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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 188**

**EDUCATION**

**The Education (Fees and Awards for EC Nationals  
and UK Returners) (Scotland) Regulations 2009**

<i>Made</i>	- - - -	<i>14th May 2009</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>15th May 2009</i>
<i>Coming into force</i>	- -	<i>25th June 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(3), 73(f) and 74(1) of the Education (Scotland) Act 1980(1) and sections 1 and 2 of the Education (Fees and Awards) Act 1983(2) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Education (Fees and Awards for EC Nationals and UK Returners) (Scotland) Regulations 2009 and come into force on 25th June 2009.

**Amendment of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006**

2. For paragraph 4(1)(b) of Schedule 1 (eligible students) to the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006(3) substitute—

“(b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”.

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- (1) 1980 c. 44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”), section 29(1) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). Section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), section 82(1) and Schedule 10, paragraph 8(17). 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) (“the Scotland Act”).
- (2) 1983 c. 40. Section 1 was relevantly amended by the Education Reform Act 1988 (c. 40), section 237(1) and Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c. 13), section 93(1) and Schedule 8, paragraph 19; and the Further and Higher Education (Scotland) Act 1992 (c. 37), section 62(2) and Schedule 9, paragraph 8. Section 2(3)(a) and the word “other” in section 2(3)(b) were repealed by the 1998 Act, section 44(2) and Schedule 4. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.
- (3) S.S.I. 2006/333, amended by S.S.I. 2007/158 and 503.

### **Amendment of the Education Authority Bursaries (Scotland) Regulations 2007**

3. The Education Authority Bursaries (Scotland) Regulations 2007(4) are amended in accordance with regulations 4 and 5.

4. In regulation 2(1) (interpretation)–

(a) after the definition of “Directive 2004/38” insert–

““EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community;”;

(b) in paragraphs (c) and (d) of the definition of “family member” for “a non UK” substitute “an”.

5. In Schedule 1 (persons eligible for bursaries)–

(a) for paragraph 4(1)(b) substitute–

“(b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”;

(b) for paragraph 9 substitute–

“9.—(1) A person who–

(a) is an EC national (other than a person who is a United Kingdom national who has not utilised a right of residence) or an EU overseas territories national or a family member of either;

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and

(c) seeks a bursary in respect of a course of study at an establishment in the area of the education authority.

(2) For the purposes of this paragraph, a United Kingdom national has utilised a right of residence if that person has exercised a right under Article 7 of Directive 2004/38 or any equivalent under the EEA Agreement or the Switzerland Agreement in a State other than the United Kingdom.”.

### **Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007**

6. The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(5) are amended in accordance with regulations 7 and 8.

7. In regulation 2 (interpretation)–

(a) after the definition of “Directive 2004/38” insert–

““EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community;”;

(b) in paragraphs (c) and (d) of the definition of “family member” for “a non UK” substitute “an”.

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(4) S.S.I. 2007/149, amended by S.S.I. 2007/503.

(5) S.S.I. 2007/151, amended by S.S.I. 2007/503 and 2008/206.

**8. In Schedule 1 (persons eligible for allowances)–**

(a) for paragraph 4(1)(b) substitute–

“(b) was settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”; and

(b) for paragraph 9 substitute–

“**9.**—(1) A person who–

(a) is an EC national (other than a person who is a United Kingdom national who has not utilised a right of residence) or an EU overseas territories national or a family member of either;

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and

(c) seeks an allowance in respect of a course of education at an establishment in Scotland.

(2) For the purposes of this paragraph, a United Kingdom national has utilised a right of residence if that person has exercised a right under Article 7 of Directive 2004/38 or any equivalent under the EEA Agreement or the Switzerland Agreement in a State other than the United Kingdom.”.

**Amendment of the Education (Fees and Awards) (Scotland) Regulations 2007**

**9.** The Education (Fees and Awards) (Scotland) Regulations 2007(6) are amended in accordance with regulations 10 to 13.

**10. In regulation 2 (interpretation)–**

(a) after the definition of “Directive 2004/38” insert–

““EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community;”; and

(b) in paragraphs (c) and (d) of the definition of “family member” for “a non UK” substitute “an”.

**11. In Schedule 1 (fees – excepted students)–**

(a) for paragraph 4(1)(b) substitute–

“(b) was settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”; and

(b) in paragraph 9(a) for “a non UK” substitute “an”.

**12.** For paragraph 4(1)(b) of Schedule 2 (post-graduate agricultural studentships – excepted candidates) substitute–

“(b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”.

13. In paragraph 3(2)(a) of Schedule 3 (fees awards – excepted candidates) for “a non UK” substitute “an”.

#### **Amendment of the Students' Allowances (Scotland) Regulations 2007**

14. The Students' Allowances (Scotland) Regulations 2007(7) are amended in accordance with regulations 15 and 16.

15. In regulation 2(1) (interpretation) after the definition of “Directive 2004/38” insert–  
““EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community;”.

16. In Schedule 1 (persons eligible for allowances)–

(a) For paragraph 4(1)(b) substitute–

“(b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”; and

(b) for paragraph 9 substitute–

“9.—(1) A person who–

- (a) is an EC national (other than a person who is a United Kingdom national who has not utilised a right of residence) or an EU overseas territories national or a family member of either;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and
- (c) seeks an allowance in respect of a course of education at an establishment in Scotland.

(2) For the purposes of this paragraph, a United Kingdom national has utilised a right of residence if that person has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a State other than the United Kingdom.”.

#### **Amendment of the Education (Student Loans) (Scotland) Regulations 2007**

17. For paragraph 4(1)(b) of Schedule 1 (eligible students) to the Education (Student Loans) (Scotland) Regulations 2007(8) substitute–

“(b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”.

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(7) S.S.I. 2007/153, amended by S.S.I. 2007/503 and 2008/206.

(8) S.S.I. 2007/154, amended by S.S.I. 2007/503 and 2008/205 and 206.

### **Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007**

**18.** For paragraph 4(1)(b) of Schedule 1 (persons eligible for education maintenance allowances) to the Education Maintenance Allowances (Scotland) Regulations 2007<sup>(9)</sup> substitute—

“(b) was settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;”.

St Andrew's House,  
Edinburgh  
14th May 2009

*FIONA HYSLOP*  
A member of the Scottish Executive

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<sup>(9)</sup> S.S.I. 2007/156, amended by S.S.I 2007/503 and S.I.2008/1879.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations amend the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the SLTF Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing Regulations”), the Education (Fees and Awards) (Scotland) Regulations 2007 (“the Fees Regulations”), the Students' Allowances (Scotland) Regulations 2007 (“the Allowances Regulations”), the Education (Student Loans) (Scotland) Regulations 2007 (“the Loans Regulations”) and the Education Maintenance Allowances (Scotland) Regulations 2007 (“the EMA Regulations”).

Regulations 2, 5(a), 8(a), 11(a), 12, 16(a), 17 and 18 amend the eligibility criteria pertaining to persons who have previously been settled in and are returning to the UK which are set out in the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the Fees Regulations, the Allowances Regulations, the Loans Regulations and the EMA Regulations. The effect of the amendments is that a person who has previously been settled in the UK and is returning to the UK to study may be eligible for home rate fees and student support where he or she has exercised a right of residence elsewhere in the European Economic Area even if this right of residence was not exercised immediately after the person left the UK.

Combined with the amendments made to certain of the defined terms, regulations 5(b), 8(b), 11(b), 13 and 16(b) amend the eligibility criteria pertaining to EC nationals which are set out in the Bursaries Regulations, the Nursing Regulations, the Fees Regulations and the Allowances Regulations. The effect of the amendments is that a person who is an EC national (other than a UK national who has not exercised a right of residence elsewhere in the European Economic Area) may be eligible for an allowance in respect of tuition and other fees for which only non UK EC nationals were previously eligible.