
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 152

EDUCATION

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

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| <i>Made</i> | - - - - | <i>6th March 2007</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>6th March 2007</i> |
| <i>Coming into force</i> | - - | <i>1st August 2007</i> |

The Scottish Ministers, in exercise of the powers conferred by sections 1 and 2 of the Education (Fees and Awards) Act 1983(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

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;

(1) 1983 (c. 40); section 1 was relevantly amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91 and the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraph 8; section 2(3)(a) and the word “other” in paragraph (b) were repealed by the Teaching and Higher Education Act 1998 (c. 30), section 44(2) and Schedule 4. 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).

“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⁽²⁾ 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⁽³⁾;

“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
- (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;

(2) O.J. No. L 158, 30.04.04, p.77.

(3) 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) 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–
 - (a) under the age of 21;
 - (b) 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–
 - (a) under the age of 21;
 - (b) 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–
 - (a) under the age of 21;
 - (b) 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⁽⁴⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽⁵⁾;

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

⁽⁴⁾ Cm. 9171.

⁽⁵⁾ 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).

“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;

“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⁽⁶⁾ 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⁽⁷⁾.

(2) Notwithstanding section 11 of the Interpretation Act 1978⁽⁸⁾, section 3(2) of the Education (Fees and Awards) Act 1983⁽⁹⁾ (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⁽¹⁰⁾;

⁽⁶⁾ Cm. 5639.

⁽⁷⁾ HC 395; relevant amending instrument is HC 164.

⁽⁸⁾ 1978 (c. 30).

⁽⁹⁾ 1983 (c. 40).

⁽¹⁰⁾ 2005 asp 6.

- (b) a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980⁽¹¹⁾; 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⁽¹²⁾,

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).

- (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⁽¹³⁾.

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—

⁽¹¹⁾ 1980 (c. 44).

⁽¹²⁾ 1992 (c. 37); relevantly amended by the [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#).

⁽¹³⁾ 1971 (c. 77); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the [British Nationality Act 1981 \(c. 61\)](#).

- (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.

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(14) 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.

(14) 1911 (c. 49).

St Andrew's House, Edinburgh
6th March 2007

NICOL STEPHEN
A member of the Scottish Executive

SCHEDULE 1

Regulation 7

FEES – EXCEPTED STUDENTS

1. It shall not be lawful in pursuance of regulation 7 to charge higher fees in the case of a student who is an excepted student within the meaning of this Schedule.

2. A person shall be an excepted student if that student–

(a) is–

- (i) an EEA migrant worker or an EEA self-employed person;
- (ii) a Swiss employed person or a Swiss self-employed person;
- (iii) an EEA frontier worker or an EEA frontier self-employed person; or
- (iv) a Swiss frontier worker or a Swiss frontier self-employed person; and

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a).

3. A person shall be an excepted student if that student–

(a) is the family member of a person mentioned in paragraph 2(a); or

(b) has a right not to be charged higher fees by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽¹⁵⁾, as extended by the EEA agreement; and

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a).

4.—(1) A person shall be an excepted student if that student–

(a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;

(b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom;

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a); and

(d) in the case where their ordinary residence referred to in sub-sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-sub-paragraph (c).

(2) For the purposes of this paragraph, a person has utilised a right of residence if that person–

(a) is–

(i) a United Kingdom national;

(ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38⁽¹⁶⁾ (or corresponding provisions under the EEA agreement or the Switzerland Agreement⁽¹⁷⁾);

(iii) a person who has a right of permanent residence arising under Directive 2004/38; and

(b) either–

⁽¹⁵⁾ 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).

⁽¹⁶⁾ O.J. No. 158, 30.04.04, p.77.

⁽¹⁷⁾ Cm. 5639.

- (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom; or
 - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.
- 5. A person shall be an excepted student if that person is—
 - (a) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first recognised as a refugee; or
 - (b) the spouse, civil partner, child of such a refugee.
- 6. A person shall be an excepted student if that person—
 - (a) has—
 - (i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although that person 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 that person has been granted leave to enter or remain accordingly; and
 - (ii) been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain; or
 - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a).
- 7. A person shall be an excepted student if that person—
 - (a) is a person who has been granted temporary protection;
 - (b) did not attain the age of 18 years prior to the beginning of the current academic year of the student's course; and
 - (c) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection.
- 8. A person shall be an excepted student if that person—
 - (a) is a non UK EC national or the child of such a national;
 - (b) is ordinarily resident in Scotland on the date referred to in regulation 5(a);
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the 3 year period preceding that date; and
 - (d) in the case where their ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (c).
- 9. A person shall be an excepted student if that person—
 - (a) is a non UK EC national or an EU overseas territories national or the family member of either;
 - (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland or the EU overseas territories throughout the 3 year period referred to in regulation 5(a); and
 - (c) their residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

- 10.** A person shall be an excepted student if that person—
- (a) is the child of a Swiss national in respect of whom it is not lawful to charge higher fees by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a); and
 - (c) in the case where their ordinary residence referred to in sub-paragraph (b) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-paragraph (b).
- 11.** A person shall be an excepted student if—
- (a) that person has not been ordinarily resident in the United Kingdom and Islands throughout the 3 year period referred to in regulation 5(a); or
 - (b) being a United Kingdom national or a non UK EC national or the child of such a person, that person has not been ordinarily resident in the European Economic Area and Switzerland throughout that 3 year period; or
 - (c) by reason only that that person, their spouse or civil partner, or either of their parents, or in the case of a dependant direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner, was temporarily either employed or studying outside the United Kingdom and Islands or, as the case may be, outside the European Economic Area or Switzerland.
- 12.** A person shall be an excepted student if that person fails to satisfy the criteria specified in paragraph 2(b), 3(c), 4(1)(c), 8(c), 9(b) or 10(b) by reason only that that person, or their spouse or civil partner, or either of their parents, or in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner, was temporarily either employed or studying elsewhere.
- 13.** A person shall be an excepted student if that person was admitted to their course in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.
- 14.** A person shall be an excepted student if that person is a British Overseas Territories national or the family member of such a national and has been ordinarily resident in either the United Kingdom or any of the British Overseas Territories throughout the 3 year period referred to in regulation 5(a).
- 15.** For the purpose of this Schedule fees shall be considered to be charged on the last date or dates on which they are required to be paid by the student, and not on the date or dates on which the student enters an agreement to pay them or on which that person receives an account in respect of them.

SCHEDULE 2

Regulation 10

POST-GRADUATE AGRICULTURAL STUDENTSHIPS – EXCEPTED CANDIDATES

1.—(1) It shall not be lawful in pursuance of regulation 10 to adopt rules of eligibility for maintenance awards which exclude from eligibility a person who is an excepted candidate within the meaning of this Schedule.

(2) In this Schedule, “the relevant date” means the date of a candidate's application for a maintenance award.

2. A person shall be an excepted candidate if that person—
 - (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) an EEA frontier worker or an EEA frontier self-employed person; or
 - (iv) a Swiss frontier worker or a Swiss frontier self-employed person; and
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
3. A person shall be an excepted candidate if that person—
 - (a) is—
 - (i) the family member of a person mentioned in paragraph 2(a); or
 - (ii) entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers, as extended by the EEA agreement; and
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
- 4.—(1) A person shall be an excepted candidate if that person—
 - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971⁽¹⁸⁾;
 - (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and any residence in Scotland in the preceding 3 years was not wholly or mainly for the purposes of receiving full-time education;
 - (c) is ordinarily resident in Scotland on the day on which the first term of the first academic year of the course actually begins;
 - (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
 - (e) in the case where their ordinary residence referred to in sub-sub-paragraph (d) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-sub-paragraph (d).

(2) For the purposes of this paragraph, a person has utilised a right of residence if that person—

 - (a) is—
 - (i) a United Kingdom national;
 - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38⁽¹⁹⁾ (or corresponding provisions under the EEA agreement or the Switzerland Agreement⁽²⁰⁾); or
 - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
 - (b) either—

⁽¹⁸⁾ 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

⁽¹⁹⁾ O.J. No. 158, 30.04.04, p.77.

⁽²⁰⁾ Cm. 5639.

- (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom; or
 - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.
5. Subject to paragraph 11, a refugee ordinarily resident in the United Kingdom and Islands who has not ceased to be so resident there since that person was recognised as a refugee, and the spouse, civil partner or child of such a refugee, shall be an excepted candidate.
6. Subject to paragraph 11, a person who—
- (a) has—
 - (i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although that person 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 that person has been granted leave to enter or remain accordingly; and
 - (ii) been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain; or
 - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a).
7. A person shall be an excepted candidate if that person—
- (a) is a person who has been granted temporary protection;
 - (b) has not attained the age of 18 years on the relevant date; and
 - (c) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection.
8. A person shall be an excepted candidate if that person—
- (a) is a non UK EC national or the child of such a national;
 - (b) is ordinarily resident in Scotland on the relevant date;
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the 3 year period preceding that date; and
 - (d) in the case where their ordinary residence referred to in sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-paragraph (c).
9. A person shall be an excepted candidate if that person—
- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period preceding the relevant date;
 - (c) is ordinarily resident in Scotland on the relevant date; and
 - (d) in the case where their ordinary residence referred to in sub-paragraph (b) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-paragraph (b).

10.—(1) Subject to paragraph 11, a person shall be an excepted candidate for the purposes of Part III if that person does not have the relevant connection with Scotland mentioned in regulation 9, by reason only that that person, their spouse or civil partner, or either of their parents, or, in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner, was temporarily either employed or studying outside Scotland.

(2) Subject to paragraph 11, a person shall be an excepted candidate if that person fails to satisfy the criteria specified in paragraph 2(b), 3(c), 4(d) or 8(c) by reason only that that person, or their spouse or civil partner, or either of their parents, or, in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner, was temporarily either employed or studying outside the European Economic Area or Switzerland.

11. Such persons as are mentioned in paragraphs 5, 6, or 10 shall be excepted candidates only where the maker of the awards has so determined.

SCHEDULE 3

Regulation 10

FEES AWARDS – EXCEPTED CANDIDATES

1. In this Schedule, “the relevant date” means the date of a candidate's application for a fees award.

2. It shall not be lawful in pursuance of regulation 10 to adopt rules of eligibility for fees awards which exclude from eligibility a person who is an excepted candidate within the meaning of this Schedule.

3.—(1) A person who is an excepted candidate within the meaning of Schedule 2 shall be an excepted candidate within the meaning of this Schedule.

(2) Subject to paragraph 4, a person who—

- (a) is a non UK EC national; or
- (b) a family member of such a national,

shall be an excepted candidate if they satisfy the conditions mentioned in sub-paragraph (3).

(3) The conditions referred to in sub-paragraph (2) are that—

- (a) that person has been ordinarily resident in the territory comprising the European Economic Area and Switzerland 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 their intended course; and
- (b) their residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

4. A candidate who would, but for this paragraph, be an excepted candidate by virtue of paragraph 3(2) and (3) shall not be an excepted candidate in a case where rules of eligibility confine awards to candidates having a relevant connection with part only of the United Kingdom and Islands and that person is, on the relevant date, ordinarily resident in some other part of the United Kingdom and Islands.

5. A person shall be an excepted candidate if that person fails to satisfy the criterion specified in paragraph 3(3)(a) by reason only that—

- (a) that person, or their spouse or civil partner, or either of their parents or, in the case of a dependant direct relative in the ascending line, the child upon whom that person was

dependent or that child's spouse or civil partner, was temporarily employed outside the European Economic Area or Switzerland, or

- (b) that person, or their spouse or civil partner, or either of their parents, or, in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner, was temporarily receiving full-time education outside the European Economic Area or Switzerland.

6. A person shall be an excepted candidate if the Scottish Ministers are satisfied that the person was born and has spent the greater part of their life in the relevant area and that—

- (a) their 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 student; or
- (b) that person has been ordinarily resident in the relevant area for at least 1 year of the specified period and, in the case of those qualifying by virtue of paragraph 1 or 9 of Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

7.—(1) In paragraph 6(a), “an independent student” means a person who prior to the relevant date—

- (a) has attained the age of 25 years;
- (b) is married or in a civil partnership;
- (c) has no parent living; or
- (d) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having been self-supporting out of their earnings for any period during which that person—

- (a) was 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; or
- (b) was 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; or
- (c) was 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; or
- (d) received any pension, allowance or other benefit paid by reason of a disability to which that person is 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; or
- (e) held a Scottish Studentship or comparable award; or
- (f) could not reasonably be expected to be self-supporting out of their earnings because that person had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Education (Fees and Awards) (Scotland) Regulations 1997 (S.I.1997/93) and certain amending instruments, which are revoked with transitional provisions by the Education (Graduate Endowment, Student Fees and Support) (Scotland) Revocation Regulations 2007 (S.S.I.2007/148).

In addition to minor and drafting alterations, these Regulations make the changes of substance described below.

The definition of “parent” (including “child”) has been clarified. The categories of excepted students have been extended to include nationals of British overseas territories (Schedule 1 paragraph 14). Nationals of EU overseas territories are extended the same treatment as EEA nationals.

Schedule 3 paragraph 6 has been added to make excepted candidates of those people who were born and spent the greater part of their life in a relevant area notwithstanding that they have not resided there in the 3 years prior to the application and definitions of “relevant area” and “an independent student ” have been inserted.

Tables of Derivations and Destinations have been prepared identifying individual regulations in these Regulations with the equivalent provisions in the superseded Regulations and vice versa. Copies of the Tables may be obtained from the Scottish Executive, Higher Education and Learner Support Division, Europa Building, 450 Argyle Street, Glasgow, G2 8LG. The Tables have been prepared to assist readers of these Regulations and do not have any legal effect.