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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 222**

**The Education (Assisted Places) (Scotland) Regulations 2001**

**PART I**  
**GENERAL**

**Interpretation**

**2.—(1)** In these Regulations—

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

“assisted place” means any place at a participating school, in respect of which place fees are to be remitted in accordance with these Regulations;

“assisted pupil”, subject to regulation 13(1), means any pupil in attendance at a participating school who had been admitted to an assisted place at that school;

“British Islands” means the United Kingdom, the Channel Islands and the Isle of Man;

“child” includes a step child and a child adopted in pursuance of adoption proceedings (and “father” and “mother” shall be construed accordingly) and, notwithstanding the definition in section 135(1) of the Act, includes a person who is over school age but has not attained the age of 20 years at the commencement of any school year of the participating school which that person attends or proposes to attend in that year;

“determination” in relation to a school means a determination made under section 75A(2) of the Act;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(1) as adjusted by the Protocol thereto signed at Brussels on 17th March 1993(2);

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“employment” includes the holding of any office and any occupation for gain (including self employment in any trade, profession or vocation); and “employed” shall be construed accordingly;

“European Economic Area” means the area of the EEA States and includes those States at any time before the EEA Agreement came into force in relation to them;

“fees” means—

- (a) tuition and other fees the payment of which is a condition of attendance at a participating school excluding—
  - (i) boarding fees;
  - (ii) such other charges if any as may be excluded in the determination relating to the school; and

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(1) Cmnd. 2073.

(2) Cmnd. 2183.

(b) fees for public examinations paid by a participating school in respect of candidates from the school;

“financial year” has the meaning assigned thereto by regulation 8(1);

“first assisted year” means the school year in which a child first takes up an assisted place;

“income”, “relevant income” and “total income” have the meanings respectively assigned thereto by regulation 9(1) and (2);

“participating school” means a school determined under section 75A(2) of the Act to be a participating school for the purposes of the scheme mentioned in section 75A(1) of the Act, and references to a school include references to the proprietors and managers thereof;

“refugee” means a person who—

(a) 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>(3)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(4)</sup>; or

(b) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although they are considered not to qualify for recognition as a refugee, it is thought right to allow them to enter or remain in the United Kingdom, and has been granted leave to enter or remain accordingly;

“relevant date” means 1st January in the calendar year in which an assisted pupil’s first assisted year begins;

“scheme” means the scheme for the time being in force established and operated by the Secretary of State under section 75A(1) of the Act;

“school day” means any day during which the school is open for the attendance of pupils; and

“school year” means a period of 12 months commencing on 1st August of any year.

- (2) Any reference in these Regulations to the parents of a child or assisted pupil is a reference—
- (a) in the ordinary case, to the father and mother (whether or not they are married to each other) of the child or assisted pupil or, where one is dead, to the survivor and, should they remarry, the spouse of the survivor;
- (b) where the father or mother of the child or assisted pupil, with whom the child or assisted pupil normally lives, has married a person who is not the parent of the child or assisted pupil, to that parent and their spouse;
- (c) where the parents of the child or assisted pupil, as defined in sub paragraph (a), are divorced or, in any of the circumstances mentioned in paragraph (4), separated, to that one of them with whom the child or assisted pupil normally lives or who, in pursuance of a court order, is entitled to have the child or assisted pupil normally live with them and, should that person remarry, their spouse;
- (d) where the child or assisted pupil has no parents as defined in sub paragraphs (a) to (c), to their guardian or guardians (if any) or to any person or persons with whom the child or assisted pupil normally lives in accordance with either—
- (i) an order relating to parental responsibilities or parental rights made under section 11(1) of the Children (Scotland) Act 1995<sup>(5)</sup>; or

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<sup>(3)</sup> Cmnd. 9171.

<sup>(4)</sup> Cmnd. 3906.

<sup>(5)</sup> 1995 c. 36.

- (ii) any subsisting court order (other than an order made under section 11(1) of the Children (Scotland) Act 1995) which specifies who is to have actual custody or care and control of the child or assisted pupil;
  - (e) where the child or assisted pupil has no parents so defined and no guardian, or where there is no order as mentioned in sub paragraph (d), to the person or persons who have care of the child or assisted pupil.
- (3) Where a child or assisted pupil–
- (a) either has no parents defined as in paragraph (2)(a), (b), (c) or (d) or has such parents whose whereabouts are unknown; and
  - (b) is looked after by a local authority under the Children (Scotland) Act 1995,

then, for the purposes of these Regulations, they shall be treated as a child or assisted pupil whose parents have no income and, subject thereto, any reference in these Regulations to their parents shall be construed as a reference to the local authority who are looking after them.

- (4) The circumstances referred to in paragraph (2)(c) are that the parents are separated under an order of a court of competent jurisdiction or by a deed of separation or, where they are not so separated (and whether or not they are married to each other), that–
- (a) it is not reasonably practicable to find one of the parents; or
  - (b) in pursuance of a court order or in accordance with a maintenance assessment under the Child Support Act 1991(6) one parent is liable to make periodic payments to or for the benefit of the other or one or more of their children; or
  - (c) in pursuance of a court order–
    - (i) one parent has been given care of, or access to, one or more of their children; or
    - (ii) one parent is prohibited from entering the matrimonial home.