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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 333**

The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006

PART I  
GENERAL

**Citation and commencement**

1. These Regulations may be cited as the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 and shall come into force on 1st July 2006.

**Interpretation**

2.—(1) In these Regulations—

“academic year”, in relation to a course, means the period of twelve months beginning on the relevant date;

“the Act” means the Education (Scotland) Act 1980;

“child of such a national” includes in relation to that national a stepchild, a child in his or her guardianship, a child for whom he or she has parental responsibility and a child in his or her care;

“designated course” means a course designated by regulation 4 or by the Scottish Ministers under regulation 4;

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council<sup>(1)</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;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(2)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(3)</sup>;

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

- (a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland 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 (within the meaning of article 7 of Directive 2004/38) in Scotland; and

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<sup>(1)</sup> O.J. No. L 158, 30.04.04, p.77.

<sup>(2)</sup> Cmnd 2073.

<sup>(3)</sup> Cmnd 2183.

- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland 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 within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;

“EEA national” means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;

“eligible student” means a person whom the Scottish Ministers have determined is eligible for a loan in connection with his or her undertaking a course in accordance with regulation 5 or 6;

“end-on course” means–

- (a) a full time degree course (other than a first degree for the initial training of teachers) which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a full-time course mentioned in paragraphs 2 and 3 of Schedule 2 for which the student was receiving support for tuition fees under the Students' Allowances (Scotland) Regulations 1999(4); or
- (b) a full time honours degree course which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a full time foundation degree course for which the student was receiving support for tuition fees under the Students' Allowances (Scotland) Regulations 1999;

“end-on course student” means a student who starts a designated course on or after 1st September 2006 where that course is an end-on course; “European Economic Area” means the European Community and, subject to the conditions laid down in the EEA Agreement, Iceland, Norway and Liechtenstein;

“family member” means–

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, an EEA self-employed person–
- (i) his or her spouse or civil partner;
- (ii) his or her child or the child of his or her spouse or civil partner;
- (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person–
- (i) his or her spouse or civil partner;
- (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
- (i) his or her spouse or civil partner;
- (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
- (aa) under the age of 21;
- (bb) dependants of him or her or his or her spouse or civil partner;

(4) S.S.I. 1999/1131, as amended by S.S.I. 2001/229, 2004/469, 2005/217, 314, 545 and 572.

- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;

“gap year student” means in relation to a course provided by or on behalf of an institution that was publicly funded as at 1st August 2005 a person who meets the conditions in subparagraph (a) or (c);

- (a) the conditions are–
  - (i) the person had on or before 1st August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the current course or a similar course; and
  - (ii) the first academic year of the current course begins on or after 1st September 2006 but before 1st September 2007;
- (b) in paragraph (a), a course (the “original course”) is similar to the current course if–
  - (i) it appears to the governing body of the institution providing the current course that the subject-matter of the course is in whole or in part the same as the subject-matter of the original course; and
  - (ii) except where the original course is no longer being provided, the current course is provided by the institution which was to have provided the original course;
- (c) the conditions are–
  - (i) the person had received an offer of a place on a designated course (whether or not at the same institution as the current course) the first academic year of which begins before 1st September 2006;
  - (ii) the person was unable to take up the offer because a specified qualification or grade was not awarded to him or her;
  - (iii) the person appealed against the decision not to award him or her the qualification or grade;
  - (iv) the appeal was allowed after the last date on which he or she could have taken up the offer;
  - (v) as a result, he or she was offered a place on the current course; and
  - (vi) the first academic year of the current course begins on or after 1st September 2006 but before 1st September 2007;

“the Islands” means the Channel Islands and the Isle of Man;

“loan” means a loan towards a student’s tuition fees under the Act and any regulations made thereunder, including the interest accrued on the loan and any penalties or charges made in connection with it;

“non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;

“period”, in relation to an academic year, means one of the periods in that year from 1st January to 31st March, 1st April to 30th June, 1st July to 31st July, or 1st August to 31st December;

“period of work experience” has the meaning given to it in regulation 4(4);

“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 Geneva on 28th July 1951<sup>(5)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(6)</sup> and any reference to the child of a refugee includes a reference to a step-child;

“relevant date”, in relation to a course, means—

- (a) as respects a course starting in the period 1st August to 31st December, 1st August;
- (b) as respects a course starting in the period 1st January to 31st March, 1st January;
- (c) as respects a course starting in the period 1st April to 30th June, 1st April; and
- (d) as respects a course starting in the period 1st July to 31st July, 1st July,

in each case the relevant date being in the year of commencement of the appropriate academic year of the course;

“Repayment Regulations” means the Repayment of Student Loans (Scotland) Regulations 2000<sup>(7)</sup>;

“student loan account number” means the account number assigned by the lender to a loan made under the Act, the Education (Student Loans) Act 1990<sup>(8)</sup>, the Education (Student Loans) (Northern Ireland) Order 1990<sup>(9)</sup>, the Teaching and Higher Education Act 1998<sup>(10)</sup>, the Education (Student Support) (Northern Ireland) Order 1998<sup>(11)</sup> or any Regulations made under any of the foregoing;

“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 Scotland; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland 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—

(5) Cmnd 9171.

(6) Cmnd 3906 (Out of print; photocopies are available, free of charge, from the Student Support Division, Department for Education and Employment, Mowden Hall, Staindrop Road, Darlington DL3 9BG or the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

(7) S.S.I. 2000/110, as amended by S.S.I. 2000/200, 2001/227 and 2005/314.

(8) 1990 c. 6, repealed by the 1998 Act Schedule 4.

(9) S.I. 1990/1506 (N.I. 11) amended by S.I. 1996/1274 (N.I. 1), 1996/1918 (N.I. 15) and 1998/258 (N.I. 1).

(10) 1998 c. 30 as amended by the Learnings 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 and the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7.

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

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week; and

“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 European Community 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 21st June 1999<sup>(12)</sup> and which came into force on 1st June 2002;

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules<sup>(13)</sup>; and

“transferring student” means a student who starts a designated course (“the current course”) on or after 1st September 2006 having transferred to that course from a previous course (“the original course”) in connection with which the student was receiving support for tuition fees under the Students' Allowances (Scotland) Regulations 1999, where the original course was—

- (a) commenced before 1st September 2006 or, before 1st September 2007 in relation to which he or she was a gap year student; and
- (b) subject to (c), similar to the current course;
- (c) in paragraph (b) an original course is similar to a current course if it appears to the governing body of the institution providing the current course that the subject-matter of the current course is in whole or in part the same as the subject-matter of the original course.

(2) For the purposes of these Regulations a person who is resident in Scotland, England, Northern Ireland, Wales, the Channel Islands or the Isle of Man as a result of having moved from another of those areas for the purpose of undertaking—

- (a) his or her present course; or
- (b) a previous designated course which (disregarding any intervening vacation) he or she was undertaking immediately before commencing his or her present course,

shall be considered to be ordinarily resident in the place from which he or she moved.

(3) For the purposes of paragraphs 1(a) and 8(b) of Schedule 1, a person shall be treated as ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that he or she was not actually resident only because that person, or his or her spouse or civil partner, or either of his or her parents, his or her guardian or any other person having parental responsibility for him or her, or any person having care of him or her when he or she is a child, or in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was temporarily employed outside Scotland.

(4) For the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c) and 9(b) of Schedule 1, a person shall be treated as having been ordinarily resident in the area specified and for the period specified in those paragraphs if the Scottish Ministers are satisfied that the person was not actually ordinarily resident in the relevant area for the specified period only because that person, or his or her spouse or civil partner, or either of his or her parents, his or her guardian or any other person having parental responsibility for him or her, or any person having care of him or her when he or she is a

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<sup>(12)</sup> Cm 5639.

<sup>(13)</sup> HC 395: relevant amending instrument is HC 194.

child, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was for the time being temporarily employed outside the relevant area.

(5) For the purposes of paragraph 1(a) of Schedule 1 and subject to paragraph (6), a person shall not be treated as being ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that his or her residence there on that day is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the first day of the first academic year of the course as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(6) Paragraph (5) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

(7) For the purposes of paragraph 1(b) of Schedule 1, a person shall not be treated as having been ordinarily resident in the United Kingdom and Islands for the three year period, if the Scottish Ministers are satisfied that he or she was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless—

- (a) the person is treated as ordinarily resident in accordance with paragraph (4); or
- (b) the person has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the person must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(8) For the purposes of these Regulations an area which—

- (a) was previously not part of the European Community or the European Economic Area, but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of those areas, shall be considered to have always been part of the European Community or the European Economic Area, as appropriate.