
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 423

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

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

8. The following Schedules shall be inserted:—

“SCHEDULE 1

Regulation 3(1)(b)

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⁽¹⁾ 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 (which was extended to apply to the whole of the European Economic Area by the EEA Agreement⁽²⁾) 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 of another member state in relation to matters which are the subject of Article 12;

⁽¹⁾ 1971 c. 77.

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

- (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.

SCHEDULE 2

Regulation 3(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.”.