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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 152**

**The Education (Fees and Awards) (Scotland) Regulations 2007**

**PART I  
GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Education (Fees and Awards) (Scotland) Regulations 2007 and shall come into force on 1st August 2007.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“award” means a fees award or a maintenance award or both as the context may require;

“British overseas territories” means Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Ducie and Oeno Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, South Georgia and the South Sandwich Islands, St Helena and Dependencies (Ascension Island and Tristan de Cunha), Turks and Caicos Islands;

“British overseas territories national” means a national of any of the British overseas territories;

“Directive 2004/38” means Directive 2004/38 of the European Parliament and of the Council<sup>(1)</sup> on the rights of the citizens of the Union and their family members to move and reside freely in the territory of the member States;

“education” includes post-graduate research otherwise than in the course of employment;

“education authority” has the same meaning as in the Education (Scotland) Act 1980<sup>(2)</sup>;

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person (within the meaning of Article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker (within the meaning of Article 7 of Directive 2004/38) in Scotland; and

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<sup>(1)</sup> O.J. No. L 158, 30.04.04, p.77.

<sup>(2)</sup> 1980 (c. 44); the relevant definition in section 135(1) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 118(9).

- (b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of Article 7 of Directive 2004/38 but who is not an EEA frontier worker;

“EEA national” means a national of an EEA state other than the United Kingdom;

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of Article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;

“employment” means full-time or part-time employment which, in a normal week, involves a significant number of hours of work and “employed” shall be construed accordingly, and the references to employment include references to the holding of any office and to any occupation for gain;

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland Henderson, Mayotte, Netherlands Antilles (Bonaire, Curcao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon, and Wallis and Futuna Islands;

“EU overseas territories national” means a national of any of the EU overseas territories;

“European Economic Area” means the area of the EEA states and includes those States at any time before they became EEA states;

“family member” means–

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, an EEA self-employed person–
  - (i) their spouse or civil partner;
  - (ii) their child or the child of their spouse or civil partner;
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person–
  - (i) their spouse or civil partner;
  - (ii) their child or the child of their spouse or civil partner;
- (c) in relation to a non UKEC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38 or an EU overseas territories national–
  - (i) their spouse or civil partner;
  - (ii) their direct descendants or those of their spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) their dependants or those of their spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38 or an EU overseas territories national–
  - (i) their spouse or civil partner;
  - (ii) their direct descendants or those of their spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) their dependants or those of their spouse or civil partner;

- (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1 and paragraph 4 of Schedule 2–
  - (i) their spouse or civil partner;
  - (ii) their direct descendants or those of their spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) their dependants or those of their spouse or civil partner;
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;

“fees” includes charges however described;

“fees award” means an award in respect of any fees payable by the candidate for the award other than any element of those fees representing or attributable to charges for their maintenance;

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

“maintenance award” means any award other than a fees award;

“non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;

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

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

“relevant area” means Scotland, the European Economic Area or Switzerland;

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier worker;

“Swiss frontier worker” means a Swiss national who–

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and
- (b) resides in Switzerland or in the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” means a Swiss national who–

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and
- (b) resides in Switzerland or in the territory of an EEA state, other than the United Kingdom, and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“Swiss self-employed person” means a Swiss national in the United Kingdom who is a self employed person (within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;

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

<sup>(4)</sup> Cm. 3906 (Out of print: photocopies are available, free of charge, from the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

“Switzerland Agreement” means the Agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999<sup>(5)</sup> and which came into force on 1st June 2002; and

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules<sup>(6)</sup>.

(2) Notwithstanding section 11 of the Interpretation Act 1978<sup>(7)</sup>, section 3(2) of the Education (Fees and Awards) Act 1983<sup>(8)</sup> (references to the United Kingdom to include references to the Islands) shall not apply for the purpose of the interpretation of these Regulations.

(3) In these Regulations, unless the context otherwise requires, a reference to a regulation, Part or Schedule is a reference to a regulation or Part of these Regulations or to a Schedule thereto, a reference in a regulation or Schedule to a paragraph is a reference to a paragraph of that regulation or Schedule and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.

## PART II

### FEES FOR TUITION ETC.

#### Scope of Part II

**3.** This Part shall have effect as respects the charging of relevant fees in respect of students undertaking a course provided by—

- (a) a fundable body providing fundable higher education in terms of section 5(3) of the Further and Higher Education (Scotland) Act 2005<sup>(9)</sup>;
- (b) a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980<sup>(10)</sup>; or
- (c) a further education establishment provided by an education authority or managed by a board of management in terms of Part I of the Further and Higher Education (Scotland) Act 1992<sup>(11)</sup>,

and any reference in this Part to a student shall be construed accordingly.

#### Relevant fees

**4.—(1)** For the purpose of this Part “relevant fees” means the aggregate of—

- (a) any fees for admission, registration or matriculation (including matriculation exemption);
- (b) any sessional or tuition fees;
- (c) any composition fee; and
- (d) any graduation fee,

in each case excluding any element thereof representing or attributable to such fees as are mentioned in paragraph (2).

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<sup>(5)</sup> Cm. 5639.

<sup>(6)</sup> HC 395; relevant amending instrument is HC 164.

<sup>(7)</sup> 1978 (c. 30).

<sup>(8)</sup> 1983 (c. 40).

<sup>(9)</sup> 2005 asp 6.

<sup>(10)</sup> 1980 (c. 44).

<sup>(11)</sup> 1992 (c. 37); relevantly amended by the Further and Higher Education (Scotland) Act 2005 (asp 6).

- (2) The fees referred to in paragraph (1) are—
- (a) any fees charged by an external body in respect of an examination or validation of a course or otherwise charged by such a body whose requirements must (for the purposes of a course) be met; and
  - (b) charges for board and lodging.

### **Relevant connection with the United Kingdom and Islands**

5. Subject to regulation 6, for the purposes of this Part a student has a relevant connection with the United Kingdom and Islands if—

- (a) that student has been ordinarily resident there throughout the 3 year period immediately preceding 1st August, 1st January, 1st April or 1st July closest to the beginning of the first term of the student's course;
- (b) that student's residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education unless the person is settled as referred to in paragraph (c) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38 and that person was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence; and
- (c) at the date referred to in paragraph (a) that student is settled in the United Kingdom within the meaning of the Immigration Act 1971(12).

6.—(1) The provisions of regulation 5(c) shall not apply in respect of a student in relation to that student undertaking a course of a kind specified in paragraph (2) where that student—

- (a) has previously undertaken a course of a kind specified in paragraph (2) during an academic year beginning before 1st September 1997 and had, in relation to that student undertaking that course, a relevant connection with the United Kingdom and Islands; and
- (b) begins to undertake the course in question—
  - (i) immediately after successfully completing the course referred to in sub paragraph (a); or
  - (ii) immediately after successfully completing a course in relation to which the provisions of regulation 5(c) do not apply by reason of this regulation.

(2) The kinds of course for the purposes of paragraph (1) are those specified in paragraphs (a), (b), (c) and (e) of section 5(3) of the Further and Higher Education (Scotland) Act 2005.

(3) In determining for the purposes of this regulation whether a student begins to undertake a course immediately after another course any intervening vacation shall be disregarded.

(4) For the purposes of this regulation a student successfully completes a course only if that student qualifies for the award to which the course leads.

### **Charging of higher relevant fees**

7. Subject to Schedule 1, it shall be lawful to charge higher relevant fees in the case of students who do not have a relevant connection with the United Kingdom and Islands than in the case of students having such a connection.

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(12) 1971 (c. 77); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

## PART III

### POST-GRADUATE AGRICULTURAL STUDENTSHIPS

#### Scope of Part III

8. This Part shall have effect as respects the adoption by the Scottish Ministers of rules of eligibility for awards (however described) made by them in pursuance of section 4 of the Small Landholders (Scotland) Act 1911(13) and any reference in this Part to an award or a candidate for an award shall be construed accordingly.

#### Relevant connection with Scotland

9. For the purposes of this Part a candidate for an award has a relevant connection with Scotland if—

- (a) that student has been ordinarily resident there throughout the 3 year period immediately preceding the date of their application for an award;
- (b) that student's residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education unless the person is settled as referred to in paragraph (c) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38 and that person was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence; and
- (c) at the date referred to in paragraph (a) that student is settled in the United Kingdom within the meaning of the Immigration Act 1971 and, if not a British Citizen, enjoys in the United Kingdom the status of a Commonwealth Citizen.

#### Authorised eligibility rules

10. Subject to Schedules 2 and 3, it shall be lawful to adopt rules of eligibility for awards which confine the awards to candidates having a relevant connection with Scotland.

St Andrew's House,  
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6th March 2007

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