

2002 No. 423

EDUCATION

**The Nursing and Midwifery Student Allowances (Scotland)
Amendment Regulations 2002**

Made 11th September 2002

Laid before the Scottish Parliament 13th September 2002

Coming into force 4th October 2002

The Scottish Ministers, in exercise of the powers conferred by sections 73(f) and 74(1) of the Education (Scotland) Act 1980(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Nursing and Midwifery Student Allowances (Scotland) Amendment Regulations 2002 and shall come into force on 4th October 2002.

Interpretation

2. In these Regulations—

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

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

(a) under Council Regulation (EEC) No. 1612/68(d) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement); or

(b) in circumstances where as a national of the United Kingdom that person has an enforceable Community right to be treated no less favourably than a national of another EEA State in relation to matters which are the subject of the above mentioned Regulation;

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

“employed” includes holding any office or any occupation for gain;

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

(a) 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 (asp 6), section 3(2); section 74 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), 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).

(b) Cmnd 2073.

(c) Cmnd 2183.

(d) O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968 (II), p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

“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;

“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(a) as extended by the Protocol thereto which entered into force on 4th October 1967(b).

“relevant day” in relation to a course of education for which an allowance is sought means—

- (a) as respects a course starting in the period 1st August to 31st December, 1st August; or
 - (b) as respects a course starting in the period 1st January to 31st July, 1st January,
- in either case the relevant day being in the year of commencement of the appropriate academic year of the course.

Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992

3. The Nursing and Midwifery Student Allowances (Scotland) Regulations 1992(c) are amended as follows.

4. For regulation 3 (persons eligible for allowance) there is substituted—

“3.—(1) The Scottish Ministers may pay an allowance in accordance with the provisions of section 73(f) of the Education (Scotland) Act 1980 and these Regulations, to or in respect of any person undertaking a course of pre-registration nursing and midwifery education leading to registration with the Nursing and Midwifery Council(d) who—

- (a) is not at any time during that course an employee of an NHS Trust(e); and
- (b) is a person described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect for the purposes of determining whether a person is to be treated, for the purposes of Schedule 1, as being, or having been, ordinarily resident in a place at, or for, a particular time.”.

5. In regulation 4(1)(a), for “attending”, there is substituted “undertaking”.

6. In regulation 5(1)(a), after “in writing”, insert “(which, for the purposes of this regulation includes an application submitted by electronic means)”.

7. In regulation 5(3)(a), for “attend regularly”, there is substituted “comply with the requirements of”.

8. The following Schedules shall be inserted:—

“Regulation 3(1)(b)

SCHEDULE 1

PERSONS ELIGIBLE FOR ALLOWANCES

1. A person who—
 - (a) is ordinarily resident in the United Kingdom 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
 - (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971(f) on the relevant day.
2. 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

(a) Cmnd 9171.

(b) Cmnd 3906.

(c) S.I. 1992/580.

(d) The Nursing and Midwifery Council, a body corporate, was established by Article 3 of the Nursing and Midwifery Order 2001 (S.I. 2002/253).

(e) Provision for the establishment of NHS trusts is contained within the National Health Service and Community Care Act 1990 (c.19). Section 5 thereof sets out the purposes and functions of such bodies.

(f) 1971 c.77.

- (which was extended to apply to the whole of the European Economic Area by the EEA Agreement^(a)) or, where that 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 the United Kingdom on the relevant day.
3. 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 his or her spouse; and
 - (c) is ordinarily resident in the United Kingdom on the relevant day.
 4. 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 that person's 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 or 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 the United Kingdom on the relevant day.
 5. A person who—
 - (a) at the date of the Scottish Ministers receiving an application for an allowance from that person, is—
 - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
 - (ii) the spouse, child or step-child of such a refugee; and
 - (b) is ordinarily resident in the United Kingdom 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 he or she is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly;
 - (ii) is ordinarily resident in the United Kingdom 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-paragraphs (a)(ii) and (a)(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;
 - (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 course of education at an establishment in Scotland.
 8. A person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations, or with the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992, within the year immediately preceding the relevant day.

(a) O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968 (11) p.475).

SCHEDULE 2
ORDINARY RESIDENCE

1. For the purposes of paragraph 1(a) of Schedule 1—
- (a) a person shall be treated as being ordinarily resident in the United Kingdom on the relevant day if the Scottish Ministers are satisfied that he or she was not actually so resident only because that person or his or her spouse was for the time being—
 - (i) employed outside the United Kingdom; or
 - (ii) attending a course of study or undertaking postgraduate research outside the United Kingdom; and
 - (b) a person shall not be treated as being ordinarily resident in the United Kingdom on the relevant day 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 the United Kingdom 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 1(b), 2(b), 3(a), 4(b), 6(a)(iii) and 7(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 he or she 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 his or her life in the relevant area, and has 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 that person or his or her spouse 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.”.

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew's House,
Edinburgh
11th September 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 4th October 2002, amend the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992 (“the principal Regulations”). The principal Regulations govern allowances paid to persons attending courses of education in Colleges of Nursing and Midwifery in Scotland, and prescribe the conditions and requirements subject to which allowances may be paid.

The principal Regulations are amended to provide for new eligibility criteria, detailed in Regulation 4 and Schedule 1, whilst Schedule 2 makes provision as to when a person is to be treated as ordinarily resident in a place for or at a particular time. Regulation 2 provides a definition of the phrase ‘relevant day’ as contained within Schedules 1 and 2.

The principal Regulations are further amended to allow the Scottish Ministers to pay allowances to students on distance learning courses as well as students attending courses of education (Regulation 5). In consequence, the requirement placed on the recipient of an allowance to ‘attend regularly’ the course of education is replaced with an obligation to comply with the requirements of the course (Regulation 7).

Finally, Regulation 6 amends the principal regulations so that an application for an allowance may be made by electronic means.

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