

## **THE EDUCATION (DISCRETIONARY FUNDS) (SCOTLAND) DETERMINATION 2023**

Scottish Ministers make the following determination in exercise of the powers conferred by regulations 3, 4 and 5(c) and (d) of the Education (Access Funds) (Scotland) Regulations 1990<sup>(a)</sup> (“the 1990 Regulations”) and all other powers enabling them to do so.

### **Citation and Effect**

1. This Determination may be cited as the Education (Discretionary Funds) (Scotland) Determination 2023 and has effect from 8 November 2023.

### **Making of Determinations**

2. The Scottish Ministers (who may pay grants under regulation 2 of the 1990 Regulations for the purpose of providing financial assistance for students) make the determinations set out in paragraphs 3 to 7.

### **Persons eligible for payments from discretionary funds**

3.—(1) A college of further education may pay a grant from discretionary funds to any person undertaking a course of education at the college in accordance with paragraphs 4, 5 and 8.

(2) An institution within the higher education sector may pay a grant from discretionary funds to any person undertaking a course of education at the institution in accordance with paragraphs 6 to 8.

(3) Schedule 3 of the Student Support (Scotland) Regulations 2022<sup>(b)</sup> (“the 2022 Regulations”) informs the meaning of “ordinarily resident” for the purposes of schedule 1 of those Regulations.

### **Further Education Discretionary Fund**

4. To be eligible for the payment of a grant from the Further Education Discretionary Fund, the person applying for support from that fund must—

- (a) be an eligible person under the schedule to this Determination or be a person eligible for student support under schedule 1 of the 2022 Regulations or be eligible to receive student support under equivalent provisions of legislation made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998<sup>(c)</sup> (“the Teaching Act”) or articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998<sup>(d)</sup> (“the NI Order”),
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the Education (Scotland) Act 1980<sup>(e)</sup> (“the 1980 Act”),
- (c) be studying at least on a part-time basis, and
- (d) be undertaking fundable further education (as defined in section 5 of the Further and Higher Education (Scotland) Act 2005<sup>(f)</sup> (“the 2005 Act”)),

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(a) S.I. 1990/1534 as amended by S.I. 1993/1892 and S.S.I. 2013/80. The functions of the Secretary of State under sections 4 and 5(c) and (d) of the 1990 Regulations were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(b) S.S.I. 2022/157 as amended by S.S.I. 2022/362 and S.S.I. 2023/142

(c) 1998 (c. 30).

(d) S.I. 1998/1760 (N.I. 14).

(e) 1980 (c. 44).

(f) 2005 asp 6.

### **College Childcare Fund**

**5.** To be eligible for the payment of a grant from the College Childcare Fund the person applying for support from that fund must—

- (a) be an eligible person under the schedule to this Determination or be a person eligible for student support under schedule 1 of the 2022 Regulations,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying at least on a part-time basis,
- (d) be undertaking fundable further education or fundable higher education (as defined in section 5 of the 2005 Act), and
- (e) have responsibility for the care of a child or children.

### **Higher Education Undergraduate and Postgraduate Discretionary Fund**

**6.** To be eligible for the payment of a grant from the Higher Education Undergraduate and Postgraduate Discretionary Fund the person applying for support from that fund must—

- (a) be an eligible person under the schedule to this Determination or be a person eligible for student support under schedule 1 of the 2022 Regulations or be eligible to receive student support under equivalent provisions of legislation made under sections 22, 42(6) and 43(1) of the Teaching Act or articles 3 and 8(4) of the NI Order,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying on at least a part-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act), and
- (e) have availed themselves in the current academic year of the full entitlement to student support provided by Government.

### **University Childcare Fund**

**7.** To be eligible for the payment of a grant from the University Childcare Fund the person applying for support from that fund must—

- (a) be an eligible person under the schedule to this Determination or be a person eligible for student support under schedule 1 of the 2022 Regulations,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying on a full-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act),
- (e) have availed themselves in the current academic year of the full entitlement to student support provided by Government, and
- (f) have responsibility for the care of a child or children.

### **International Students' Emergency Fund**

**8.** To be eligible for the payment of a grant from the International Students' Emergency Fund the person applying for support from that fund must—

- (a) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (b) be undertaking fundable further education or fundable higher education (as defined in section 5 of the 2005 Act) at a fundable post-16 education body (with the meaning of section 6 of the 2005 Act),

- (c) be facing financial hardship as a result of a significant change in circumstances and at risk of not being able to continue with their studies due to this hardship,
- (d) not be eligible to receive living cost support from a UK funding body, and
- (e) have applied to the Home Office for a form of extension to enable them to stay in the UK, or have made an asylum application to the Home Office, and
- (f) be studying at least on a part-time basis.

### REVOCATION

**9.** The Education (Access Funds) (Scotland) Determination (No. 3) 2022 and the Education (Access Funds) (Scotland) (No. 4) Determination 2022 are revoked.

**Dr Naureen Ahmad**  
**Deputy Director, Learner Experience Division**  
**Directorate for Lifelong Learning and Skills**

A handwritten signature in dark ink, appearing to read 'Naureen' followed by a stylized circular flourish.

Date: 8<sup>th</sup> November 2023

## SCHEDULE

Paragraph 3

### Eligible Persons

#### **Asylum Seekers**

**1.**—(1) A person who is an asylum seeker and who is resident in Scotland.

(2) Persons to whom this paragraph applies do not need to have availed themselves of the support referred to in paragraph 6(e) (Higher Education Undergraduate and Postgraduate Discretionary Fund).

#### **Persons experiencing financial hardship as a direct result of global conflict**

**2.**—(1) A person who is experiencing financial hardship as a direct result of any global conflict.

(2) Persons to whom this paragraph applies do not need to have availed themselves of the support referred to in paragraph 6(e) (Higher Education Undergraduate and Postgraduate Discretionary Fund).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This determination is made under the Education (Access Funds) (Scotland) Regulations 1990 S.S.I. 1990/1534) (“the 1990 Regulations”).

Under the 1990 Regulations, the Scottish Ministers are empowered to pay grants for the financial assistance of students attending colleges of further education and institutions within the higher education sector on such terms and conditions as the Scottish Ministers determine. These grants are sums for payment of discretionary funds.

Under the Education (Access Funds) (Scotland) Direction 2023, the Scottish Ministers have directed the Scottish Further and Higher Education Council and regional strategic bodies to administer the discretionary funds for the financial assistance of students attending colleges of further education on their behalf. The Student Awards Agency Scotland is the executive agency of the Scottish Ministers with regard to the higher education sector and administers the discretionary funds for the financial assistance of students attending institutions within the higher education sector.

Through this determination, the Scottish Ministers are setting out the terms and conditions on which discretionary funds are to be paid.

Paragraphs 4 and 5 in conjunction with the schedule set out the terms and conditions on which discretionary funds are to be paid to students attending colleges of further education.

Paragraphs 6 and 7 in conjunction with the schedule set out the terms and conditions on which discretionary funds are to be paid to students attending institutions within the higher education sector.

Paragraph 8 sets out the terms and conditions on which discretionary funds are to be paid to support students attending colleges of further education and institutions within the higher education sector who are experiencing financial difficulties as a result of a significant change in circumstances and who are at risk of not being able to continue with their studies due to this hardship. The changes in circumstances can include students not being able to return home because of conflicts or the fear of persecution.

Paragraph 1 of the Schedule provides that asylum seekers are eligible for discretionary funds and, in relation to the Higher Education Undergraduate and Postgraduate Discretionary Fund, they do not have to meet the condition of having availed themselves of other forms of student support. Paragraph 2 of the Schedule provides that persons who have experienced financial hardship as a direct result of global conflict are eligible for discretionary funds and, in relation to the Higher Education Undergraduate and Postgraduate Discretionary Fund, they do not have to meet the condition of having availed themselves of other forms of student support.