

**2004 No. 273**

**EDUCATION**

**The Education Maintenance Allowances (Scotland)  
Regulations 2004**

<i>Made</i> - - - -	<i>8th June 2004</i>
<i>Laid before the Scottish Parliament</i>	<i>10th June 2004</i>
<i>Coming into force</i> - -	<i>2nd July 2004</i>

The Scottish Ministers, in exercise of the powers conferred on them by section 73(f) 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 Education Maintenance Allowances (Scotland) Regulations 2004 and shall come into force on 2nd July 2004.

**Interpretation**

2.—(1) In these Regulations—

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

“course of education” means a full-time—

- (a) course of school education;
- (b) course of non-advanced education undertaken at a home within an area of an education authority and approved by that education authority; or
- (c) course of non-advanced education undertaken elsewhere within an area of an education authority under the supervision of that education authority;

“course of non-advanced education” means any course which prepares a person to a standard not higher than that required for—

- (a) a qualification awarded by the Scottish Qualifications Authority; or
- (b) a General Certificate of Education qualification of England and Wales or Northern Ireland;

“education maintenance allowance” means an allowance paid or to be paid under these Regulations;

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(a) 1980 c.44. Section 73(f) was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). 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).

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

“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 the Free Movement Regulation; or
- (b) in circumstances where as a national of the United Kingdom he or she 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;

“employment” shall include the holding of any office and any occupation for gain 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;

“Free Movement Regulation” means Council Regulation (EEC) No. 1612/68<sup>(c)</sup> on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement);

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

“parent” is to be construed in accordance with the definition below of person’s child;

“person’s child” includes a reference to a person adopted in pursuance of adoption proceedings, a stepchild, and a child in whose case the person concerned has admitted paternity or has been adjudged the putative father;

“qualifying date” means the first day of the term of the course of education for which an education maintenance allowance is sought;

“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<sup>(d)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(e)</sup>; and

“temporary protection” has the meaning defined in Council Directive 2001/55/EC<sup>(f)</sup> on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

(2) In these Regulations, except where the context otherwise requires, any reference—

- (a) to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations;
- (b) in a regulation or Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule, as the case may be.

### **Exercise of power to grant an education maintenance allowance**

**3.—**(1) Subject to paragraphs (3) and (4), the Scottish Ministers may pay an education maintenance allowance in accordance with section 73(f) of the Act and these Regulations to any person undertaking a course of education in Scotland who—

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<sup>(a)</sup> Cmnd. 2073.

<sup>(b)</sup> Cmnd .2183.

<sup>(c)</sup> 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).

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

<sup>(e)</sup> Cmnd. 3906. (Out of Print: photocopies are available free from the Students Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, Edinburgh EH12 9HH.

<sup>(f)</sup> O.J. No. L 212, 20.7.01, p.12.

- (a) is deemed to have attained the age of 16 years under section 33 of the Act (School leaving dates);
- (b) has not, on the qualifying date, attained the age of 20 years; and
- (c) is described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect as regards 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.

(3) The Scottish Ministers shall not pay an education maintenance allowance to a person described in paragraph 7 of Schedule 1 if that person has attained the age of 18 years.

(4) The Scottish Ministers shall not pay an education maintenance allowance to any person who attained the age of 16 years prior to 1st March 2004.

#### **Amount of education maintenance allowances**

4.—(1) The amount of an education maintenance allowance shall be determined by the Scottish Ministers and may include sums in respect of the maintenance of the holder during periods of full-time study excluding vacations.

(2) In determining the amount of an education maintenance allowance, the Scottish Ministers may take account of the sums, if any, which in their opinion the holder of the education maintenance allowance, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(3) The amount of an education maintenance allowance may be revised at any time if the Scottish Ministers think fit having regard to—

- (a) the failure of that holder to comply with the conditions of the education maintenance allowance;
- (b) all the circumstances of that holder, his or her parents and his or her spouse; or
- (c) any error made in the computation of the amount of the education maintenance allowance.

(4) In paragraphs (2) and (3) above 'holder's spouse' shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not married to each other but who are living together as husband and wife.

#### **Conditions of education maintenance allowance**

5.—(1) Every education maintenance allowance shall be held subject to the following conditions—

- (a) the holder of the educational maintenance allowance shall attend in accordance with any requirements specified by the educational establishment for the course of education in respect of which the education maintenance allowance is awarded;
- (b) the Scottish Ministers shall be satisfied as to the conduct and progress of that holder; and
- (c) that holder shall provide the Scottish Ministers with such information and such documents as they may from time to time require to enable them to exercise their functions under these Regulations.

(2) If the conditions specified in paragraph (1) are not complied with or if the holder receives from any other source any sum which, in the opinion of the Scottish Ministers, makes it unnecessary for the holder to be assisted by means of an education maintenance allowance, the Scottish Ministers may suspend payment of the education maintenance allowance or terminate the education maintenance allowance.

(3) It shall be a condition of payment of an education maintenance allowance that the applicant gives a written undertaking to pay to the Scottish Ministers any amount of which they may request repayment in the circumstances specified in paragraph (4).

(4) Where the Scottish Ministers are satisfied that there has been an overpayment of education maintenance allowance for any reason and request repayment of the overpayment or so much thereof as they think fit, the holder of the education maintenance allowance shall be obliged to pay to the Scottish Ministers the amount requested.

St Andrew's House,  
Edinburgh  
8th June 2004

*JAMES R WALLACE*  
A member of the Scottish Executive

**PERSONS ELIGIBLE FOR EDUCATION MAINTENANCE  
ALLOWANCES**

1. A person who—
  - (a) is ordinarily resident in the United Kingdom and Islands on the qualifying date in relation to the course of education in respect of which he or she seeks an education maintenance allowance;
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years preceding the qualifying date; and
  - (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971<sup>(a)</sup> on the qualifying date.
  
2. A person who is an EEA migrant worker who—
  - (a) is entitled to the payment of an education maintenance allowance for the course in respect of which he or she seeks that education maintenance allowance by virtue of Article 7(2) or (3) of the Free Movement Regulation or, where he or she 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) of that Regulation;
  - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the qualifying date; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date.
  
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 qualifying date;
  - (b) is installed in the United Kingdom with his or her spouse; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date.
  
4. A person who is the child of an EEA migrant worker and who—
  - (a) is entitled to the payment of an education maintenance allowance by virtue of Article 12 of the Free Movement Regulation or, where his or her 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 qualifying date; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date.
  
5. A person who—
  - (a) at the date of the Scottish Ministers receiving his or her application for an education maintenance allowance 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

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<sup>(a)</sup> 1971 c.77; amended by the British Nationality Act 1981 (c.61), section 39 and Schedule 4, the Immigration Act 1988 (c.14), sections 1, 3, 4, 6 and 10 and the Schedule, the Asylum and Immigration Appeals Act 1993 (c.23), sections 10 to 12, the Immigration and Asylum Act 1999 (c.33), sections 1 to 3, 7, 8, 18, 19, 28 to 30, 38, 54, 128 to 140, 165 and Schedule 16, the Adoption (Intercountry Aspects) Act 1999 (c.40), Schedule 2 and the Nationality Immigration and Asylum Act 2002 (c.41), sections 10, 58, 62 to 64, 73, 75, 118, 119, 121, 143, 144, 148 to 156, 158 and Schedule 9.

- (ii) the spouse, or child, of such a refugee; and
- (b) is ordinarily resident in Scotland on the qualifying date.

**6.** A person who—

- (a) —
  - (i) has been informed in writing by a person acting under the authority of the Scottish Ministers 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 Scotland on the qualifying date; and
  - (iii) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the qualifying date; or
- (b) is the spouse or child of a person of the kind described in sub-paragraph (a) and who meets the requirements specified in sub-paragraph (a)(ii) and (iii).

**7.** A person who—

- (a) at the date of the Scottish Ministers receiving his or her application for an education maintenance allowance is a person entitled to temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as entitled to temporary protection; and
- (b) is ordinarily resident in the United Kingdom and Islands on the qualifying date.

**8.—**(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, an education maintenance allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking an education maintenance allowance, provided that the current application will not result in such a person being awarded an education maintenance allowance for more than 3 years.

(2) Sub-paragraph (1) shall not preclude the payment of the monetary value of 3 years education maintenance allowance over a period of 4 years.

## 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 and Islands on the qualifying date if the Scottish Ministers are satisfied that he or she was not so resident only because his or her spouse or either of his or her parents was for the time being—
  - (i) employed outside the United Kingdom and Islands; or
  - (ii) attending a course of study or undertaking postgraduate research outside the United Kingdom and Islands; and
- (b) a person shall not be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date 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 and Islands within 3 years immediately preceding the qualifying date 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(a) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (in this paragraph, “the specified period”) in either the United Kingdom and Islands or the European Economic Area (in this paragraph, “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 in and spent the greater part of his or her life in the relevant area and either—
  - (i) that person’s parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent person; or
  - (ii) he or she has been ordinarily resident for at least one year of the specified period in the relevant area provided that the Scottish Ministers are also satisfied that he or she has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; and
- (b) the person was not so resident only because he or she, his or her spouse, or either of his or her parents 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.

(4) In paragraph 2(3)(a)(i), an “independent person” means a person who prior to the qualifying date—

- (a) has been married; or
- (b) has no parent living.

## EXPLANATORY NOTE

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

These Regulations regulate the exercise by the Scottish Ministers of their powers under section 73(f) of the Education (Scotland) Act 1980 to pay education maintenance allowances to persons aged 16 to 19 who are attending courses of education. They prescribe that education maintenance allowances may only be paid to persons who fulfil certain criteria as to eligibility and they prescribe the conditions and requirements subject to which such education maintenance allowances may be paid.

The eligibility criteria are detailed in regulation 3 and Schedule 1. Schedule 1 lists the eligibility criteria for different categories of persons, including persons ordinarily resident in the United Kingdom, EEA migrant workers, their spouses and children, refugees, their spouses and children and persons with leave to enter or remain in the United Kingdom. Paragraph 7 of Schedule 1 has a further category of eligible persons, being those people who are granted temporary protection. This category is included in these Regulations to fulfil the requirements of Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof (O.J. No. L 212, 20.7.01, p.12.).

Regulation 4 provides that the amount of an education maintenance allowance is to be determined by the Scottish Ministers and specifies matters to be taken in to account in making that determination. Regulation 5 specifies conditions on which education maintenance allowances are to be held. Schedule 2 makes provision as to when a person is to be treated as “ordinarily resident”.

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