
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 280

EDUCATION

The Graduate Endowment (Scotland) Regulations 2001

Made - - - - - *27th July 2001*

Coming into force - - - - - *1st August 2001*

The Scottish Ministers, in exercise of the powers conferred by section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001⁽¹⁾ and by sections 73(f) and 73B of the Education (Scotland) Act 1980⁽²⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 1(8) of the former Act and section 133(2B) of the latter Act⁽³⁾, been laid before, and approved by resolution of the Scottish Parliament:

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Graduate Endowment (Scotland) Regulations 2001 and shall come into force on 1st August 2001.

Interpretation

2. In these Regulations—

“academic year”, in relation to a course, means a period beginning on the first day of the first term of an academic year for that course and ending on the last day of the final term of that academic year for that course;

“the Act” means the Education (Graduate Endowment and Student Support) (Scotland) Act 2001;

(1) 2001 asp 6.

(2) 1980 c. 44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 2. Section 73B was inserted by the Teaching and Higher Education Act 1998, section 29(2).

(3) Section 133(2B) was inserted by paragraph 4 of Schedule 3 to the Teaching and Higher Education Act 1998 (c. 30).

“continuous programme of higher education” means a programme of education undertaken by an individual comprising–

- (a) either–
 - (i) a course leading to a Higher National Certificate immediately followed by a course leading to a Higher National Diploma (disregarding any intervening vacation); or
 - (ii) a course leading to a Higher National Diploma; and
- (b) a course of higher education not of a kind referred to in paragraph (a) above which commences in the academic year immediately following the end of the course referred to in paragraph (a) or in the following academic year;

“due date” means 1st April immediately following the last day of the last academic year of the course of higher education in respect of which the liability to pay the graduate endowment arises;

“full-time course of higher education” means a course of higher education, other than a course treated as not falling within section 38 of the Further and Higher Education (Scotland) Act 1992⁽⁴⁾ by virtue of regulation 5, which is a sandwich course or a course–

- (a) which persons undertaking it are normally required by the institution providing it to attend (whether at premises of the institution or elsewhere) for a period of at least 24 weeks in each academic year except the final academic year and of at least eight weeks in the final academic year; and
- (b) the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each academic year to an average of at least 21 hours a week as respects the periods of attendance mentioned in paragraph (a) above for the year;

“liable graduate” means a graduate who is liable to pay the graduate endowment;

“loan” means a loan for the purposes of discharging the liability of a liable graduate to pay the graduate endowment made under the 1980 Act and these Regulations, including the interest accrued on the loan and any penalties or charges made in connection with it;

“periods of work experience” means–

- (a) periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outwith the institution; and
- (b) in the case of a course which includes the study of one or more modern languages for not less than one half of the time spent studying on the course, and which includes periods of residence in a country whose language is a language of the course, such periods of residence during which the student is employed;

“sandwich course” means a course consisting of alternate periods of full-time study in an institution and periods of work experience so organised that, taking the course as a whole, the student attends for the periods of full-time study for an average of not less than 19 weeks in each year, and for the purposes of calculating their attendance the course shall be treated as beginning with the first period of full-time study and ending with the last such period; and

“the 1980 Act” means the Education (Scotland) Act 1980⁽⁵⁾.

(4) 1992 c. 37.

(5) 1980 c. 44.

PART II

LIABILITY FOR THE GRADUATE ENDOWMENT

Liabile Graduates

3.—(1) Subject to the following paragraphs and regulations 4 and 5, a graduate of the following description shall be liable to pay the graduate endowment under section 1(1) of the Act, namely a graduate who—

- (a) has undertaken a full-time course of higher education which commenced on or after 1st August 2001 which is the first full-time course of higher education undertaken by them;
- (b) has undertaken that course for a period of at least 3 academic years or, where that course is undertaken as part of a continuous programme of higher education, for a period of at least 2 academic years; and
- (c) is a person mentioned in paragraphs 2 to 7 of Schedule 1.

(2) A graduate who has undertaken a full-time course of higher education which commenced on or after 1st August 2001 shall not be liable to pay the graduate endowment if that course is undertaken as part of a continuous programme of higher education which commenced prior to 1 August 2001.

(3) This paragraph applies to graduates who have undertaken a full-time course of higher education who prior to the completion of that course—

- (a) transferred from one institution to another to undertake the same or any other full-time course of higher education;
 - (b) ceased to undertake that course but transferred to another full-time course of higher education at the same institution; or
 - (c) ceased to undertake that course but transferred to another course of higher education which is not a full-time course of higher education.
- (4) In the case of a graduate to whom paragraph (3) applies, for the purposes of paragraph (1)—
- (a) all of the full-time courses of higher education undertaken by them which follow on immediately from the preceding course (disregarding any intervening vacation) shall be treated as a single course of full-time higher education; and
 - (b) the period taken into account for the purposes of paragraph (1)(b) above shall be the entire period during which the graduate undertook the full-time courses of higher education referred to in sub-paragraph (a) above;

Exempt Graduates

4.—(1) A graduate shall be exempt from liability for the graduate endowment if, on the relevant day applicable to the course of higher education in respect of which the graduate would otherwise be liable to pay the graduate endowment, the graduate—

- (a) has attained the age of 25 years;
- (b) is married; or
- (c) has supported himself or herself out of his or her earnings for periods aggregating not less than 3 years.

(2) A graduate shall be exempt from liability for the graduate endowment if, at any time during the course of higher education in respect of which the graduate would otherwise be liable to pay the graduate endowment, the graduate—

- (a) is eligible for an allowance under the Students' Allowances (Scotland) Regulations 1999(6) in respect of their being a lone parent;
- (b) is eligible for an allowance under those Regulations in respect of their being a disabled student; or
- (c) is a person mentioned in paragraph 7 of Schedule 1 and would have been eligible for either of the allowances mentioned in sub-paragraphs (a) and (b) above if the graduate had been a person mentioned in paragraph 2 of that Schedule.

(3) For the purposes of paragraph (1)(c) above, a person shall be regarded as having supported themselves out of their earnings for any period or periods during which that person satisfies any of the conditions set out in paragraph 3(2) of Schedule 2.

(4) For the purposes of paragraph (1) above, the relevant day applicable to a course of higher education shall be—

- (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 first academic year in which the graduate undertook the course of higher education.

Exempt Courses

5.—(1) For the purposes of section 1 of the Act, the following classes of course shall be treated as not falling within section 38 of the Further and Higher Education (Scotland) Act 1992—

- (a) a course at a higher level in preparation for a higher diploma or certificate;
- (b) a course of post-graduate studies (including a higher degree course); and
- (c) a course at a higher level in preparation for a qualification from a professional body.

(2) For the purposes of section 1 of the Act, the following courses shall be treated as not falling within the said section 38:—

- (a) a first degree course in nursing or midwifery; or
- (b) a first degree course in one of the subjects listed in Schedule 3 to these Regulations.

Provision of Information

6.—(1) Every liable graduate, and any person whom the Scottish Ministers consider may become a liable graduate, shall, as soon as reasonably practicable after requested to do so, provide the Scottish Ministers with such information as they consider necessary arising out of or in connection with their liability for, or the payment by them of, the graduate endowment.

(2) Every institution which provides any course of higher education shall, as soon as reasonably practicable after requested to do so, provide the Scottish Ministers with such information as they consider necessary in respect of liable graduates and persons who may become liable graduates.

PART III

AMOUNT AND PAYMENT OF GRADUATE ENDOWMENT

Amount of Graduate Endowment

7.—(1) Subject to paragraph (2) below, the amount of the graduate endowment which a liable graduate shall be liable to pay to the Scottish Ministers shall be the amount of the graduate endowment prevailing on the first day of the first academic year in which the graduate undertook the course of higher education in respect of which they are liable to pay the graduate endowment.

(2) If a liable graduate undertakes a course of higher education in respect of which they are liable to pay the graduate endowment as part of a continuous programme of higher education, the amount of the graduate endowment which that liable graduate shall be liable to pay to the Scottish Ministers shall be that prevailing on the first day of the first academic year of the course referred to in paragraph (b) of the definition of “continuous course of higher education” in regulation 2 undertaken as part of that continuous course of higher education.

(3) For the period from 1st August 2001 to 31st July 2002, the amount of the graduate endowment shall be £2000.

(4) For any subsequent period of one year commencing on 1 August, the amount of the graduate endowment shall be the amount of the graduate endowment for the previous period increased by the appropriate percentage for that subsequent period and if the resulting amount is not a whole number of pounds, it shall be rounded down to the nearest pound.

(5) The appropriate percentage for any period is the percentage by which the retail prices index for the month of July immediately preceding that period has increased compared with the retail prices index for the previous July.

Payment of Graduate Endowment

8.—(1) Subject to the following paragraph, each liable graduate shall pay the full amount of the graduate endowment for which they are liable to the Scottish Ministers on the due date.

(2) A liable graduate may apply to the Scottish Ministers for a loan in accordance with Part IV of these Regulations for the purposes of discharging their liability to pay the graduate endowment, and paragraph (1) shall not apply to a liable individual who makes such an application before the due date.

PART IV

LOANS TO PAY THE GRADUATE ENDOWMENT

Eligibility for a loan

9.—(1) The Scottish Ministers shall make a loan in accordance with section 73(f) of the 1980 Act⁽⁷⁾ and these Regulations in respect of each liable graduate who applies for a loan in accordance with regulation 10 for the purposes of discharging their liability to pay the graduate endowment.

(2) All liable graduates shall be eligible for such a loan.

(7) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29, and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 2.

Applications for a loan

10.—(1) A liable graduate shall apply for a loan by completing and submitting to the Scottish Ministers an application in such form as the Scottish Ministers may require.

(2) The completed application shall include such information as the Scottish Ministers require, including the following particulars:—

- (a) the liable graduate's United Kingdom national insurance number, unless they do not have one;
- (b) the liable graduate's most recent student loan account number, if any; and
- (c) the names, addresses and telephone numbers of two persons who know the liable graduate.

(3) The completed application shall also include a declaration, which shall be signed by the liable graduate if they are required to submit their application in writing by the Scottish Ministers, that—

- (a) the particulars given in the form are correct to the best of their knowledge and belief; and
- (b) they will notify the Scottish Ministers of any change in those particulars which might affect their eligibility for a loan.

(4) The application form must reach the Scottish Ministers by such date as they may determine from time to time (and different dates may be determined by them in respect of loans for different liable graduates) unless the Scottish Ministers consider that, having regard to the circumstances of the particular case, the time limit should not apply, in which case the application must reach the Scottish Ministers not later than such date as they specify.

(5) A liable graduate shall demonstrate their eligibility for a loan by providing such evidence as the Scottish Ministers may require.

(6) The Scottish Ministers may take such steps and make such enquiries as they consider necessary to determine whether the liable graduate is eligible for a loan.

Information

11. Every liable graduate applying for a loan under regulation 10 shall as soon as reasonably practicable after requested to do so provide the Scottish Ministers with such information as they consider necessary for the exercise of their functions under these Regulations.

Amount of Loan

12. The amount of any loan shall be the amount of the graduate endowment for which the liable graduate to whom the loan is made is liable.

Purpose of Loan

13.—(1) The Scottish Ministers shall apply the full amount of any loan made in respect of a liable graduate for the purpose of discharging the liability of that liable graduate to pay the graduate endowment, and shall not pay any part of the loan to the liable graduate or to any other person on their behalf.

(2) Where a liable graduate has made an application for a loan prior to the due date, the Scottish Ministers shall apply the amount of their loan in accordance with paragraph (1) on the due date.

(3) Where a liable graduate has made an application for a loan after the due date, the Scottish Ministers shall apply the amount of their loan in accordance with paragraph (1) as soon as reasonably practicable.

(4) Any loan made in respect of a liable graduate in accordance with these Regulations shall be applied for the purpose referred to in paragraph (1) and for no other purpose.

Interest

14.—(1) Subject to paragraph (2), loans shall bear interest from the date on which they are applied by the Scottish Ministers in accordance with regulation 13 at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980⁽⁸⁾ equal to the percentage increase between the retail prices all items index published by the Office for National Statistics for the month of March immediately preceding the month in which the loan is applied by the Scottish Ministers in accordance with regulation 13 and that index so published for the previous March.

(2) If the rate referred to in paragraph (1) exceeds the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974⁽⁹⁾ loans shall bear interest at the rate so specified.

(3) Interest shall be calculated on the principal outstanding daily, and shall be added to the principal monthly.

Insolvency

15. Where after the date of sequestration of an liable graduate's estate, they receive, or are entitled to receive, a loan in accordance with these Regulations—

- (a) the sheriff shall not, in fixing an amount under subsection (2) of section 32 of the Bankruptcy (Scotland) Act 1985⁽¹⁰⁾ treat the loan as income of the eligible student;
- (b) for the purpose of subsection (6) of that section the loan shall not be treated as estate vesting in, or requiring to be conveyed or delivered to, the eligible student's permanent trustee; and
- (c) any debt or liability to which the eligible student is, or may become, subject in respect of the loan shall not be treated as a debt or liability—
 - (i) for the purposes of the sequestration (or of any offer of composition to the permanent trustee); or
 - (ii) from which the liable graduate is discharged on the expiry of a period after the date of sequestration, under or by virtue of section 54 or 75(4) of that Act (or on an order being made under paragraph 11 of Schedule 4 to that Act as respects the liable graduate and the permanent trustee).

St Andrew's House, Edinburgh
27th July 2001

WENDY ALEXANDER
A member of the Scottish Executive

⁽⁸⁾ S.I. 1980/51, amended by S.I. 1983/1562, 1989/596.

⁽⁹⁾ 1974 c. 39.

⁽¹⁰⁾ 1985 c. 66; section 32 was amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 6, and the Pensions Act 1995 (c. 26), Schedule 3, paragraph 14.

SCHEDULE 1

Regulation 3(1)(c)

LIABLE GRADUATES

1.—(1) In this Schedule—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽¹¹⁾ as adjusted by the protocol signed at Brussels on 17th March 1993⁽¹²⁾;

“EEA migrant worker” means a person who is a national of a member State of the European Economic Area who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, as extended by the EEA Agreement⁽¹³⁾; or
- (b) in circumstances where as a national of the United Kingdom the person has an enforceable Community right to be treated no less favourably than a national of another member State in relation to matters which are the subject of the above mentioned Council Regulation;

“European Community” means the territory comprised by the member states of the European Community as constituted from time to time;

“European Economic Area” means the European Community, and subject to the conditions laid down in the EEA Agreement, the area comprised by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

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

“national of a member state of the European Community” means a person who is a national for the purposes of the Community Treaties of any member state of the European Community (including the United Kingdom) as constituted from time to time;

“parent” includes a step-parent, a guardian, any other person having parental responsibility for a child and any person having care of a child, and “child” shall be construed accordingly;

“relevant day” means the first day of the first academic year of a full - time course of higher education.

(2) For the purposes of this Schedule, 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 the case may be.

(3) Schedule 2 shall have effect for the purposes of determining whether a person is to be treated, for the purposes of this Schedule, as being, or having been, ordinarily resident in a place at, or for, a particular time.

2. A person who—

- (a) is ordinarily resident in Scotland on the relevant day;
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant day; and

⁽¹¹⁾ Cm. 2073.

⁽¹²⁾ Cm. 2183.

⁽¹³⁾ O.J. No. L 257, 19.10.68, p. 2 (O.J./S.E. 1968 (II), p.457).

- (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971(14) on the relevant day.
3. A person who is an EEA migrant worker who—
- (a) is entitled to the payment of an allowance by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement) or, where the person is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and
 - (c) is ordinarily resident in Scotland on the relevant day.
4. A person who is the spouse of an EEA migrant worker and who—
- (a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day;
 - (b) is installed in the United Kingdom with their spouse; and
 - (c) is ordinarily resident in Scotland on the relevant day.
5. A person who is the child of an EEA migrant worker and who—
- (a) is entitled to the payment of an allowance by virtue of Article 12 of the above mentioned Council Regulation or, where their migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12;
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and
 - (c) is ordinarily resident in Scotland on the relevant day.
6. A person who—
- (a) (i) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although the person is 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 they have been granted leave to enter or remain accordingly;
 - (ii) is ordinarily resident in Scotland on the relevant day; and
 - (iii) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant day; or
 - (b) is the spouse, child or step-child of a person of the kind described in sub-paragraph (a) and who meets the residence requirements specified in sub-paragraph (a)(ii) and (iii).
7. A person who—
- (a) is a national, or the child or step-child of a national, of a member state of the European Community;
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day;

(14) 1971 c. 77.

- (c) has not been ordinarily resident in the United Kingdom and Islands throughout that 3 year period; and
- (d) seeks an allowance in respect of a full-time course of higher education at an establishment in Scotland.

SCHEDULE 2

Regulation 4(3) and Schedule 1(1)

ORDINARY RESIDENCE

1. For the purposes of paragraph 2(a) of Schedule 1–

- (a) a person shall be treated as being ordinarily resident in Scotland on the relevant day if the Scottish Ministers are satisfied that they were not actually so resident only because the person, their spouse or their parent was for the time being–
 - (i) employed outside Scotland; or
 - (ii) attending a course of study or undertaking postgraduate research outside Scotland; and
- (b) a person shall not be treated as being ordinarily resident in Scotland on the relevant day if the Scottish Ministers are satisfied that their 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 relevant day as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 2(b), 3(b), 4(a), 5(b), 7(a)(iii) and 8(b) and (c) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the specified period in either the United Kingdom or the European Economic Area (hereinafter referred to in this paragraph as “the relevant area”).

(2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that the person was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that–

- (a) the person was born and has spent the greater part of their life in the relevant area and that–
 - (i) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and the person is not an independent student; or
 - (ii) they have been ordinarily resident in the relevant area for at least 1 year of the specified period and no part of that period of residence was wholly or mainly for the purpose of receiving full-time education; or
- (b) the person was not actually ordinarily resident in the relevant area for the specified period only because the person, their spouse or their parent was for the time being–
 - (i) employed outside the relevant area; or
 - (ii) attending a course of study or undertaking postgraduate research outside the relevant area.

3.—(1) In paragraph 2(3)(a)(i) above, “an independent student” means a person who on the relevant day–

- (a) has attained the age of 25 years;

- (b) is married; or
 - (c) has supported himself or herself out of his or her earnings for periods aggregating not less than 3 years.
- (2) A person shall be regarded as having supported himself or herself out of his or her earnings for any period or periods during which they—
- (a) were participating in arrangements for training for the unemployed under any scheme operated, sponsored or funded by any state authority or agency, national, regional or local;
 - (b) were in receipt of benefit payable by any state authority or agency, national, regional or local, in respect of a person who is available for employment but who is unemployed;
 - (c) were available for employment and had complied with any requirement of registration imposed by a body referred to in paragraphs (a) or (b) as a condition of entitlement for participation in arrangements for training or receipt of benefit;
 - (d) received any pension, allowance or other benefit paid by reason of a disability to which they are subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, national, regional or local, by an employer or any former employer, or by any other person;
 - (e) held a Scottish Studentship or comparable award; or
 - (f) could not reasonably be expected to support himself or herself out of his or her earnings because they had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them.

SCHEDULE 3

Regulation 5(2)

EXEMPT COURSES

For the purposes of regulation 5(2)(b) a first degree course in one of the following subjects shall not be treated as falling within the said section 38—

- (a) Dental Hygiene
- (b) Dental Therapy
- (c) Chiropody
- (d) Podiatry
- (e) Dietetics
- (f) Occupational Therapy
- (g) Orthoptics
- (h) Physiotherapy
- (i) Radiography
- (j) Speech Therapy
- (k) Language Therapy
- (l) Prosthetics
- (m) Orthotics

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first regulations made under section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 with respect to the graduate endowment. They specify which graduates are liable to pay the graduate endowment and the amount of the graduate endowment and when it is to be paid, and make provision for loans to be made available to graduates for the purposes of paying the graduate endowment.

Graduates who fall into one of the categories of person listed in Schedule 1 are liable to pay the graduate endowment. Graduates are liable graduates for the purposes of these Regulations if, on the first day of the first academic year of the relevant course, they are ordinarily resident in Scotland, have been ordinarily resident in the United Kingdom for the preceding three years and are settled in the United Kingdom within the meaning of the Immigration Act 1971 (regulation 3(3) and Schedule 1, paragraph 2). Graduates will also be liable if they are European Economic Area migrant workers, or the spouses or children of such workers (Schedule 1, paragraphs 3 5), persons granted exceptional leave to remain in the United Kingdom (Schedule 1, paragraph 6) and persons who are nationals, or children or step-children of nationals, of a member state of the European Community (Schedule 1, paragraph 7).

Graduates falling into one of these categories are liable to pay the graduate endowment in respect of the first full-time course of higher education which they undertake commencing on or after 1st August 2001 which lasts for a period of at least 3 academic years (or, where the relevant course is undertaken as part of a continuous programme of higher education, at least 2 academic years) (regulation 3(1)). Provision is made in respect of the calculation of the relevant period in cases where graduates have changed course or institution prior to completing their course (regulations 3(3) and (4)). However, graduates who have undertaken a continuous programme of higher education are not liable to pay the graduate endowment if that continuous course commenced prior to 1 August 2001 (regulation 3(2)).

Certain categories of graduate are exempt even though they meet the criteria outlined above. Graduates are exempt from liability for the graduate endowment if on the relevant date for the course in respect of which they would otherwise be liable to pay the graduate endowment, they are aged 25 or over, are married or have supported themselves out of their earnings for periods aggregating not less than 3 years (regulation 4(1)). They will also be exempt if, at any time during that course, they are eligible for a students' allowance in respect of their being a lone parent or a disabled student, or, if they are a national of a European Community member state or a child or step-child of such a national, would be have been so eligible if they had been ordinarily resident in Scotland (regulation 4(2)).

Courses at a higher level in preparation for a higher diploma or certificate or in preparation for a qualification from a professional body and courses of postgraduate studies are not courses of higher education are not treated as courses of higher education for the purposes of these Regulations (regulation 5(1)). Similarly, degree courses in nursing or midwifery and certain other subjects related to medicine are not treated as courses of higher education (regulation 5(2) and Schedule 3). Accordingly, graduates who have undertaken these courses shall not be liable for the graduate endowment in respect of their attendance on them.

Liable graduates and persons whom the Scottish Ministers reasonably consider may become liable graduates are obliged to provide certain information to the Scottish Ministers on request. So too are institutions providing any course of higher education (regulation 6).

The amount of the graduate endowment which a liable graduate will have to pay is fixed on the first day of the first academic year in which the graduate undertook the course of higher education in respect of which they are liable to pay the graduate endowment (regulation 7(1)). For courses commencing in the period from 1st August 2001 to 31st July 2002, the amount of the graduate endowment is £2000 (regulation 7(3)). Provision is made for increasing the amount of the graduate endowment on an annual basis by an amount equal to inflation (regulation 7(4) and (5)).

A liable graduate is bound to pay the full amount of the graduate endowment to the Scottish Ministers by 1st April in the year following the end of the academic year in which they finish their course (the “due date”) (regulation 8(1)). However, a liable graduate may apply to the Scottish Ministers for a loan in respect of their liability to pay the graduate endowment, and if they do so by the due date, they are under no liability to pay the graduate endowment on that date (regulation 8(2)).

All liable graduates are eligible for a loan to meet their liability for the graduate endowment (regulation 9(2)). A liable graduate must apply for such a loan by completing a questionnaire and supplying supporting evidence and information if required to the Scottish Ministers (regulations 10 and 11). The amount of the loan is the amount of the graduate endowment for which the liable graduate is liable (regulation 12). The Scottish Ministers are required to apply the full amount of any loan made to discharge the liability of the liable graduate to pay the graduate endowment. The use of the loan is limited to this purpose, and no part of the loan is paid to the liable graduate or to any other person (regulation 13(1) and (4)). The loan is to be applied for its purpose on the due date or as soon as reasonably practicable after the application has been made (regulation 13(2) and (3)).

Provision is made for the interest which the loans will bear, which is calculated daily and compounded monthly (regulation 14). The rate is identical to that paid on other student loans.

Loans in respect of liability to pay the graduate endowment paid or payable after the commencement of the sequestration of the graduate’s estate do not form part of their estate and accordingly cannot be claimed by the trustee. The graduate will not be discharged from liability to repay loan payments made after sequestration when he is discharged under or by virtue of section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985.