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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 153**

**EDUCATION**

**The Students' Allowances (Scotland) Regulations 2007**

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| <i>Made</i>                                    | - - - - | <i>6th March 2007</i>  |
| <i>Laid before the Scottish<br/>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 73(f) and 74(1) of the Education (Scotland) Act 1980(1) 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 Students' Allowances (Scotland) Regulations 2007 and shall come into force on 1st August 2007.

**Interpretation**

2.—(1) In these Regulations—

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

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council(2) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States;

“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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(1) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp. 6), section 3(2); section 74(1) 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).

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

- (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 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 UK EC 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–
  - (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;

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

“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 date” in relation to a course of education for which an allowance is sought means–

- (a) for a course starting in the period 1st August to 31st December, 1st August in that year;
- (b) for a course starting in the period 1st January to 31st March, 1st January in that year;
- (c) for a course starting in the period 1st April to 30th June, 1st April in that year; and
- (d) for a course starting in the period 1st July to 31st July, 1st July in that year;

“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 employed person;

“Swiss frontier employed person” 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) 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; and
  - (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.

### **Persons eligible for allowances**

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 education who is a person 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.

### **Amount of allowances**

4.—(1) The amount of an allowance shall be determined by the Scottish Ministers and, subject to paragraph (2), may include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the allowance;
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in undertaking the course of education in respect of which the allowance is awarded;
- (c) the maintenance of the holder and of any persons dependent on them during periods of full time study and during vacations; and
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) An allowance payable to, or in respect of, a person who is eligible for an allowance only by virtue of paragraph 9 of Schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

(3) In determining the amount of an allowance, the Scottish Ministers shall take account of the sums, if any, which, in accordance with principles determined by them from time to time, the holder, the holder’s parents and the holder’s spouse or civil partner can reasonably be expected to contribute towards the holder’s expenses.

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

- (a) the failure of the holder to comply with the requirements of the allowance;
- (b) all the circumstances of the holder, their parents and the holder’s spouse or civil partner as the case may be; or

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(5) Cm. 5639.

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

- (c) any error made in determining the amount of, or entitlement to, the allowance.

### **Conditions and requirements of allowances**

5.—(1) The following shall be conditions of payment of every allowance for each academic year—

- (a) an application in such form as the Scottish Ministers may require shall be received by them by such date as they may determine in respect of that year, and different dates may be determined by them in respect of different courses; and
- (b) that application shall include an undertaking by the applicant to repay to the Scottish Ministers any amount of which they request repayment following a revisal in terms of regulation 4(4).

(2) The Scottish Ministers may treat an application received after any date determined for the purposes of paragraph (1)(a) as having been received by that date where they consider that, having regard to the circumstances of the particular case, it should be so treated.

(3) Every allowance shall be held subject to the following requirements—

- (a) the holder shall comply with the requirements of the course of education in respect of which the allowance is awarded;
- (b) the Scottish Ministers shall be satisfied as to the conduct and progress of the holder;
- (c) the 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; and
- (d) the holder shall repay to the Scottish Ministers any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 4(4).

### **Method of payment**

6.—(1) The allowance may be paid to the holder or to another person for their behoof, or in part to the holder and in part to the said other person, and any sum in respect of fees payable to an educational institution which is included in the amount of the allowance may be paid on behalf of the holder to the institution.

(2) The allowance may be paid in a single payment or by instalments as the Scottish Ministers think fit, but no payment shall be made before the holder has been accepted for admission to the course of education in respect of which the allowance is awarded.

(3) Payments may be made in such manner as the Scottish Ministers consider appropriate, and they may make it a condition of entitlement to payment that the eligible student shall provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

St Andrew's House, Edinburgh  
6th March 2007

*NICOL STEPHEN*  
A member of the Scottish Executive

## SCHEDULE 1

Regulation 3(1)

## PERSONS ELIGIBLE FOR ALLOWANCES

1. A person who—
  - (a) is ordinarily resident in Scotland on the relevant date;
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and
  - (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(7)</sup> on the relevant date.
  
- 2.—(1) A person who—
  - (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; and
  - (c) subject to sub paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub paragraph (1)(c) does not apply where the person applying for support falls within paragraph (a)(iii) or (iv) of sub paragraph (1).
  
- 3.—(1) A person who—
  - (a) is—
    - (i) the family member of a person mentioned in paragraph 2(1)(a); or
    - (ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(8)</sup>, as extended by the EEA agreement;
  - (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; and
  - (c) subject to sub paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub paragraph (1)(c) does not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).
  
- 4.—(1) A person who—
  - (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 and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education;

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

<sup>(8)</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).

- (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 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 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<sup>(9)</sup> (or corresponding provisions under the EEA agreement or the Switzerland Agreement<sup>(10)</sup>); or
    - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
  - (b) either—
    - (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 who—
- (a) at the date the Scottish Ministers received their application for an allowance, is—
    - (i) 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
    - (ii) the spouse, civil partner or child of such a refugee; and
  - (b) is ordinarily resident in Scotland on the relevant date.
6. A person who—
- (a)
    - (i) has 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;
    - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain; and
    - (iii) is ordinarily resident in Scotland on the relevant date; or
  - (b) is the spouse, civil partner or child of a person of the kind described in sub paragraph (a) and who is ordinarily resident in Scotland on the relevant date.
7. A person who—

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<sup>(9)</sup> O.J. No. L 158, 30.04.04, p.77.

<sup>(10)</sup> Cm. 5639.

- (a) at the date the Scottish Ministers receive that person's application for an allowance has been granted temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection;
- (b) has not attained the age of 18 years on the relevant date; and
- (c) is ordinarily resident in Scotland on the relevant date,

provided that an allowance paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.

**8.** A person who—

- (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 period of 3 years immediately preceding the relevant 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 who—

- (a) is a non UK EC national or an EU overseas territories national or a family member of either;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and
- (c) seeks an allowance in respect of a course of education at an establishment in Scotland.

**10.** A person who—

- (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 period of 3 years immediately 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 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 paragraph (b).

## SCHEDULE 2

Regulation 3(2)

### ORDINARY RESIDENCE

**1.—(1)** For the purposes of paragraph 1(a) and paragraph 8(b) of Schedule 1 a person shall be treated as being ordinarily resident in Scotland on the relevant date if the Scottish Ministers are satisfied that that person was not actually so resident only because—

- (a) that person or their spouse or civil partner or either of their parents; or

(b) 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 for the time being—

- (i) employed outside Scotland; or
- (ii) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of paragraph 1(a) of Schedule 1 and subject to sub paragraph (3), a person shall not be treated as being ordinarily resident in Scotland on the relevant date if the Scottish Ministers are satisfied that that person's residence there on that date is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full time education.

(3) Sub paragraph (2) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971<sup>(11)</sup> as a result of residence for full time education which has led to a right of permanent residence arising under Directive 2004/38.

2.—(1) Sub paragraphs (2) to (5) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c), 9(b) and 10(b) 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") specified period in the United Kingdom, the European Economic Area or Switzerland or the EU overseas territories (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 in paragraph 1(b) of Schedule 1, if the Scottish Ministers are satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full time education, unless—

- (a) the person is treated as ordinarily resident in accordance with sub paragraph (5) below; or
- (b) the person has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the person must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 9(b) of Schedule 1 if the Scottish Ministers are satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full time education, unless that person is treated as ordinarily resident by virtue of sub paragraph (5).

(4) 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 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.

(5) 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 the person was not actually ordinarily resident in the relevant area for the specified period only because—

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(11) 1971 c. 77.

- (a) that person, or their spouse or civil partner, or either of their parents; or
  - (b) 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 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.

**3.—(1)** In paragraph 2(4)(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;
  - (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;
  - (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;
  - (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;
  - (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.

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## EXPLANATORY NOTE

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

These Regulations consolidate, with minor amendments, the Students' Allowances (Scotland) Regulations 1999 (S.I.1999/1131 (S.91)) 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 definitions of “employment” (including “employed”) and “relevant date” have been clarified.

Support in relation to fees only has been extended to include nationals of EU overseas territories. 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 the Regulations and do not have any legal effect.