

**Student Support Information Note (SSIN)**

**The Education (Student Support) Regulations**

**TO LOCAL EDUCATION AUTHORITIES  
(For the attention of the Student Support Manager)**

**TO THE STUDENT LOANS COMPANY**

**TO UNIVERSITIES UK**

**SSIN 08/09**

23/11/2009

Dear Colleague

**Indefinite Leave to Remain – Judicial review outcome**

**Background**

The Highly Skilled Migrant Programme (HSMP) Forum Ltd brought a Judicial Review against the Home Office on the grounds that those who entered onto the HSMP before the qualifying period for Indefinite Leave to Remain (ILR) was increased from four to five years should be eligible to apply for settlement (ILR) after four years on the scheme. On 6 April 2009 the judge found in favour of the HSMP Forum on this point. A copy of the judgment can be found at the following web address:

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/711.htm>

**Effect on fee status**

The effect of this judgement is that some individuals who have entered higher education and been charged the overseas rate of fees may now qualify to be considered as home fee students, as they have received letters confirming that they have been awarded backdated ILR. Where a student presents a letter to an institution confirming that they have been awarded backdated ILR, the institution should confirm that the date of award places the student in the position of fulfilling the necessary eligibility criteria before or on the first day of the first academic year. That being the case, the institution will be required to charge the home fee rate and refund the difference.

Where an individual has been awarded backdated ILR but the date it has been backdated to falls after the first day of the first academic year, then the individual does not fall to be assessed as a home student.

A retrospective change in fee status for individual students would not necessarily result in a change to the grant for the institution previously

provided by HEFCE, but it may do in some cases. For advice on seeking changes to HEFCE grant in these circumstances, institutions should contact their HE policy adviser at HEFCE. Institutional contacts at HEFCE can be found from the HEFCE web-site, [www.hefce.ac.uk](http://www.hefce.ac.uk), by selecting 'regions', then 'institutional teams'.

### **Effect on eligibility for student support**

In line with the change to fee status noted above, such students may now become eligible for student support. Where a student presents a letter to an institution confirming that they have been awarded backdated ILR, the institution should confirm that the date of award places the student in the position of fulfilling the necessary eligibility criteria to be assessed as a home student before or on the first day of the first academic year. An application for student support should then be made to Student Finance England in the normal manner.

Where an individual has been awarded backdated ILR but the date it has been backdated to falls after the first day of the first academic year, then the individual does not fall to be assessed as a home student.

### **Further information**

This note is issued in relation to students who would fall to be assessed by the English administration. Institutions approached by students who would fall to be assessed by the devolved administrations should approach the appropriate administration for advice.

If you require further information on this issue please contact Gill Walden at the Department for Business, Innovation and Skills  
[Gill.walden@bis.gsi.gov.uk](mailto:Gill.walden@bis.gsi.gov.uk)