38” means [Directive 2004/38/EC](#) of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States⁽³⁾, and reference to a provision of this Directive—

- (a) is reference to the Directive as it had effect immediately before IP completion day, and
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“education” includes post-graduate research otherwise than in the course of employment,

(1) [1983 c. 40](#); section 1 was relevantly amended by the Education Reform Act [1988 \(c. 40\)](#), schedule 12, paragraph 91, the Further and Higher Education (Scotland) Act [1992 \(c. 37\)](#), schedule 9, paragraph 8, the Further and Higher Education Act [1992 \(c. 13\)](#), schedule 8, paragraph 19 and the Education Act [1996 \(c. 56\)](#), schedule 37, paragraph 57. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act [1998 \(c. 46\)](#).

(2) [S.I. 2020/1209](#).

(3) OJ L 158, 30.4.2004, p.77.

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁴⁾, together with the protocol signed at Brussels on 17 March 1993⁽⁵⁾, as modified or supplemented from time to time, but does not include any retained direct EU legislation,

“EEA EFTA separation agreement” means (as modified from time to time in accordance with any provision of it) the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA agreement and other agreements applicable between the United Kingdom and the EEA EFTA states by virtue of the United Kingdom’s membership of the European Union⁽⁶⁾,

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in the United Kingdom, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“EEA frontier worker” means an EEA national who—

- (a) is a worker in the United Kingdom, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker, but who is not an EEA frontier worker,

“EEA national” means any person who is a national of any EEA state,

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person but who is not an EEA frontier self-employed person,

“EEA state” means—

- (a) any Member State of the European Union, or
- (b) any other state that is party to the EEA agreement,

“employment” means full time or part time employment which, in a normal week, involves a significant number of hours of work and “employed” is to be construed accordingly, and references to employment include references to the holding of any office and to any occupation for monetary gain,

“EU national” means any person who is a national of any Member State of the European Union,

“European Economic Area” means the European Union and, subject to the conditions laid down in the EEA agreement, Iceland, Norway and Liechtenstein,

“family member” means, in relation to any person—

- (a) their spouse or civil partner,
- (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21, or
 - (ii) their dependants or those of their spouse or civil partner, or
- (c) their dependant direct relatives in the ascending line or those of their spouse or civil partner,

⁽⁴⁾ CP 2073 and OJ L 1, 3.1.1994, p.3.

⁽⁵⁾ CP 2183 and OJ L 1, 3.1.1994, p.572.

⁽⁶⁾ CP 217.

“fees” includes charges however described,

“parent” includes a step-parent, a guardian, any other person having parental responsibilities for a child and any person having care of a child, and “child” is to be construed accordingly,

“person with protected rights” means—

- (a) a person within the scope of Article 10 (personal scope) of the EU withdrawal agreement, Article 9 (personal scope) of the EEA EFTA separation agreement, or Article 10 (personal scope) of the Swiss citizens’ rights agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended,
 - (iii) otherwise has rights deemed to apply by virtue of Article 18(1)(d), (2) and (3) (issuance of residence documents) of the EU withdrawal agreement, Article 17(1)(d), (2) and (3) (issuance of residence documents) of the EEA EFTA Separation agreement, or Article 16(1)(d), (2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement, or
 - (iv) is an Irish national who, pursuant to section 3ZA (Irish citizens) of the Immigration Act 1971⁽⁷⁾, does not require leave to enter or remain in the UK, or
- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,

“refugee” means a person within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951⁽⁸⁾, as extended by article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967⁽⁹⁾, and any reference to the child of a refugee includes a reference to a step-child,

“relevant date” in relation to a course of education commenced by a student means—

- (a) for a course of education starting in the period 1 August to 31 December, 1 August in that year,
- (b) for a course of education starting in the period 1 January to 31 March, 1 January in that year,
- (c) for a course of education starting in the period 1 April to 30 June, 1 April in that year,
- (d) for a course of education starting in the period 1 July to 31 July, 1 July in that year,

“relevant fees” means the aggregate of—

- (a) any fees for admission, registration or matriculation (including matriculation exemption),
- (b) any sessional or tuition fees,
- (c) any composition fee, and
- (d) any graduation fee,

in each case excluding any element thereof representing or attributable to—

- (i) any fees charged by an external body in respect of an examination or validation of a course of education or otherwise charged by such a body whose requirements must (for the purposes of a course) be met, and

⁽⁷⁾ 1971 c. 77.
⁽⁸⁾ Cmnd 9171.
⁽⁹⁾ Cmnd 3906.

(ii) charges for board and lodging,

“relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,

“residence scheme immigration rules” has the meaning given by section 17(1) (Interpretation: Part 3) of the European Union (Withdrawal Agreement) Act 2020⁽¹⁰⁾,

“Swiss citizens’ rights agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens’ rights following the withdrawal of the United Kingdom from the European Union and the Free movement of persons agreement⁽¹¹⁾,

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person (within the meaning of Annex 1 to the Switzerland agreement), but who is not a Swiss frontier employed person,

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland agreement) in the United Kingdom, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland agreement) in the United Kingdom, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person (within the meaning of Annex 1 to the Switzerland agreement), but who is not a Swiss frontier self-employed person,

“Switzerland agreement” means the agreement between the EU and its member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999⁽¹²⁾ and which came into force on 1 June 2002, and reference to a provision of the agreement—

- (a) is reference to the agreement as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“worker” means a worker within the meaning of Article 7 (right of residence for more than three months) of Directive 2004/38 or the EEA agreement as the case may be.

(2) For the purposes of these Regulations, and subject to paragraph (3), in assessing whether a student has a relevant connection with Scotland or is an excepted student for the charging of relevant fees, a course of education is deemed to have started on the date that the first constituent part of any programme which contributes to the final award for that course of education commenced.

(3) In assessing whether a student has a relevant connection with Scotland or is an excepted student for the charging of relevant fees—

- (a) a programme leading to—

⁽¹⁰⁾ 2020 c. 1.

⁽¹¹⁾ CP 64.

⁽¹²⁾ Cm 5639.

- (i) a degree,
 - (ii) a Higher National Diploma, or
 - (iii) a Higher National Certificate, and
 - (b) such other programmes as the Scottish Ministers may determine,
- are to be treated as separate and distinct courses of education.
- (4) Where a student (“A”)—
- (a) is an excepted student within the meaning of schedule 1 for the purposes of—
 - (i) not being charged higher relevant fees for the first year of A’s current course, or
 - (ii) not being charged higher relevant fees for an earlier year of A’s current course, and
 - (b) as at the day before the relevant date for the academic year in respect of which A is seeking to continue to be an excepted student—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
 - (ii) A has not made an in-time application within the meaning of regulation 4(6) (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations, or
 - (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations, the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an excepted student under schedule 1,

A ceases to be an excepted student immediately before the first day of that academic year.

Relevant connection with Scotland

3. For the purposes of regulation 4(1) (charging of higher relevant fees), a student has a relevant connection with Scotland if that student on the relevant date—

- (a) is ordinarily resident in Scotland,
- (b) has been ordinarily resident in the United Kingdom throughout the period of 3 years immediately preceding the relevant date, and
- (c) is—
 - (i) settled in the United Kingdom within the meaning given by section 33(2A) (Interpretation) of the Immigration Act 1971,
 - (ii) under the age of 18 and has lived in the United Kingdom throughout the seven year period preceding the relevant date,
 - (iii) aged 18 or above and, preceding the relevant date, has lived in the United Kingdom throughout either half their life or a period of twenty years,
 - (iv) aged 18 or above and received support by virtue of sub-paragraph (ii) for the academic year immediately preceding the relevant date, or
 - (v) is the spouse, civil partner or child of a person described in sub-paragraphs (i) to (iv).

Charging of higher relevant fees

4.—(1) Subject to paragraph (2), it is lawful to charge higher relevant fees in the case of students who do not have a relevant connection with Scotland than in the case of students having such a connection.