

**2007 No. 503**

**EDUCATION**

**The Education (Amendments in respect of Graduate  
Endowment, Student Fees and Support) (Scotland)  
Regulations 2007**

*Made* - - - - *7th November 2007*

*Laid before the Scottish Parliament* *8th November 2007*

*Coming into force* - - *1st December 2007*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1 and 2 of the Education (Fees and Awards) Act 1983(a), sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(b), section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001(c) and all other powers enabling them to do so.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Education (Amendments in respect of Graduate Endowment, Student Fees and Support) (Scotland) Regulations 2007 and shall come into force on 1st December 2007.

(2) These Regulations extend to Scotland only.

**Amendment of the Education (Fees and Awards) (Scotland) Regulations 2007**

2.—(1) The Education (Fees and Awards) (Scotland) Regulations 2007(d) are amended as follows.

(2) In regulation 2(1) (interpretation), insert in the appropriate place—

““child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 of the Nationality, Immigration and Asylum Act 2002(e);”

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(a) 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(Scotland) Act 1992 (c.37), Schedule 9, paragraph 8; section 2(3)(a) and the word “other” in paragraph (b) were repealed by the Teaching and Higher Education Act 1998 (c.30), section 44(2) and Schedule 4.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).

(b) 1980 (c.44); section 49(2A) was inserted by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) (“the 1989 Act”), Schedule 10; 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), by the Income Tax (Earnings and Pension) Act 2003 (c.1), Schedule 6, paragraph 149 and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 34; section 74(1) was amended by the 1989 Act, 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).

(c) 2001 asp 6.

(d) S.S.I. 2007/152.

(e) 2002 c.41.

““Turkish worker” means a Turkish national who–

- (a) is ordinarily resident in Scotland; and
- (b) is, or has been, lawfully employed in the United Kingdom;”;

““young asylum seeker” means an unaccompanied asylum-seeking child”.

(3) In Schedule 1 (fees – excepted students)–

(a) in paragraph 4, after sub-paragraph (2) insert–

“(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”;

(b) after paragraph 7 insert–

“**7A.** A person shall be an excepted student if that person–

- (a) is the child of an asylum seeker or is a young asylum seeker;
- (b) is resident in Scotland on 1st August, 1st January, 1st April or 1st July closest to the beginning of the first term of the person’s course;
- (c) has been resident in Scotland throughout the 3 year period referred to in regulation 5(a);
- (d) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1st December 2006; and
- (e) is under 25 years old on 1st August, 1st January, 1st April or 1st July closest to the beginning of the first term of the person’s course.”; and

(c) after paragraph 14 insert–

“**14A.** A person shall be an excepted student if that person–

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.

(4) In Schedule 2 (post-graduate agricultural studentships – excepted candidates)–

(a) in paragraph 4–

- (i) omit sub-paragraph (1)(c); and
- (ii) after sub-paragraph (2) insert–

“(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”;

(b) after paragraph 10 insert–

“**10A.** A person shall be an excepted candidate if that person–

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.

(5) In Schedule 3 (fees awards – excepted candidates)–

- (a) in paragraph 3(3)(a) after “Switzerland” insert “and Turkey”; and
- (b) in paragraph 5(a) after “Switzerland” insert “or Turkey”.

### **Amendment of the Students' Allowances (Scotland) Regulations 2007**

- 3.—(1) The Students' Allowances (Scotland) Regulations 2007(a) are amended as follows.
- (2) In regulation 2(1) (interpretation), insert in the appropriate place—
- ““child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 of the Nationality, Immigration and Asylum Act 2002(b);”;
- ““Turkish worker” means a Turkish national who—
- (a) is ordinarily resident in Scotland; and
- (b) is, or has been, lawfully employed in the United Kingdom;”;
- ““young asylum seeker” means an unaccompanied asylum-seeking child”.
- (3) In regulation 4(2) (amount of allowances) for “paragraph 9” substitute “paragraphs 7A or 9”.
- (4) In Schedule 1 (persons eligible for allowances)—
- (a) in paragraph 4—
- (i) omit sub-paragraph (1)(c); and
- (ii) after sub-paragraph (2) insert—
- “(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”;
- (b) after paragraph 7 insert—
- “7A. A person who—
- (a) is the child of an asylum seeker or is a young asylum seeker;
- (b) is resident in Scotland on the relevant date;
- (c) has been resident in Scotland throughout the period of 3 years immediately preceding the relevant date;
- (d) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1st December 2006;
- (e) is under 25 years old on the relevant date; and
- (f) seeks an allowance in respect of a course of education at an establishment in Scotland.”; and
- (c) after paragraph 10 insert—
- “11. A person who—
- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.
- (5) In paragraph 2(1) of Schedule 2 (ordinary residence)—
- (a) for “9(b) and 10(b)” substitute “9(b), 10(b) and 11(c)”; and
- (b) after “EU overseas territories” insert “or Turkey”.

### **Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007**

- 4.—(1) The Education Maintenance Allowances (Scotland) Regulations 2007(c) are amended as follows.

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(a) S.S.I. 2007/153.  
(b) 2004 c.41.  
(c) S.S.I. 2007/156.

- (2) In regulation 2(1) (interpretation), insert in the appropriate place—
- ““Turkish worker” means a Turkish national who—
- (a) is ordinarily resident in Scotland; and
  - (b) is, or has been, lawfully employed in the United Kingdom”.
- (3) In Schedule 1 (persons eligible for education maintenance allowances)—
- (a) in paragraph 4—
    - (i) omit sub-paragraph (1)(c); and
    - (ii) after sub-paragraph (2) insert—
 

“(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”;
  - (b) after paragraph 10 insert—
 

“11. A person who—

    - (a) is the child of a Turkish worker;
    - (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
    - (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.
- (4) In paragraph 2(1) of Schedule 2 (ordinary residence)—
- (a) for “8(c) and 9(b)” substitute “8(c), 9(b) and 11(c)”;
  - (b) after “Switzerland” insert “or Turkey”.

#### **Amendment of the Graduate Endowment (Scotland) Regulations 2007**

**5.**—(1) The Graduate Endowment (Scotland) Regulations 2007(a) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “full-time course of higher education” for “fundable higher education, other than a course treated as not falling within section 5(3) of the Further and Higher Education (Scotland) Act 2005” substitute “higher education, other than a course treated as not falling within section 38 of the Further and Higher Education (Scotland) Act 1992(b)”.

(3) In regulation 5 (exempt courses)—

(a) in paragraph (1) for “section 5(3) of the Further and Higher Education (Scotland) Act 2005” substitute “section 38 of the Further and Higher Education (Scotland) Act 1992”; and

(b) in paragraph (2) for “section 5(3)” substitute “section 38”.

(4) In Schedule 3 (exempt courses) for “section 5(3) of the Further and Higher Education (Scotland) Act 2005” substitute “section 38 of the Further and Higher Education (Scotland) Act 1992”.

#### **Amendment of the Education Authority Bursaries (Scotland) Regulations 2007**

**6.**—(1) The Education Authority Bursaries (Scotland) Regulations 2007(c) are amended as follows.

(2) In regulation 2(1) (interpretation), insert in the appropriate place—

““Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in Scotland; and

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(a) S.S.I. 2007/155.

(b) 1992 c.37.

(c) S.S.I. 2007/149.

- (b) is, or has been, lawfully employed in the United Kingdom”.
- (3) In Schedule 1 (persons eligible for bursaries)–
  - (a) in paragraph 4, after sub-paragraph (2), insert–
    - “(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”; and
  - (b) after paragraph 11 insert–
    - “**12.** A person who–
      - (a) is the child of a Turkish worker;
      - (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
      - (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.
- (4) In paragraph 2(1) of Schedule 2 (ordinary residence)–
  - (a) for “9(b) and 10(b)” substitute “9(b), 10(b) and 12(c)”; and
  - (b) after “EU overseas territories” insert “or Turkey”.

**Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007**

7.—(1) The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(a) are amended as follows.

- (2) In regulation 2 (interpretation), insert in the appropriate place–
  - ““Turkish worker” means a Turkish national who–
    - (a) is ordinarily resident in Scotland; and
    - (b) is, or has been, lawfully employed in the United Kingdom”.
- (3) In Schedule 1 (persons eligible for allowances)–
  - (a) in paragraph 4–
    - (i) omit sub-paragraph (1)(c); and
    - (ii) after sub-paragraph (2), insert–
      - “(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”; and
  - (b) after paragraph 10 insert–
    - “**11.** A person who–
      - (a) is the child of a Turkish worker;
      - (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
      - (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.
- (4) In paragraph 2(1) of Schedule 2 (ordinary residence)–
  - (a) for “9(b) and 10(b)” substitute “9(b), 10(b) and 11(c)”; and
  - (b) after “EU overseas territories” insert “or Turkey”.

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(a) S.S.I. 2007/151.

### **Amendment of the Education (Student Loans) (Scotland) Regulations 2007**

**8.**—(1) The Education (Student Loans) (Scotland) Regulations 2007<sup>(a)</sup> are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1) insert in the appropriate place—

““Turkish worker” means a Turkish national who—

(a) is ordinarily resident in Scotland; and

(b) is, or has been, lawfully employed in the United Kingdom”; and

(b) in paragraph (4), for “8(c) and 9(b)” substitute “8(c), 9(b) and 10(c)”.

(3) In Schedule 1 (eligible students)—

(a) in paragraph 4—

(i) omit sub-paragraph (1)(c); and

(ii) after sub-paragraph (2), insert—

“(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”; and

(b) after paragraph 9 insert—

“**10.** A person who—

(a) is the child of a Turkish worker;

(b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and

(c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.

### **Amendment of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006**

**9.**—(1) The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006<sup>(b)</sup> are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1), insert in the appropriate place—

““Turkish worker” means a Turkish national who—

(a) is ordinarily resident in Scotland; and

(b) is, or has been, lawfully employed in the United Kingdom”; and

(b) in paragraph (4) for “8(c) and 9(b)” substitute “8(c), 9(b) and 10(c)”.

(3) In Schedule 1 (eligible students)—

(a) in paragraph 4—

(i) omit sub-paragraph (1)(c); and

(ii) after sub-paragraph (2), insert—

“(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).”; and

(b) after paragraph 9 insert—

“**10.** A person who—

(a) is the child of a Turkish worker;

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(a) S.S.I. 2007/154.

(b) S.S.I. 2006/333, as amended by S.S.I. 2007/158.

- (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.”.

St Andrew's House,  
Edinburgh  
7th November 2007

*FIONA HYSLOP*  
A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations amend the Education (Fees and Awards) (Scotland) Regulations 2007, the Students' Allowances (Scotland) Regulations 2007, the Education Maintenance Allowances (Scotland) Regulations 2007, the Graduate Endowment (Scotland) Regulations 2007, the Education Authority Bursaries (Scotland) Regulations 2007, the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, the Education (Student Loans) (Scotland) Regulations 2007 and the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006.

Amendments are made in respect of children of asylum seekers and young asylum seekers to allow them to be treated as excepted students in respect of fees in order that they may be charged the lower rate of fees rather than the rate set for overseas students. Amendments are also made to allow fee support to be received in respect of these persons. The amendments relate only to persons who were under 18 years old at the time application for asylum was made, which application must have been made prior to December 2006, and under 25 years old at the appropriate date relative to the beginning of the course.

Amendments are made to comply with article 9 of Decision No. 1/80 of the Association Council of 19th September 1980 on the development of the Association between the European Community and Turkey. The Association Council was created by the agreement establishing an association between the European Community and Turkey which was signed in Ankara on 12th September 1963 by the Republic of Turkey on the one hand and the Member States of the EEC and the Community on the other. The agreement was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23rd December 1963 (O.J. No. 217, 27.12.1964, p.3685).

Article 9 of Decision No. 1/80 of the Association Council of 19th September 1980 on the development of the Association provides: "Turkish children residing legally in a Member State of the Community with their parents who are or have been legally employed in that Member State, shall be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State. They may in that Member State be eligible to benefit from the advantages provided for under the national legislation in this area."

These Regulations also make amendments to remove, in relation to family members of persons who have utilised a right of residence in the EEA and Switzerland, the necessity to have settled status within the meaning of the Immigration Act 1971. The requirement for ordinary residence in either Scotland or the United Kingdom and Islands at the appropriate date relative to the beginning of the course is removed for those persons who have utilised a right of residence in the EEA and Switzerland and for their family members.

These Regulations also amend the Graduate Endowment (Scotland) Regulations 2007 to correct a drafting error relating to statutory cross-references to the Further and Higher Education (Scotland) Act 2005 which should have been to the Further and Higher Education (Scotland) Act 1992.

**£3.00**

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