

2007 No. 154

EDUCATION

The Education (Student Loans) (Scotland) Regulations 2007

Made - - - - *6th March 2007*

Laid before the Scottish Parliament *6th March 2007*

Coming into force - - *1st August 2007*

The Scottish Ministers, in exercise of the powers conferred by sections 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I
GENERAL

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“academic year”, in relation to a course, means the period of twelve months beginning on the relevant date;

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

“designated course” means a course designated in terms of regulation 4;

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council(b) 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

(a) 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) (“the 2001 Act”), section 3(2); section 73B was inserted by the 1998 Act, section 29(2) and amended by the 2001 Act, section 3(3) and by the Income Tax (Earnings and Pension) Act 2003 (c.1), Schedule 6, paragraph 149; 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).

(b) 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 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;

“eligible student” means a person whom the Scottish Ministers have determined is eligible for a loan in connection with their undertaking a course in accordance with regulation 5 or 6;

“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;

“European Community” means the territory comprised by the member States of the European Community as constituted from time to time;

“European Economic Area” means the European Community and, subject to the conditions laid down in the EEA agreement, the area comprised by Norway, Iceland and Liechtenstein;

“family member” means–

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, or 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–
 - (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–
 - (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–
 - (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;

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

“loan” means a loan towards a student’s maintenance under the Act and any regulations made thereunder, including the interest accrued on the loan and any penalties or charges made in connection with it;

“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;

“period”, in relation to an academic year, means one of the periods in that year from 1st January to 31st March, 1st April to 30th June, 1st July to 31st July, or 1st August to 31st December;

“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(a) as extended by the Protocol thereto which entered into force on 4th October 1967(b);

“relevant date”, in relation to a course, means–

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

in each case the relevant date being in the year of commencement of the appropriate academic year of the course;

“Repayment Regulations” means the Repayment of Student Loans (Scotland) Regulations 2000(c);

“student loan account number” means the account number assigned by the lender to a loan made under the Act, the Education (Student Loans) Act 1990(d), the Education (Student Loans) (Northern Ireland) Order 1990(e), the Teaching and Higher Education Act 1998(f), the Education (Student Support) (Northern Ireland) Order 1998(g) or any regulations made under any of the foregoing;

(a) Cm. 9171.

(b) 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).

(c) S.S.I. 2000/110.

(d) 1990 c.6, amended by the Further and Higher Education Act 1992 (c.13), Schedule 8, paragraph 67; by the Further and Higher Education (Scotland) Act 1992 (c.37), Schedule 9, paragraphs 12(2) and (3); by the Education Act 1994 (c.30), Schedule 2, paragraph 9; by the Education (Student Loans) Act 1996 (c.9), section 1(1) and the Schedule; by the Education Act 1996 (c.56), Schedule 37, paragraph 98 and Schedule 38, and by the Education (Student Loans) Act 1998 (c.1), sections 1 to 3.

(e) S.I. 1990/1506 (N.I. 11).

(f) 1998 c.30.

(g) S.I. 1998/1760 (N.I. 14).

“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 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^(a) 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^(b).

(2) For the purposes of these Regulations a person who is resident in Scotland, England, Northern Ireland, Wales, or the Islands as a result of having moved from another of those areas for the purpose of undertaking—

- (a) that person’s present course; or
- (b) a previous designated course which (disregarding any intervening vacation) that person was undertaking immediately before commencing that person’s present course,

shall be considered to be ordinarily resident in the place from which that person moved.

(3) For the purposes of paragraph 1(a) and 8(b) of Schedule 1, a person shall be treated as ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that that person was not actually resident only because—

- (a) that person, or their spouse or civil partner, or parent; 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 temporarily either employed or studying outside Scotland.

(4) For the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c) and 9(b) of Schedule 1, a person shall be treated as having been ordinarily resident in the area specified and for the period specified in those paragraphs if the Scottish Ministers are satisfied that the person was not actually ordinarily resident in the relevant area for the specified period only because—

- (a) that person, or their spouse or civil partner, or parent; 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 temporarily either employed or studying outside the relevant area.

(a) Cm. 5639.

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

(5) For the purposes of paragraph 1(a) of Schedule 1 and subject to paragraph (6), a person shall not be treated as being ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that their residence there on that day is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the first day of the first academic year of the course as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(6) Paragraph (5) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971(a) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

(7) For the purposes of paragraph 1(b) of Schedule 1, a person shall not be treated as having been ordinarily resident in the United Kingdom and Islands for the 3 year period, if the Scottish Ministers are satisfied that that person was resident there 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 paragraph (4); 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.

PART II

ELIGIBILITY AND APPLICATIONS

Eligible students

3.—(1) The Scottish Ministers may pay a loan, in accordance with the provisions of section 73(f) of the Act and these Regulations, to or in respect of an eligible student.

(2) Subject to and in accordance with these Regulations a person shall be eligible for a loan in connection with their undertaking a designated course if that person—

- (a) is a person mentioned in Schedule 1;
- (b) is—
 - (i) under the age of 50 on the first day of the first academic year of the course; or
 - (ii) aged 50 or over and under the age of 55 on that day and the Scottish Ministers are satisfied that that person intends to enter employment after completion of the course;
- (c) is not eligible for a loan in relation to an academic year of the course under the Education (Student Loans) Act 1990, the Education (Student Loans) (Northern Ireland) Order 1990, the Teaching and Higher Education Act 1998, the Education (Student Support) (Northern Ireland) Order 1998 or any regulations made under any of the foregoing;
- (d) is not eligible to receive in relation to the academic year—
 - (i) a bursary or award of similar description under section 63 of the Health Services and Public Health Act 1968(b) the amount of which is not calculated by reference to their income; or

(a) 1971 c.77.

(b) 1968 c.46; section 63 was amended by the National Health Services Reorganisation Act 1973 (c.32), Schedule 4, paragraph 124 and Schedule 5, the National Health Service Act 1977 (c.49), Schedule 15, paragraph 45 and Schedule 16, the National Health Services (Scotland) Act 1978 (c.29), Schedule 16, paragraph 26(2) and Schedule 17, the Health Services Act 1980 (c.53), sections 1, 2 and Schedule 1, Part I, paragraph 19(3), the Local Government Act 1985 (S.I. 1985/39), article 6(1), the Health and Medicines Act 1988 (c.49), section 20, section 25(2) and Schedule 3, the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 74(1) and (2), the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 95(1) and (2), the Local Government Reorganisation (Wales) (Consequential amendments) (No. 2) Order 1996 (S.I. 1996/1008), the Schedule, paragraph 1, and the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 1(4).

- (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007^(a);
- (e) is not in breach of any obligation to repay any loan;
- (f) where the designated course is a part-time course, has already received fewer than 8 loans in connection with that person undertaking one or more part-time courses;
- (g) where the designated course is a part-time course, on the relevant date—
 - (i) has attained the age of 25 years;
 - (ii) is married or in a civil partnership;
 - (iii) has no parent living; or
 - (iv) has been self-supporting out of earnings for periods aggregating not less than 3 years.

(3) Notwithstanding that a person satisfies the requirements specified in paragraph (2), a person shall not be eligible for a loan if—

- (a) that person has, in the opinion of the Scottish Ministers, shown themselves by their conduct to be unfitted to receive a loan; or
- (b) the designated course is a part-time course and the person holds a first degree from an educational institution in the United Kingdom or a comparable qualification from an educational institution outside the United Kingdom.

(4) For the purposes of paragraph (2)(e) and (f) “loan” means a loan made under the Act, the Education (Student Loans) Act 1990, the Education (Student Loans) (Northern Ireland) Order 1990, the Teaching and Higher Education Act 1998, the Education (Student Support) (Northern Ireland) Order 1998 or under any regulations made under any of the foregoing.

(5) A person in respect of whom the first day of the first academic year of the course is on or after 1st August 2007 shall not, at any one time, be eligible for support for more than one designated course.

Designated courses

4.—(1) A course shall be designated for the purposes of regulation 3(2) if it is—

- (a) mentioned in Schedule 2;
- (b) a full-time course, a part-time course or sandwich course;
- (c) of at least one academic year’s duration and, in the case of a part-time course, does not have a duration in excess of twice the period normally required to complete a full-time course leading to the same qualification; and
- (d) wholly provided by an educational institution or institutions in the United Kingdom maintained or assisted by recurrent grants out of public funds or is provided by such an institution or institutions in conjunction with an institution or institutions outside the United Kingdom.

(2) For the purposes of this regulation a “sandwich course” is a course, other than a course for the initial training of teachers referred to in paragraph 4 of Schedule 2, consisting of alternate periods of full-time study in an institution and periods of work experience so organised that, taking the course as a whole, the student attends the periods of full-time study for an average of not less than 18 weeks in each year; and for the purposes of calculating their attendance the course shall be treated as beginning with the first period of full-time study and ending with the last such period.

(3) For the purposes of paragraph (2), where periods of both full-time study and work experience occur within any week of the course, the days of full-time study shall be aggregated with any weeks of full-time study in determining the number of weeks full-time study in each year.

(a) S.I. 2007/151.

(4) For the purposes of this regulation “periods of work experience” means–

- (a) periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outwith the institution; and
- (b) in the case of a course which includes the study of one or more modern languages for not less than one half of the time spent studying on the course, and which includes periods of residence in a country whose language is a language of the course, such periods of residence during which the student is employed.

(5) For the purposes of this regulation a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not it has entered into an agreement with the student to provide the course.

(6) For the purposes of paragraph (1) a university and any constituent college or institution in the nature of a college of a university shall be regarded as maintained or assisted by recurrent grants out of public funds if either the university or the constituent college or institution is so maintained or assisted.

(7) For the purposes of paragraph (1) an institution shall not be regarded as maintained or assisted by recurrent grants out of public funds by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992(a).

(8) For the purposes of these Regulations, a course, the standard of which is not higher than a first degree course, which leads to a qualification as a medical doctor, a dentist, a veterinary surgeon, an architect, a landscape architect, a landscape designer, a landscape manager, a town planner or a town and country planner, shall be considered to be a single course for a first degree or for an equivalent qualification notwithstanding that the course may lead to another degree or qualification being conferred before the degree or equivalent qualification, and notwithstanding that part of the course may be optional.

(9) For the purposes of regulation 3(2) the Scottish Ministers may designate courses of higher education which are not designated under paragraph (1).

Applications for loans

5.—(1) A student shall apply for a loan, not exceeding the maximum amount applicable in that student’s case, in connection with undertaking a course by completing and submitting to the Scottish Ministers an application in such form as the Scottish Ministers may require.

(2) The completed application shall include such information as the Scottish Ministers require, including the following particulars:–

- (a) the student’s United Kingdom national insurance number;
- (b) the student’s most recent student loan account number, if any; and
- (c) the names, addresses and telephone numbers of two persons who know the student.

(3) The completed application shall also include a declaration by the student that–

- (a) the particulars given in the form are correct to the best of their knowledge and belief;
- (b) the student will notify the Scottish Ministers of any change in those particulars which might affect their eligibility for a loan; and
- (c) the student will, if required to do so, repay to the Scottish Ministers–
 - (i) any amount paid to them which exceeds for whatever reasons the amount of loan to which that student is entitled under these Regulations; and
 - (ii) any amount lent to them, together with interest and applicable charges and penalties, in accordance with the Act and any regulations made thereunder from time to time.

(4) The application form must reach the Scottish Ministers by such date as they may determine from time to time (and different dates may be determined by them in respect of loans for different courses) unless the Scottish Ministers consider that, having regard to the circumstances of the

(a) 1992 c.13; section 65(3A) was inserted by section 27 of the Teaching and Higher Education Act 1998 (c.30).

particular case, the time limit should be relaxed, in which case the application must reach the Scottish Ministers not later than such date as they specify.

(5) A student shall demonstrate eligibility for a loan by providing such evidence as the Scottish Ministers may require.

(6) The Scottish Ministers may take such steps and make such inquiries as they consider necessary to determine whether the student is eligible for a loan.

(7) If the Scottish Ministers determine that a student is eligible for a loan they shall notify that student of that fact and of the maximum amount of loan applicable in their case, and thenceforth the student shall be an “eligible student” for the purposes of these Regulations.

(8) In any case where the Scottish Ministers—

- (a) determine that the maximum amount of loan which has been notified to an eligible student in relation to an academic year should be increased (including an increase from nil), as a result of a reassessment of the student’s contribution or otherwise; and
- (b) consider that the increase in the maximum amount does not result from the eligible student—
 - (i) failing to provide information promptly which might affect eligibility for a loan or the amount of loan for which they are eligible; or
 - (ii) providing information which is inaccurate in any material particular,

they shall notify the increased amount to the eligible student who may apply to borrow an additional amount which when added to the amount already applied for shall not exceed the increased maximum.

(9) Where an eligible student who has submitted an application for a loan in accordance with paragraph (1) has not applied for the maximum amount of loan to which they are entitled in relation to an academic year under the preceding paragraphs that student may apply to borrow an additional amount, which when added to the amount already applied for shall not exceed the maximum applicable in their case.

(10) An application under paragraphs (8) or (9) shall be made by completing and submitting to the Scottish Ministers an application in such form as they may require by such date as they may determine from time to time (and different dates may be determined by them in respect of loans for different courses) and shall contain a declaration by the eligible student in the terms set out in paragraph (3).

Transfers of eligibility

6.—(1) An eligible student may request that the Scottish Ministers transfer their eligibility in any case where—

- (a) on the recommendation of the academic authority of the institution concerned the eligible student starts to undertake another course at the institution;
- (b) with the written consent of the academic authorities of both institutions concerned, given on educational grounds, the eligible student starts to undertake a course at another institution;
- (c) with the written consent of the academic authority of the institution concerned, the eligible student ceases to undertake a full-time course but starts to undertake a part-time course, or ceases to undertake a part-time course but starts to undertake a full-time course, in either case at the same institution;
- (d) after commencing a course for the Certificate in Education, the eligible student is, on or before the completion of that course, admitted to a course for the degree of Bachelor of Education;
- (e) after commencing a course for the degree (other than an honours degree) of Bachelor of Education the eligible student is, on or before the completion of that course, admitted to a course for the honours degree of Bachelor of Education; or

(f) after commencing a course for a first degree (other than an honours degree) the eligible student is, before the completion of that course, admitted to a course for an honours degree in the same subject or subjects at the institution.

(2) Subject to paragraph (3) the Scottish Ministers, on being satisfied of the matters referred to in paragraph (1) and that the second course is a designated course, shall transfer the eligible student's eligibility, and thenceforth the eligible student shall for all purposes be an eligible student in connection with undertaking the second course, whether or not they might have been eligible for a loan if they had applied under regulation 5.

(3) The Scottish Ministers may, after consulting the academic authority concerned, refuse to transfer eligibility where paragraph (1)(a), (b) or (c) applies if they are satisfied that when the student applied for a loan they did not intend to complete the course to which their application related.

(4) For the purposes of the duty of the Scottish Ministers to transfer eligibility where paragraph (1)(d) or (e) applies it shall be immaterial whether or not the two courses are provided by the same institution.

(5) Where the Scottish Ministers have transferred an eligible student's eligibility from a course which is a full-time course to a course which is a part-time course, or from a course which is a part-time course to a course which is a full-time course, in either case during an academic year, then notwithstanding any other provision of these Regulations, the maximum amount of loan applicable in the case of the eligible student in respect of that academic year shall be the amount determined from time to time by the Scottish Ministers under regulation 10 as being applicable in respect of students whose eligibility is so transferred.

(6) The Scottish Ministers shall notify the eligible student of any change in the maximum amount of loan applicable in their case as a result of the transfer of their eligibility.

(7) An eligible student's eligibility for a loan may not be transferred after it has expired or been terminated under regulation 7.

Termination of eligibility

7.—(1) Subject to paragraph (2) an eligible student shall cease to be eligible for a loan on the expiry of the period ordinarily required for the completion of the course, and accordingly that person shall then cease to be an eligible student.

(2) The Scottish Ministers may before or after an eligible student ceases to be an eligible student under paragraph (1) determine that that person shall continue to be eligible for a loan for such further period after the expiry of the period referred to in that paragraph as they specify, and accordingly that person shall be, or be considered to have been, an eligible student throughout that further period until its expiry.

(3) Where an eligible student has withdrawn from a course in circumstances where the Scottish Ministers have not transferred or will not transfer that person's eligibility to another course under regulation 6, or has abandoned or been expelled from their course, the Scottish Ministers shall determine that that person is no longer eligible for a loan, and on such determination that person shall then cease to be an eligible student.

(4) Where the conduct of an eligible student has shown the eligible student to be unfitted to receive a loan the Scottish Ministers may determine that that person is no longer eligible for a loan, and on such determination that person shall then cease to be an eligible student.

Provision of United Kingdom national insurance number

8.—(1) The Scottish Ministers may make it a condition of entitlement to payment of any loan that the applicant or eligible student must provide them with that applicant or eligible student's United Kingdom national insurance number.

(2) Where the Scottish Ministers have imposed a condition under paragraph (1), they must not make any payment of the loan to the applicant or eligible student before they are satisfied that the applicant or eligible student has complied with that condition.

(3) Despite paragraph (2), the Scottish Ministers may make a payment of loan to an applicant or eligible student if they are satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the applicant or eligible student having complied with the condition imposed under paragraph (1).

Information

9.—(1) Every applicant and every eligible student shall as soon as reasonably practicable after being requested to do so provide the Scottish Ministers with such information as they consider necessary for the exercise of their functions under these Regulations.

(2) Every applicant and every eligible student shall forthwith inform the Scottish Ministers if any of the following occurs, and provide them with particulars—

- (a) they withdraw from, abandon or are expelled from their course;
- (b) they transfer to another course, at the same or a different institution, whether or not the new course is a designated course;
- (c) they cease to undertake their course and do not intend to, or are not permitted to, return for the remainder of the academic year;
- (d) they are absent from their course for more than 60 days due to illness, or are absent from their course for any period for any other reason;
- (e) the month for the start or completion of the course changes; or
- (f) their home or term time address, email address, contact details for persons described in regulation 5(2)(c), bank account or telephone number changes.

(3) If the Scottish Ministers are satisfied that an eligible student has wilfully failed to comply with any requirement to provide information, or has provided information that the student knows to be false in a material particular, or has recklessly provided information which is false in a material particular, they may determine that the student shall—

- (a) no longer be eligible for any loan; or
- (b) not be eligible for such a particular loan or particular amount of loan as they consider appropriate in the circumstances.

(4) The Scottish Ministers may at any time require an applicant or eligible student to enter into an agreement to repay a loan by a particular method.

(5) The Scottish Ministers may at any time request from an applicant or eligible student sight of their valid national identity card, their valid passport issued by the state of which they are a national or their birth certificate.

(6) The Scottish Ministers may at any time verify with the Department for Work and Pensions the United Kingdom national insurance number that an applicant or eligible student has provided or may check with the Department for Work and Pensions whether that applicant or eligible student has such a number with a view to obtaining it if that applicant or eligible student does.

(7) Where the Scottish Ministers have requested information or documents under this regulation, they may withhold any payment of a loan until the applicant or eligible student provides what has been requested or provides a satisfactory explanation for not complying with the request.

(8) Where the Scottish Ministers have requested an agreement as to the method of repayment under this regulation, they may withhold any payment of a loan until the applicant or eligible student provides what has been requested.

PART III

LOANS

Maximum amounts of loans

10. The maximum amount of loan in respect of each academic year shall not exceed such amount as may be determined from time to time by the Scottish Ministers and different maximum amounts may be determined for different categories of student.

Means test

11.—(1) In determining the amount of a loan payable under these Regulations, the Scottish Ministers shall take account of the sums, if any, which—

- (a) in accordance with principles determined by them from time to time; and
- (b) after having regard to any sums taken into account under regulation 4(3) of the Students' Allowances (Scotland) Regulations 2007^(a) in determining the amount of an allowance payable to the eligible student under those Regulations,

the eligible student, the eligible student's parents and the eligible student's spouse or civil partner can reasonably be expected to contribute towards the eligible student's expenses.

(2) For the purpose of the exercise of their functions under this regulation the Scottish Ministers may require an eligible student to provide from time to time such information as the Scottish Ministers consider necessary as to the income of any person whose means are relevant to the assessment of a contribution under this regulation.

PART IV

PAYMENTS

Payment of loans

12.—(1) Subject to the following paragraphs the Scottish Ministers may pay loans for which an eligible student has applied under these Regulations at such times and in such number of instalments (which need not be of equal amounts) as they consider appropriate; and in the exercise of their functions under this paragraph they may, in particular, make provisional payments pending the final calculation of the amount of loan for which the student is eligible.

(2) No instalment of a loan shall be paid in respect of the period of the academic year during which, in the opinion of the Scottish Ministers, the longest of any vacations is taken.

(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.

(4) Subject to regulation 6, no instalment shall be paid after an eligible student has withdrawn from, abandoned or been expelled from their course.

(5) No instalment shall be paid in respect of a period during any part of which an eligible student is absent from their course if attendance at the course is a requirement of it, unless in the opinion of the Scottish Ministers in all the circumstances it would be appropriate to pay all or part of the loan.

(6) In deciding whether it would be appropriate to pay all or part of the loan when an eligible student is absent from their course, the circumstances which the Scottish Ministers shall have

(a) S.S.I. 2007/153.

regard to include the reasons for the student's absence, the length of the absence and the financial hardship which not paying all or part of the instalment of loan would cause.

(7) An eligible student shall not be considered to be absent from their course if that student is unable to attend due to illness and their absence has not exceeded 60 days.

(8) If the payment of instalments has been suspended and before the end of the academic year the eligible student commences undertaking their course again the Scottish Ministers may pay further instalments but so that the amount lent in relation to that year does not exceed such amount as the Scottish Ministers in all the circumstances consider appropriate.

(9) Where the Scottish Ministers have paid any instalment of loan and the eligible student applies for an additional loan in respect of an academic year, the Scottish Ministers shall pay the first instalment as soon as is reasonably practicable after a satisfactory application has been received and any subsequent instalments with instalments already payable.

(10) Where the Scottish Ministers have paid an instalment of loan for which a student is eligible in respect of an academic year and they make a determination that the amount of loan for which the student is eligible is less than the amount previously determined, either by way of revision of a provisional determination or otherwise—

- (a) they shall subtract such amount as is necessary to ensure that the student does not borrow an amount greater than the amount which that student is eligible to borrow from any instalments of loan which remain to be paid;
- (b) if the amount to be subtracted is greater than the amount of loan remaining to be paid that amount shall be reduced to nil;
- (c) any remaining overpayment shall be recovered in accordance with regulation 13.

Overpayments

13.—(1) Any overpayment of a loan in respect of any academic year may be recovered by the Scottish Ministers if, in their opinion—

- (a) the overpayment is a result of a failure of the student to provide promptly information which might affect their eligibility for a loan or the amount of loan for which that student is eligible; or
- (b) any information which that student has provided is inaccurate in a material particular,

but otherwise it shall be treated as a loan properly made under these Regulations which shall be repayable in accordance with the Act and any regulations made under it.

(2) Where an overpayment of loan is treated, by virtue of paragraph (1), as a loan properly made, the Scottish Ministers may subtract the overpayment from the amount of loan for which the student is eligible in respect of any other academic year.

(3) Where an overpayment of loan is recoverable in accordance with paragraph (1) it shall be recovered in such one or more of the following ways as the Scottish Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from the amount of loan for which the student is eligible in respect of any other academic year;
- (b) where a student upon completion of their course immediately commences another course (disregarding any intervening vacation) by subtracting the overpayment from the amount of any loan for which that person is eligible in respect of any academic year in connection with the second course;
- (c) by taking such other action for the recovery of a payment made without statutory authority as is available to them.

PART V

INTEREST AND INSOLVENCY

Interest

14.—(1) Subject to paragraph (2), loans made in each 12 month period commencing on each 1st September shall bear interest at a rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980(a) equal to the percentage by which the retail prices all items index published by the Office for National Statistics for the month of March immediately preceding the commencement of that period has increased compared with that for the previous March.

(2) If the rate referred to in paragraph (1) exceeds the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974(b) loans shall bear interest at the rate so specified.

(3) Interest shall be calculated on the principal outstanding daily, and shall be added to the principal monthly.

(4) The index of prices that the Scottish Ministers shall have regard to in prescribing the rate of interest which loans shall bear shall be the retail prices all items index mentioned in paragraph (1).

Insolvency

15. Where after the date of sequestration of an eligible student's estate, that student receives, or is entitled to receive, sums by way of loan—

- (a) the sheriff shall not, in fixing an amount under section 32(2) of the Bankruptcy (Scotland) Act 1985(c) treat the sums as income of the eligible student;
- (b) for the purpose of section 32(6) of that Act the sums shall not be treated as estate vesting in, or requiring to be conveyed or delivered to, the eligible student's permanent trustee; and
- (c) any debt or liability to which the eligible student is, or may become, subject in respect of the sums shall not be treated as a debt or liability—
 - (i) for the purposes of the sequestration (or of any offer of composition to the permanent trustee); or
 - (ii) from which the eligible student is discharged on the expiry of a period after the date of sequestration, under or by virtue of section 54 or 75(4) of that Act (or on an order being made under paragraph 11 of Schedule 4 to that Act as respects them and the permanent trustee).

NICOL STEPHEN
A member of the Scottish Executive

St Andrew's House,
Edinburgh
6th March 2007

(a) S.I. 1980/51; amended by S.I. 1983/1562 and 1989/596.

(b) 1974 c.39.

(c) 1985 c.66; section 32 was amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 6, the Pensions Act 1995 (c.26), Schedule 3, paragraph 14 and prospectively by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 17, 18 and 19 and schedule 1.

SCHEDULE 1

Regulation 3(2)

ELIGIBLE STUDENTS

1. A person who—

- (a) is ordinarily resident in Scotland on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971^(a).

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;
 - (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the first day of the first academic year of the course.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iii) or (iv).

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^(b), 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 first day of the first academic year of the course; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the first day of the first academic year of the course.

(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

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

^(b) 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).

- 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;
- (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 first day of the first academic year of the course; and
 - (e) in the case where that persons's 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^(a) (or corresponding provisions under the EEA agreement or the Switzerland Agreement^(b)); 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) 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 first day of the first academic year of the course.
- 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 to remain accordingly;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted leave to enter or remain, and
 - (iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or

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

(b) Cm. 5639.

- (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 first day of the first academic year of the course.

7. A person who—

- (a) has been granted temporary protection, 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 first day of the first academic year of the course.

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 first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding that date; and
- (d) in the case where that person's 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 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 first day of the first academic year of the course;
- (c) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
- (d) in the case where that person's 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 4(1)(a)

DESIGNATED COURSES

1. A first degree course other than a course referred to in paragraph 4.
2. A course for the Diploma of Higher Education.
3. A course for the Higher National Diploma or Higher National Certificate of—
 - (a) the Business & Technician Education Council; or
 - (b) the Scottish Qualifications Authority.
4. A course for the initial training for teachers, including such a course leading to a first degree.
5. A course for the further training of teachers or youth and community workers.
6. A course in preparation for a professional examination of a standard higher than that of—
 - (a) examinations at advanced level for the General Certificate of Education or the examination at higher level for the Scottish Certificate of Education; or
 - (b) the examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3,

not being a course for entry to which a first degree (or equivalent qualification) is normally required.

7. A course providing education (whether or not in preparation for an examination) the standard of which is—
 - (a) higher than that of courses providing education in preparation for any of the examinations mentioned in paragraph (6)(a) or (b) above, but
 - (b) not higher than that of a first degree course,

and for entry to which a first degree (or equivalent qualification) is not normally required.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Education (Student Loans) (Scotland) Regulations 2000 (S.S.I. 2000/200) 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 provide definitions of “EEA state”, “employment” (including “employed”) and “parent” (including “child”). Regulation 8 allows the Scottish Ministers to impose a condition on a student to provide them with that student’s United Kingdom national insurance number and regulation 9 also sets out in more detail the information to be provided to the Scottish Ministers.

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.

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