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STATUTORY INSTRUMENTS

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**2012 No. 1818**

**The Further Education Loans Regulations 2012**

**PART 1**

**GENERAL**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Further Education Loans Regulations 2012 and come into force on 1st September 2012.

(2) These Regulations apply in relation to England<sup>(1)</sup>.

(3) These Regulations apply to the provision of fee loans to students in connection with a further education course which begins on or after 1st August 2013 whether anything done under these Regulations is done before, on or after 1st August 2013.

**Interpretation**

2. In these Regulations—

“the 1998 Act” means the Teaching and Higher Education Act 1998;

“Access to HE Diploma” means a qualification which is specifically designed to prepare persons for study at university;

“applicant” means a person applying for a fee loan under regulation 10(1);

“Apprenticeship Framework” has the meaning given to it in section 12 of the Apprenticeships, Skills, Children and Learning Act 2009;

“borrower” means a person to whom a fee loan has been made;

“current course” means the designated further education course in respect of which a person is applying for a fee loan;

“designated further education course” means a course designated by regulation 4 or by the Secretary of State under regulation 4;

“Directive 2004/38” means Directive 2004/38 of the European Parliament and of the Council of 29th April 2004<sup>(2)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“electronic signature” is so much of anything in electronic form as—

(a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

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(1) 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.

(2) OJL158, 30.4.2004, p77.

- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible prisoner” means a prisoner—

- (a) who begins the current course on or after 1st August 2013;
- (b) who is serving a sentence of imprisonment in England;
- (c) has been authorised by the prison Governor or Director or other appropriate authority to study the current course; and
- (d) whose earliest release date is within 6 years of the first day of the current course;

“eligible student” has the meaning given in regulation 3;

“EU national” means a national of a Member State of the EU;

“fee loan” means a loan for fees made to an eligible student pursuant to regulations made by the Secretary of State under section 22 of the 1998 Act;

“fees” has the meaning given in section 41(1) of the Higher Education Act 2004(3);

“further education course” means a course providing further education as defined by section 2(3) of the Education Act 1996(4);

“information” includes documents;

“institution” means an organisation delivering further education courses;

“Islands” means the Channel Islands and the Isle of Man and “the United Kingdom and Islands” means the United Kingdom and the Islands taken together;

“loan”, except where otherwise indicated, means a loan made pursuant to regulations made by the Secretary of State under section 22 of the 1998 Act, including the interest accrued on the loan and any penalties or charges incurred in connection with it;

“period of eligibility” has the meaning given in regulation 5 in relation to an eligible student;

“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(5);
- (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002(6)); 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;

“public funds” means moneys provided by Parliament or by a government authority outside the United Kingdom;

“publicly funded”, unless otherwise indicated, means maintained or assisted by recurrent grants out of public funds and related expressions are to be interpreted accordingly;

“refugee” means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at

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(3) 2004 c.8.

(4) 1996 c.56. Section 2(3)(a) repealed by Education Act 2006 (c.32.), ss.215 (2), 216(4), Schedule 22 Pt 3 (with ss.210(8), 214(4)); S.I. 2002/2439, S.I.2002/3185, art.4, Sch.1,Part1.

(5) 1971 c.77.

(6) 2002 c.41; section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19), section 26 and Schedule 2 and the Immigration, Asylum and Nationality Act 2006 (c.13), section 9.

Geneva on 28th July 1951(7) as extended by the Protocol thereto which entered into force on 4th October 1967(8);

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“student loans legislation” means the Education (Student Loans) Act 1990(9), the Education (Student Loans) (Northern Ireland) Order 1990(10), the Education (Scotland) Act 1980 and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998(11) and regulations made under that Order or the 1998 Act;

“Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands; and
- (b) is, or has been, lawfully employed in the United Kingdom.

## PART 2

### ELIGIBILITY

#### Eligible students

3.—(1) An eligible student qualifies for a fee loan in connection with a designated further education course subject to and in accordance with this regulation.

(2) A person is an eligible student in connection with a designated further education course if in assessing that person’s application for a fee loan the Secretary of State determines that the person falls within one of the categories set out in Part 2 of Schedule 1 and the person satisfies the requirements of the other paragraphs of this regulation.

(3) The requirements of this paragraph are that the eligible student (“A”)—

- (a) has reached the age of 24 on the first day of A’s designated further education course;
- (b) is not in breach of any obligation to repay any loan;
- (c) has ratified any agreement for a loan made with A when A was under the age of 18;
- (d) has not, in the opinion of the Secretary of State, shown by A’s conduct that A is unfitted to receive support.

(4) If A is an eligible prisoner A can qualify for a fee loan under this regulation in respect of a designated further education course which is taking place at the time which A enters prison, is in prison or is released from prison.

(5) For the purposes of paragraphs (4)(b) and (4)(c), “loan” means a loan made under any provision of the student loans legislation.

(6) In a case where the agreement for a loan is subject to the law of Scotland, paragraph (4)(c) only applies if the agreement was made—

- (a) before 25th September 1991; and
- (b) with the concurrence of the borrower’s curator or at a time when the borrower had no curator.

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(7) Cmnd. 9171.

(8) Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Finance Policy Division, Department for Business, Innovation and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

(9) 1990 c.6; repealed by the Teaching and Higher Education Act 1998, Schedule 4.

(10) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No 306.

(11) S.I. 1998/1760 (N.I. 14) to which there have been amendments not relevant to these Regulations.

(7) Where the Secretary of State has determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person (“A”) is—

- (a) an eligible student in connection with an application for a fee loan for a designated further education course; and
- (b) as at the day before that course begins, the refugee status of A or of A’s spouse, civil partner, parent or step-parent, as the case may be, has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A’s status as an eligible student terminates immediately before the first day of the course.

(8) Where the Secretary of State has determined that, by virtue of being a person granted humanitarian protection or the spouse, civil partner, child or step-child of such a person, a person (“A”) is—

- (a) an eligible student in connection with an application for a fee loan for a designated further education course; and
- (b) as at the day before that course begins, the period for which the person granted humanitarian protection is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A’s status as an eligible student terminates immediately before the first day of the course.

### **Designated courses**

4.—(1) Subject to paragraphs (2) and (3), a further education course is a designated further education course for the purposes of section 22(1) of the 1998 Act and this regulation if it is one of the following—

- (a) a number of A levels not greater than four;
  - (b) an Access to HE Diploma;
  - (c) a Level 3 Certificate;
  - (d) a Level 3 Diploma;
  - (e) a Level 4 Certificate;
  - (f) a Level 4 Diploma;
  - (g) an Advanced Apprenticeship Framework; or
  - (h) a Higher Apprenticeship Framework.
- (2) A further education course is a designated further education course if—
- (a) it began on or after 1st August 2013;
  - (b) the institution providing the course receives public funds for a course listed in regulation 4(1);
  - (c) the further education course is publicly funded; and
  - (d) the institution providing the course is situated in England.

(3) For the purposes of section 22 of the 1998 Act the Secretary of State may designate further education courses which are not designated under paragraphs (1) and (2).

### **Period of eligibility**

5.—(1) A student’s status as an eligible student is retained in connection with a designated further education course until the status terminates in accordance with this regulation.

- (2) The period for which an eligible student retains that status is the “period of eligibility”.
- (3) Subject to the following paragraphs the maximum periods of eligibility are determined by the type of further education course and are as follows—
- (a) two years for A Levels;
  - (b) two years for an Access to HE Diploma;
  - (c) two years for a Level 3 Certificate;
  - (d) three years for a Level 3 Diploma;
  - (e) two years for a Level 4 Certificate;
  - (f) three years for a Level 4 Diploma;
  - (g) three years for an Advanced Apprenticeship Framework;
  - (h) three years for a Higher Apprenticeship Framework.
- (4) The period of eligibility terminates when the eligible student (“A”)—
- (a) withdraws from A’s further education course in circumstances where the Secretary of State has not transferred or will not transfer A’s status as an eligible student under regulation 8, or
  - (b) abandons or is expelled from A’s further education course.
- (5) The Secretary of State may terminate the period of eligibility where A has shown by A’s conduct that A is unfitted to receive a fee loan.
- (6) If the Secretary of State is satisfied that an eligible student has failed to comply with any requirement to provide information under these Regulations or has provided information which is inaccurate in a material particular, the Secretary of State may take such of the following actions as the Secretary of State considers appropriate in the circumstances—
- (a) terminate the period of eligibility;
  - (b) determine that the student no longer qualifies for any fee loan or particular amount of fee loan;
  - (c) treat any fee loan paid to the student as an overpayment which may be recovered under regulation 24.
- (7) Where the period of eligibility terminates before the student completes the further education course, the Secretary of State may, at any time, renew the period of eligibility for such period as the Secretary of State determines.

### **Students becoming eligible other than prior to the beginning of a designated further education course**

6. Where one of the events listed in regulation 7 occurs other than prior to the beginning of a designated further education course a student may qualify for a fee loan in accordance with this Part in respect of that course.

7. The events are—

- (a) the student’s course becomes a designated further education course;
- (b) the student or the student’s spouse, civil partner, parent or step-parent is recognised as a refugee or becomes a person granted humanitarian protection;
- (c) a state accedes to the EU where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the student acquires the right of permanent residence;

- (f) the student becomes the child of a Turkish worker;
- (g) the student becomes a person described in paragraph 6(1)(a) of Schedule 1; or
- (h) the student becomes the child of a Swiss national.

#### **Transfer of status within same institution**

8.—(1) Where an eligible student (“A”) transfers to another designated further education course at the same institution, the Secretary of State may transfer their status as an eligible student to that further education course where—

- (a) the Secretary of State receives a request from the eligible student to transfer to a further education course at an equivalent level to the course which the eligible student is currently taking, and
- (b) the period of eligibility has not terminated.

(2) Where A transfers under paragraph (1), A is entitled to receive in connection with the further education course to which A transfers, any remainder of the fee loan assessed by the Secretary of State in respect of the remainder of the period of eligibility of the further education course to which A transfers.

#### **Transfer to another institution**

9. Where an eligible student transfers to a designated further education course at an alternative institution that eligible student must apply for a fee loan under regulation 10 unless that eligible student has transferred to an alternative institution because the institution at which that eligible student began a designated further education course ceases to be publicly funded or, if an eligible student is an apprentice, that eligible student’s employment status is terminated.

## **PART 3**

### **APPLYING FOR A FEE LOAN, PROVISION OF INFORMATION AND LOAN CONTRACTS**

#### **Applications for a fee loan**

10.—(1) A person (the “applicant”) must apply for a fee loan in connection with each further education course by completing and submitting to the Secretary of State an application in such form and accompanied by such documentation as the Secretary of State may require.

(2) The Secretary of State may take such steps and make such inquiries as the Secretary of State considers necessary to determine whether the applicant is an eligible student, whether the applicant qualifies for a fee loan and the amount of fee loan payable, if any.

(3) The Secretary of State must notify the applicant of whether the applicant qualifies for a fee loan and, if so, the amount of fee loan payable in respect of the further education course.

#### **Time limits**

11. An application must reach the Secretary of State within the period of eligibility for the further education course for which support is required.

#### **Information**

12. Schedule 2 deals with the provision of information.

### **Requirement to enter into a contract for a fee loan**

13. To receive a fee loan a student must enter into a contract with the Secretary of State.

## **PART 4**

### **FEE LOANS**

#### **Availability of fee loans to eligible students - general**

14. When assessing an application for a fee loan in respect of a designated further education course, the Secretary of State must determine the standard entitlement.

#### **Standard entitlement of eligible students**

15.—(1) The standard entitlement of an eligible student is a maximum of four loans where each loan is for a different category of further education course, as listed at regulation 4.

(2) In addition to the standard entitlement, if the Secretary of State determines that the eligible student is repeating a further education course because of compelling personal reasons, an eligible student can qualify for further fee loans in respect of any period or periods of repeat study.

(3) If the eligible student has failed to complete a previous further education course for which the student had received a fee loan an eligible student qualifies for one further fee loan in respect of the period of repeat study.

(4) Where a student is taking more than one designated further education course at any one time, the student qualifies for only one fee loan during that time.

#### **Amount of the fee loan**

16. The amount of a fee loan in respect of a further education course must not exceed the lesser of—

- (a) the maximum level of public funding in connection with that further education course, or
- (b) the amount which the institution is charging the eligible student for the further education course.

17. A fee loan must be for an amount no less than £300.

#### **Amount of fee loan for transferring students**

18.—(1) If a student's status as an eligible student is transferred from one further education course to another under regulation 8 or 9 and the circumstances in paragraph (2) apply, the student may apply to the Secretary of State to borrow an additional amount by way of a fee loan in respect of the further education course to which that student transfers.

(2) The circumstances are that the fees payable in respect of the further education course to which the student transfers exceed the fees payable in respect of the course from which the student is transferring.

(3) If a student's status as an eligible student is transferred from one course to another under these Regulations and the circumstances in paragraph (4) apply, the student shall apply to the Secretary of State to reduce the amount of fee loan applied for in respect of the course to which the eligible student has transferred.

(4) The circumstances are that the fees payable in respect of the course to which the student transfers are lower than the fees payable in respect of the course from which the student is transferring.

## PART 5

### PAYMENTS

#### Interpretation

**19.** In this Part “confirmation of the student’s attendance” means—

- (a) confirmation from the institution that the student has been present at the institution and has begun to attend the further education course where the student is applying for a fee loan in connection with that further education course; or
- (b) confirmation from the institution that the student has enrolled for a further education course where the student is applying for a fee loan in connection with that further education course, and the student is undertaking the further education course but not attending (regardless of whether the reason for not attending relates to the student’s disability); or
- (c) confirmation that the student remains enrolled, continues to attend the further education course or is undertaking the further education course but not attending, where the confirmation relates to payment of an instalment of the fee loan other than the first instalment.

### PAYMENT OF LOANS

#### Provision of United Kingdom national insurance number

**20.—(1)** The Secretary of State may make it a condition of entitlement to payment of any fee loan that the eligible student must provide the Secretary of State with the student’s United Kingdom national insurance number.

(2) Where the Secretary of State has imposed a condition under paragraph (1), the Secretary of State must not make any payment of the fee loan to the eligible student before the Secretary of State is satisfied that the student has complied with that condition.

(3) Notwithstanding paragraph (2), the Secretary of State may make a payment of a fee loan to an eligible student if the Secretary of State is satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the eligible student having complied with the condition imposed under paragraph (1).

#### Information requirements

**21.—(1)** The Secretary of State may at any time request from an applicant or eligible student information that the Secretary of State considers is required to recover a fee loan.

(2) The Secretary of State may at any time request from an applicant or eligible student sight of their national identity card, passport issued by the state of which they are a national or their birth certificate.

(3) Where the Secretary of State has requested information under this regulation, the Secretary of State may withhold any payment of a fee loan until the person provides what has been requested or provides a satisfactory explanation for not complying with the request.



### **Payment of fee loans**

**22.**—(1) The Secretary of State must pay the fee loan for which an eligible student qualifies to an institution to which the student is liable to make payment.

(2) The Secretary of State may pay the fee loan in instalments.

(3) The Secretary of State must not pay the fee loan or instalment of fee loan until the Secretary of State has received from the institution—

(a) a request for payment; and

(b) confirmation (in such form as may be required by the Secretary of State) of the student's attendance on the course for the period to which the instalment relates.

(4) The institution must inform the Secretary of State if a student ceases to attend or undertake the further education course.

### **Method of repayment**

**23.**—(1) The Secretary of State may at any time require an applicant or eligible student to enter into an agreement to repay a fee loan by a particular method.

(2) Where the Secretary of State has required an agreement as to the method of repayment under this regulation, the Secretary of State may withhold any payment of a fee loan until the person provides what has been required.

## **OVERPAYMENTS**

### **Overpayments of fee loan**

**24.**—(1) Any overpayment of fee loan is recoverable by the Secretary of State from—

(a) the institution; or

(b) the student in respect of whom the payment of fee loan was made.

(2) An overpayment of fee loan may be recovered from a student under paragraph (1)(b) in whichever one or more of the following ways the Secretary of State considers appropriate in all the circumstances—

(a) by subtracting the overpayment from any amount of the fee loan which remains to be paid;

(b) by requiring the student to repay the fee loan in accordance with regulations made under section 22 of the 1998 Act;

(c) by taking such other action for the recovery of an overpayment as is available to the Secretary of State.

11th July 2012

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