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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 72**

**EDUCATION**

**The Education (Fees, Awards and Student Support)  
(Miscellaneous Amendments) (Scotland) Regulations 2012**

*Made* - - - - 29th February 2012  
*Laid before the Scottish  
Parliament* - - - - 2nd March 2012  
*Coming into force* - - 1st April 2012

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

**Citation and commencement**

1. These Regulations may be cited as the Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2012 and come into force on 1st April 2012.

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

2. The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006(3) are amended in accordance with regulations 3 to 7.

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) for the definition of “family member” substitute—

““family member” means—

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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), section 82(1) and 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) (“the Scotland Act”).
- (2) 1983 c.40. Section 1 was relevantly amended by the Education Reform Act 1988 (c.40), section 237(1) and Schedule 12, paragraph 91; by the Further and Higher Education Act 1992 (c.13), section 93(1) and Schedule 8, paragraph 19; and by the Further and Higher Education (Scotland) Act 1992 (c.37), section 62(2) and Schedule 9, paragraph 8. Section 2(3)(a) and the word “other” in section 2(3)(b) were repealed by the 1998 Act, section 44(2) and Schedule 4.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.
- (3) S.S.I. 2006/333, amended by S.S.I. 2007/158 and 503, 2009/188, 189 and 309, 2010/300 and S.I. 2010/1010.

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, an EEA self-employed person, 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; or
    - (ii) their direct descendants or those of their spouse or civil partner who are—
      - (aa) under the age of 21; or
      - (bb) their dependants or those of their spouse or civil partner; or
    - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
  - (b) in relation to a non UKEC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
    - (i) their spouse or civil partner; or
    - (ii) their direct descendants or those of their spouse or civil partner who are—
      - (aa) under the age of 21; or
      - (bb) their dependants or those of their spouse or civil partner; and
  - (c) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(c) of Directive 2004/38 or, for the purposes of paragraph 4 of Schedule 1, a United Kingdom national—
    - (i) their spouse or civil partner; or
    - (ii) their direct descendants or those of their spouse or civil partner who are—
      - (aa) under the age of 21; or
      - (bb) their dependants or those of their spouse or civil partner; or
    - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;” and
- (b) for the definition of “the Islands” substitute—  
““Islands” means the Channel Islands and the Isle of Man;”.
- (3) In paragraph (3) for “8(b)” substitute “8(1)(b)”.
- (4) In paragraph (4) for “8(c)” substitute “8(1)(c)”.
- (5) In paragraph (7) omit sub-paragraph (a).
- 4.—(1)** Regulation 3 (eligible students) is amended as follows.
- (2) In paragraph (3)—
- (a) in sub-paragraph (b) before “the” insert “except in the case of a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree;”, and
  - (b) in sub-paragraph (c) after “Education” insert “or a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree,”.
- (3) After paragraph (5) insert—
- “(6) For the purposes of these Regulations, and subject to paragraph (7), in assessing a person’s eligibility under Schedule 1 for a loan in respect of a course, that course will be deemed to have started on the date that the first constituent part of any programme of education which contributes to the final award for that course commenced.
- (7) In assessing a person’s eligibility under Schedule 1 for a loan in respect of a course—

(a) a programme of education leading to—  
    (i) a Degree;  
    (ii) a Higher National Diploma; or  
    (iii) a Higher National Certificate; and  
(b) such other programmes of education as the Scottish Ministers may determine,  
are to be treated as separate and distinct courses.”.

5. In paragraph (1)(b) of regulation 4 (designated courses) before “a” insert “except in the case of a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree,”.

6.—(1) Schedule 1 (eligible students) is amended as follows.

(2) In paragraph 2(1)(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 4—

(a) in sub-paragraph (1)—

(i) in paragraph (a) after “1971” insert “on the first day of the first academic year of the course”; and

(ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and

(b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.

(4) For paragraph 8 substitute—

“8.—(1) A person who—

(a) is, on the first day of the first academic year of the course, a non UK EC national or the family member 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 the first day of the first academic year of the course; 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).

(2) Where a state accedes to the EU after the first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EC national on the first day of the first academic year of the course is treated as being satisfied.”.

(5) After paragraph 10 insert—

“11. A person to whom, or in respect of whom, a loan has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking a loan, provided that the person is continuing to undertake the same course.”.

7. After paragraph 7 of Schedule 2 (designated courses) insert—

“8. A vocational course leading to a Postgraduate Diploma.

9. A vocational course leading to a Postgraduate masters degree.”.

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

8. The Education Authority Bursaries (Scotland) Regulations 2007(4) are amended in accordance with regulations 9 to 11.

9. In regulation 2(1) (interpretation)—

- (a) in the definition of “EU overseas territories” after “Greenland” omit “Henderson”;
- (b) omit the definition of “EU overseas territories national”; and
- (c) for the definition of “family member” substitute—

““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, 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; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
- (b) in relation to an EC national or 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; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; and
- (c) in relation to an EC national or a non UK EC national who is self-sufficient within the meaning of Article 7(1)(c) of Directive 2004/38 or, for the purposes of paragraph 4 of Schedule 1, a United Kingdom national—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

10.—(1) Schedule 1 (persons eligible for bursaries) is amended as follows.

(2) In paragraph 2(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 4—

(a) in sub-paragraph (1)—

- (i) in paragraph (a) after “1971” insert “on the relevant date”; and

- (ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and
  - (b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.
- (4) For paragraph 8 substitute—
- “8.—(1) A person who—
- (a) is, on the relevant date, a non UK EC national or the family member of such a national;
  - (b) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which that person seeks a bursary;
  - (c) has been ordinarily resident in the British 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).
- (2) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EC national on the relevant date is treated as being satisfied.”.
- (5) For paragraph 9 substitute—
- “9.—(1) A person who—
- (a) is, on the relevant date, an EC national or a family member of such national;
  - (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and
  - (c) seeks a bursary in respect of a course of study at an establishment in the area of the education authority.
- (2) Sub-paragraph (1)(b) does not apply to a family member of an EC national where that EC national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.
- (3) For the purposes of this paragraph—
- (a) an EC national does not include a United Kingdom national who has not utilised a right of residence; and
  - (b) a United Kingdom national has utilised a right of residence if that person 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.
- (4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EC national on the relevant date is treated as being satisfied.”.
- (6) In paragraph 12—

- (a) in sub-paragraph (b) for “first day of the first academic year of the course” substitute “qualifying day”; and
- (b) in sub-paragraph (c) for “first day of the first academic year of the course” substitute “relevant date”.

**11.**—(1) Schedule 2 (ordinary residence) is amended as follows.

(2) In paragraph 1(1)—

- (a) for “8(b)” substitute “8(1)(b)”; and
- (b) for “for the time being” substitute “temporarily”.

(3) In paragraph 2—

- (a) in sub-paragraph (1) for “8(c)” substitute “8(1)(c)”; and
- (b) in sub-paragraph (2) omit paragraph (a);
- (c) in sub-paragraph (3) omit “, unless that person is treated as ordinarily resident by virtue of sub-paragraph (5)”; and
- (d) in sub-paragraph (5) for “for the time being” substitute “temporarily”.

(4) In paragraph 3—

- (a) at the end of sub-paragraph (1)(c) omit “or” and insert—
  - “(ca) had the care of a person under the age of 18 years who was wholly or mainly financially dependent on them; or”; and
- (b) in sub-paragraph (2)—
  - (i) at the end of paragraph (d) insert “or”;
  - (ii) in paragraph (e) for “a Scottish Studentship” substitute “an advance postgraduate award”; and
  - (iii) after paragraph (e) omit the word “or” to the end.

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

**12.** The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(5) are amended in accordance with regulations 13 to 17.

**13.** In regulation 2 (interpretation)—

- (a) in the definition of “EU overseas territories” after “Greenland,” omit “Henderson”;
- (b) omit the definition of “EU overseas territories national”;
- (c) for the definition of “family member” substitute—
  - ““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, 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; or
    - (ii) their direct descendants or those of their spouse or civil partner who are—
      - (aa) under the age of 21; or
      - (bb) their dependants or those of their spouse or civil partner; or

- (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
    - (b) in relation to an EC national or 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; or
      - (ii) their direct descendants or those of their spouse or civil partner who are—
        - (aa) under the age of 21; or
        - (bb) their dependants or those of their spouse or civil partner; and
    - (c) in relation to an EC national or a non UK EC national who is self-sufficient within the meaning of Article 7(1)(c) of Directive 2004/38 or, for the purposes of paragraph 4 of Schedule 1, a United Kingdom national—
      - (i) their spouse or civil partner; or
      - (ii) their direct descendants or those of their spouse or civil partner who are—
        - (aa) under the age of 21; or
        - (bb) their dependants or those of their spouse or civil partner; or
      - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”;
  - (d) for the definition of “Swiss frontier worker” substitute—
    - ““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 the United Kingdom; 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;”.
14. In regulation 4(3) (amount of allowances) for “shall” substitute “may”.
15. In regulation 5(1) (conditions and requirements of allowances)—
- (a) at the end of sub-paragraph (a) omit “and”; and
  - (b) after sub-paragraph (b) insert—
    - “(c) that application shall include the agreement of the applicant that 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) may be recovered by the Scottish Ministers in one or more of the ways specified in sub-paragraph (d); and
    - (d) the Scottish Ministers may recover 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) in one or more of the following ways as the Scottish Ministers consider appropriate in all the circumstances—
      - (i) by subtracting the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 4(4) from the amount of any other allowance payable under these Regulations or the Students’ Allowances (Scotland) Regulations 2007(6) for which the student is eligible in respect of any other academic year;

- (ii) by taking such other action for the recovery of the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 4(4) as is available to them.”.

**16.—**(1) Schedule 1 (persons eligible for allowances) is amended as follows.

- (2) In paragraph 1(a) after “United Kingdom” insert “and Islands”.
- (3) In paragraph 2(1)(a)(iv) for “worker” substitute “employed person”.
- (4) In paragraph 4—
- (a) in sub-paragraph (1)—
- (i) in paragraph (a) after “1971” insert “on the relevant date”; and
- (ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and
- (b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.
- (5) For paragraph 8 substitute—

**“8.—**(1) A person who—

- (a) is, on the relevant date, a non UK EC national or the family member of such a national;
- (b) is ordinarily resident in the United Kingdom and Islands 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;
- (d) seeks an allowance in respect of a course of education at an establishment in Scotland; and
- (e) 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).

(2) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EC national on the relevant date is treated as being satisfied.”.

(6) For paragraph 9 substitute—

**“9.—**(1) A person who—

- (a) is, on the relevant date, an EC national or a family member of such national;
- (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and 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.

(2) Sub-paragraph (1)(b) does not apply to a family member of an EC national where that EC national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.

(3) For the purposes of this paragraph—

- (a) an EC national does not include a United Kingdom national who has not utilised a right of residence; and
- (b) a United Kingdom national has utilised a right of residence if that person 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.

(4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EC national on the relevant date is treated as being satisfied.”

(7) In paragraph 11(b) and (c) for “first day of the first academic year of the course” substitute “relevant date”.

(8) After paragraph 11 insert—

“12.—(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance, provided that the person is continuing to undertake the same course of education.

(2) Where sub-paragraph (1) applies to a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance where that person qualified for an allowance only by virtue of paragraph 9, an allowance payable to, or in respect of, the person may include sums only in respect of tuition and other fees payable in respect of that person.”

17.—(1) Schedule 2 (ordinary residence) is amended as follows.

(2) In paragraph 1(1)—

- (a) for “8(b)” substitute “8(1)(b)”; and
- (b) for “for the time being” substitute “temporarily”.

(3) In paragraph 2—

- (a) in sub-paragraph (1) for “8(c)” substitute “8(1)(c)”;
- (b) in sub-paragraph (2) omit paragraph (a);
- (c) in sub-paragraph (3) omit “, unless that person is treated as ordinarily resident by virtue of sub-paragraph (5)”; and
- (d) in sub-paragraph (5) for “for the time being” substitute “temporarily”.

(4) In paragraph 3—

(a) at the end of sub-paragraph (1)(c) omit “or” and insert—

“(ca) had the care of a person under the age of 18 years who was wholly or mainly financially dependent on them; or”; and

(b) in sub-paragraph (2)—

- (i) at the end of paragraph (d) insert “or”;
- (ii) in paragraph (e) for “a Scottish Studentship” substitute “an advance postgraduate award”; and
- (iii) after paragraph (e) omit from the word “or” to the end.

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

18. The Education (Fees and Awards) (Scotland) Regulations 2007(7) are amended in accordance with regulations 19 to 23.

19.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “British overseas territories” after “Gibraltar,” insert “Henderson,”;
- (b) in sub-paragraph (a) of the definition of “EEA frontier self-employed person” for Scotland” substitute “the United Kingdom”;
- (c) in sub-paragraph (a) of the definition of “EEA frontier worker” for “Scotland” substitute “the United Kingdom”;
- (d) in the definition of “EU overseas territories” after “Greenland” omit “Henderson”;
- (e) omit the definition of “EU overseas territories national”;
- (f) for the definition of “family member” substitute—

““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, 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; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
- (b) in relation to an EC national or 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; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; and
- (c) in relation to an EC national or a non UK EC national who is self-sufficient within the meaning of Article 7(1)(c) of Directive 2004/38 or, for the purposes of paragraph 4 of Schedule 1, a United Kingdom national—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”;
- (g) for the definition of “the Islands” substitute—

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

(h) for the definition of “Swiss frontier worker” substitute—

““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 the United Kingdom; 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;”;

(i) in the definition of “Swiss frontier self-employed person” for “Scotland” substitute “the United Kingdom”.

(3) After paragraph (4) insert—

“(5) For the purposes of these Regulations, and subject to paragraph (6), in assessing whether a person has a relevant connection with the United Kingdom and Islands or is an excepted student for the charging of relevant fees, a course is deemed to have started on the date that the first constituent part of any programme of education which contributes to the final award for that course commenced.

(6) In assessing whether a person has a relevant connection with the United Kingdom and Islands or is an excepted student for the charging of relevant fees—

(a) a programme of education leading to—

(i) a Degree;

(ii) a Higher National Diploma; or

(iii) a Higher National Certificate; and

(b) such other programmes of education as the Scottish Ministers may determine,

are to be treated as separate and distinct courses.”.

20. After regulation 7 (charging of higher relevant fees) insert—

#### **“Application of Schedule 1A**

7A. Schedule 1A has effect as regards determining whether a person is to be treated, for the purposes of regulation 5 or Schedule 1, as being, or having been, ordinarily resident in a place at, or for, a particular time.”.

21. Part III (post-graduate agricultural studentships) and Schedules 2 (post-graduate agricultural studentships - excepted candidates) and 3 (fees awards – excepted candidates) are revoked.

22.—(1) Schedule 1 (fees – excepted students) is amended as follows.

(2) In paragraph 2(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 4—

(a) in sub-paragraph (1)—

(i) in paragraph (a) after “1971” insert “on the date referred to in regulation 5(a)”; and

(ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and

(b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.

(4) For paragraph 8 substitute—

“**8.**—(1) A person shall be an excepted student if that person—

- (a) is, on the date referred to in regulation 5(a), a non UK EC national or the family member of such a national;
- (b) is ordinarily resident in Scotland on the date referred to in regulation 5(a);
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the date referred to in regulation 5(a); 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).

(2) Where a state accedes to the EU after the date referred to in regulation 5(a) and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EC national on the date referred to in regulation 5(a) is treated as being satisfied.”

(5) For paragraph 9 substitute—

“**9.**—(1) A person shall be an excepted student if that person—

- (a) is, on the date referred to in regulation 5(a), an EC national or a family member of such national;
- (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the date referred to in regulation 5(a).

(2) Sub-paragraph (1)(b) does not apply to a family member of an EC national where that EC national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the date referred to in regulation 5(a).

(3) For the purposes of this paragraph—

- (a) an EC national does not include a United Kingdom national who has not utilised a right of residence; and
- (b) a United Kingdom national has utilised a right of residence if that person 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.

(4) Where a state accedes to the EU after the date referred to in regulation 5(a) and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EC national on the date referred to in regulation 5(a) is treated as being satisfied.”

(6) Omit paragraphs 11 and 12.

(7) In paragraph 14A(b) and (c) for “first day of the first academic year of the course” substitute “date referred to in regulation 5(a)”.

(8) After paragraph 14A insert—

“**14B.** A person shall be an excepted student if that person was an excepted student for the charging of relevant fees within the meaning of these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is to be charged relevant fees, provided that the person is continuing to undertake the same course.”

**23.** After Schedule 1 insert—

“SCHEDULE 1A

Regulation 7A

ORDINARY RESIDENCE

1.—(1) For the purposes of regulation 5(d), a person is to be treated as being ordinarily resident in the United Kingdom on the date referred to in regulation 5(a) if 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 temporarily—
  - (i) employed outside the United Kingdom; or
  - (ii) attending a course of study or undertaking postgraduate research outside the United Kingdom.

(2) For the purposes of paragraph 8(1)(b) of Schedule 1, a person is to be treated as being ordinarily resident in Scotland on the date referred to in regulation 5(a) if 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 temporarily—
  - (i) employed outside Scotland; or
  - (ii) attending a course of study or undertaking postgraduate research outside Scotland.

2.—(1) Sub-paragraphs (2) to (4) apply in determining, for the purposes of regulation 5(a) and paragraphs 2(b), 3(c), 4(1)(c), 8(1)(c), 9(1)(b), 10(b) and 14A(c) 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”) in the United Kingdom and Islands, the European Economic Area, Switzerland, the EU overseas territories or Turkey (in this paragraph, “the relevant area”).

(2) A person is not to be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 9(1)(b) of Schedule 1 if that person was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person is to be treated as having been ordinarily resident in the relevant area for the specified period if that person was born and has spent the greater part of their life in the relevant area and—

- (a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that person is not an independent student; or
- (b) that person has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of regulation 5 or paragraph 9 of Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(4) A person is to be treated as having been ordinarily resident in the relevant area for the specified period if that 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 either of their parents; or

- (b) in the case of a dependent direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner,  
was temporarily—
- (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(3)(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;
- (d) had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them; or
- (e) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A person is to 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; or
- (e) held an advance postgraduate or other comparable award.”.

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

**24.** The Students’ Allowances (Scotland) Regulations 2007<sup>(8)</sup> are amended in accordance with regulations 25 to 30.

**25.—(1)** Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “EU overseas territories” after “Greenland” omit “Henderson”;
- (b) omit the definition of “EU overseas territories national”; and
- (c) for the definition of “family member” substitute—

““family member” means—

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<sup>(8)</sup> S.S.I. 2007/153, amended by S.S.I. 2007/503, 2008/206 and 2009/188 and 309.

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, an EEA self-employed person, 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; or
    - (ii) their direct descendants or those of their spouse or civil partner who are—
      - (aa) under the age of 21; or
      - (bb) their dependants or those of their spouse or civil partner; or
    - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
  - (b) in relation to an EC national or 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; or
    - (ii) their direct descendants or those of their spouse or civil partner who are—
      - (aa) under the age of 21; or
      - (bb) their dependants or those of their spouse or civil partner; and
  - (c) in relation to an EC national or a non UK EC national who is self-sufficient within the meaning of Article 7(1)(c) of Directive 2004/38 or, for the purposes of paragraph 4 of Schedule 1, a United Kingdom national—
    - (i) their spouse or civil partner; or
    - (ii) their direct descendants or those of their spouse or civil partner who are—
      - (aa) under the age of 21; or
      - (bb) their dependants or those of their spouse or civil partner; or
    - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.
- (3) After paragraph (2) insert—
- “(3) For the purposes of paragraph (1)(a) of Schedule 1 a person who is ordinarily resident in Scotland as a result of having moved from the Islands for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the Islands.
- (4) For the purposes of paragraph (1)(a) of Schedule 1 a person who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the part of the United Kingdom from where they moved.”.

**26.** After regulation 3(2) (persons eligible for allowances) insert—

“(3) For the purposes of these Regulations, and subject to paragraph (4), in assessing a person’s eligibility under Schedule 1 for an allowance in respect of a course of education, that course of education will be deemed to have started on the date that the first constituent part of any programme of education which contributes to the final award for that course of education commenced.

(4) In assessing a person’s eligibility under Schedule 1 for an allowance in respect of a course of education—

- (a) a programme of education leading to—
  - (i) a Degree;
  - (ii) a Higher National Diploma; or

- (iii) a Higher National Certificate; and
  - (b) such other programmes of education as the Scottish Ministers may determine, are to be treated as separate and distinct courses of education.”.
- 27.** In regulation 4(3) (amount of allowances) for “shall” substitute “may”.
- 28.** In regulation 5(1) (conditions and requirements of allowances)—
- (a) at the end of sub-paragraph (a) omit “and”; and
  - (b) after sub-paragraph (b) insert—
    - “(c) that application shall include acceptance by the applicant that 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) may be recovered by the Scottish Ministers in one or more of the ways specified in sub-paragraph (d); and
    - (d) the Scottish Ministers may recover 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) in one or more of the following ways as the Scottish Ministers consider appropriate in all the circumstances—
      - (i) by subtracting the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 4(4) from the amount of any other allowance payable under these Regulations or the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007<sup>(9)</sup> for which the student is eligible in respect of any other academic year;
      - (ii) by taking such other action for the recovery of the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 4(4) as is available to them.”.
- 29.—**(1) Schedule 1 (persons eligible for allowances) is amended as follows.
- (2) In paragraph 2(1)(a)(iv) for “worker” substitute “employed person”.
  - (3) In paragraph 4—
    - (a) in sub-paragraph (1)—
      - (i) in paragraph (a) after “1971” insert “on the relevant date”; and
      - (ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and
    - (b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.
  - (4) For paragraph 8 substitute—
    - “**8.—**(1) A person who—
      - (a) is, on the relevant date, a non UK EC national or the family member 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

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(9) S.S.I. 2007/151, amended by S.S.I. 2007/503, 2008/206 and 2009/188 and 309.

(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).

(2) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EC national on the relevant date is treated as being satisfied.”.

(5) For paragraph 9 substitute—

“9.—(1) A person who—

- (a) is, on the relevant date, an EC national or a family member of such national;
- (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and 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.

(2) Sub-paragraph (1)(b) does not apply to a family member of an EC national where that EC national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.

(3) For the purposes of this paragraph—

- (a) an EC national does not include a United Kingdom national who has not utilised a right of residence; and
- (b) a United Kingdom national has utilised a right of residence if that person 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.

(4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EC national on the relevant date is treated as being satisfied.”.

(6) In paragraph 11(b) and (c) for “first day of the first academic year of the course” substitute “relevant date”.

(7) After paragraph 11 insert—

“12.—(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance, provided the person is continuing to undertake the same course of education.

(2) Where sub-paragraph (1) applies to a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance where that person qualified only by virtue of paragraph 7A or paragraph 9, an allowance payable to, or in respect of, the person may include sums only in respect of tuition and other fees payable in respect of that person.

(3) Sub paragraph (1) does not apply where it would result in payment of an allowance to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 7.”.

- 30.**—(1) Schedule 2 (ordinary residence) is amended as follows—
- (2) In paragraph 1(1)—
- (a) for “8(b)” substitute “8(1)(b)”; and
  - (b) for “for the time being” substitute “temporarily”.
- (3) In paragraph 2—
- (a) in sub-paragraph (1)—
    - (i) for “8(c)” substitute “8(1)(c)”; and
    - (ii) after the words “(in this paragraph, “the specified period”)” omit “specified period”;
  - (b) in sub-paragraph (2) omit paragraph (a);
  - (c) in sub-paragraph (3) omit “, unless that person is treated as ordinarily resident by virtue of sub-paragraph (5)”; and
  - (d) in sub-paragraph (5) for “for the time being” substitute “temporarily”.
- (4) In paragraph 3—
- (a) at the end of sub-paragraph (1)(c) omit “or” and insert—
 

“(ca) had the care of a person under the age of 18 years who was wholly or mainly financially dependent on them; or”; and
  - (b) in sub-paragraph (2)—
    - (i) at the end of paragraph (d) insert “or”;
    - (ii) in paragraph (e) for “a Scottish Studentship” substitute “an advance postgraduate award”; and
    - (iii) after paragraph (e) omit from the word “or” to the end.

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

**31.** The Education (Student Loans) (Scotland) Regulations 2007(**10**) are amended in accordance with regulations 32 to 36.

- 32.**—(1) Regulation 2 (interpretation) is amended as follows.
- (2) In paragraph (1)—
- (a) after the definition of “employment” insert—
 

““EU national” means a person who is a national of any member State;”;
  - (b) for the definition of “family member” substitute—
 

““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, 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; or
      - (ii) their direct descendants or those of their spouse or civil partner who are—
        - (aa) under the age of 21; or
        - (bb) their dependants or those of their spouse or civil partner; or

- (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
    - (b) in relation to an EU national or a non UK EU national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
      - (i) their spouse or civil partner; or
      - (ii) their direct descendants or those of their spouse or civil partner who are—
        - (aa) under the age of 21; or
        - (bb) their dependants or those of their spouse or civil partner; and
    - (c) in relation to an EU national or a non UK EU national who is self-sufficient within the meaning of Article 7(1)(c) of Directive 2004/38 or, for the purposes of paragraph 4 of Schedule 1, a United Kingdom national—
      - (i) their spouse or civil partner; or
      - (ii) their direct descendants or those of their spouse or civil partner who are—
        - (aa) under the age of 21; or
        - (bb) their dependants or those of their spouse or civil partner; or
      - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”;
  - (c) for the definition of “loan” substitute—
    - ““loan” means—
      - (a) in relation to a student undertaking a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree, a loan towards that student’s tuition fees under the Act and any regulations made under the Act, including the interest accrued on the loan and any penalties or charges made in connection with it; and
      - (b) in relation to any other student, a loan towards that student’s maintenance under the Act and any regulations made under the Act, including the interest accrued on the loan and any penalties or charges made in connection with it;”;
  - (d) for the definition of “non UK EC national” substitute—
    - ““non UK EU national” means a person who is a national of any member State other than the United Kingdom;”;
  - (e) for the definition of “Swiss frontier worker” substitute—
    - ““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;”;
- (3) In paragraph (3) for “8(b)” substitute “8(1)(b)”.
- (4) In paragraph (4) for “8(c)” substitute “8(1)(c), 8A(1)(b)”.
- (5) In paragraph (7) omit sub-paragraph (a).
- 33.**—(1) Regulation 3 (eligible students) is amended as follows.
- (2) After paragraph (2) insert—

“(2A) Paragraph (2)(b) does not apply to a student undertaking a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree.”; and

(3) After paragraph (5) insert—

“(6) For the purposes of these Regulations, and subject to paragraph (7), in assessing a person’s eligibility under Schedule 1 for a loan in respect of a course, that course will be deemed to have started on the date that the first constituent part of any programme which contributes to the final award for that course commenced.

(7) In assessing a person’s eligibility under Schedule 1 for a loan in respect of a course—

(a) a programme of education leading to—

- (i) a Degree;
- (ii) a Higher National Diploma; or
- (iii) a Higher National Certificate; and

(b) such other programmes of education as the Scottish Ministers may determine,

are to be treated as separate and distinct courses of education.”.

**34.** In regulation 4(1)(b) (designated courses), after “not” insert “, except in the case of a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree.”.

**35.**—(1) Schedule 1 (eligible students) is amended as follows.

(2) In paragraph 2(1)(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 4—

(a) in sub-paragraph (1)—

- (i) in sub-paragraph (a) after “1971” insert “on the first day of the first academic year of the course”; and
- (ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and

(b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.

(4) For paragraph 8 substitute—

“**8.**—(1) A person who—

- (a) is, on the first day of the first academic year of the course, a non UK EU national or the family member 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 the first day of the first academic year of the course; 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).

(2) Where a state accedes to the EU after the first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) to

be a non UK EU national on the first day of the first academic year of the course is treated as being satisfied.”.

(5) After paragraph 8 insert—

“**8A.**—(1) A person who—

- (a) is, on the first day of the first academic year of the course, an EU national or a family member of such national;
- (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
- (c) seeks a loan in respect of a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree at an establishment in Scotland.

(2) Sub-paragraph (1)(b) does not apply to a family member of an EU national where that EU national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the first day of the first academic year of the course.

(3) For the purposes of this paragraph—

- (a) an EU national does not include a United Kingdom national who has not utilised a right of residence; and
- (b) a United Kingdom national has utilised a right of residence if that person 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.

(4) Where a state accedes to the EU after the first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.”.

(6) After paragraph 10 insert—

“**11.**—(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, a loan has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking a loan, provided the person is continuing to undertake the same course.

(2) Where sub-paragraph (1) applies to a person to whom, or in respect of whom, a loan has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking a loan where that person qualified only by virtue of paragraph 8A, a loan payable to, or in respect of, the person may include sums only in respect of tuition fees payable in respect of that person.”.

**36.** After paragraph 7 of Schedule 2 (designated courses) insert—

“**8.** A vocational course leading to a Postgraduate Diploma.

**9.** A vocational course leading to a Postgraduate masters degree.”.

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

**37.** The Education Maintenance Allowances (Scotland) Regulations 2007(11) are amended in accordance with regulations 38 to 40.

**38.** For the definition of “family member” in regulation 2(1) (interpretation) substitute—

““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, 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; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
- (b) 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; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; and
- (c) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(c) of Directive 2004/38 or, for the purposes of paragraph 4 of Schedule 1, a United Kingdom national—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

**39.—**(1) Schedule 1 (persons eligible for education maintenance allowances) is amended as follows.

(2) In paragraph 2(1)(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 4—

- (a) in sub-paragraph (1)—
  - (i) in paragraph (a) after “1971” insert “on the qualifying date”; and
  - (ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and
- (b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.

(4) For paragraph 8 substitute—

“8.—(1) A person who—

- (a) is, on the qualifying date, a non UK EC national or the family member of such a national;
- (b) is ordinarily resident in Scotland on the qualifying date;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the qualifying 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).

(2) Where a state accedes to the EU after the qualifying date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EU national on the qualifying date is treated as being satisfied.”

(5) In paragraph 11(b) and (c) for “first day of the first academic year of the course” substitute “qualifying date”.

**40.**—(1) Schedule 2 (ordinary residence) is amended as follows.

(2) In paragraph 1(1)—

- (a) for “8(b)” substitute “8(1)(b)”; and
- (b) for “for the time being” substitute “temporarily”.

(3) In paragraph 2—

- (a) in sub-paragraph (1) for “8(c)” substitute “8(1)(c)”; and
- (b) in sub-paragraph (2) omit paragraph (a);
- (c) in sub-paragraph (3) omit “, unless that person is treated as ordinarily resident by virtue of sub-paragraph (5)”; and
- (d) in sub-paragraph (5) for “for the time being” substitute “temporarily”.

### **Amendment of the Education (Fees) (Scotland) Regulations 2011**

**41.** The Education (Fees) (Scotland) Regulations 2011(12) are amended in accordance with regulations 42 to 44.

**42.** In regulation 2(1) (interpretation)—

- (a) in the definition of “family member”—
  - (i) in sub-paragraph (b) after “EU national” insert “or a non UK EU national”; and
  - (ii) in sub-paragraph (c) after “EU national” insert “or a non UK EU national”; and
- (b) for the definition of “Swiss frontier worker” substitute—

““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 the United Kingdom; 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;”.

**43.**—(1) Schedule 1 (fees – excepted students) is amended as follows.

(2) In paragraph 1(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 3—

(a) in sub-paragraph (1)(b)—

(i) omit “the Scottish Ministers are satisfied that”; and

(ii) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and

(b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.

**44.** In paragraph 2(1) of Schedule 2 (ordinary residence) after “specified in” insert “that regulation or”.

St Andrew’s House,  
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29th February 2012

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## EXPLANATORY NOTE

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

These Regulations amend the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the SLTF Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing Regulations”), the Education (Fees and Awards) (Scotland) Regulations 2007 (“the 2007 Fees Regulations”), the Students’ Allowances (Scotland) Regulations 2007 (“the Allowances Regulations”), the Education (Student Loans) (Scotland) Regulations 2007 (“the Loans Regulations”), the Education Maintenance Allowances (Scotland) Regulations 2007 (“the EMA Regulations”) and the Education (Fees) (Scotland) Regulations 2011 (“the 2011 Fees Regulations”).

Regulations 3, 9, 13, 19, 25, 32, 38 and 42 amend regulation 2 (interpretation) of all of the amended instruments to make changes to some definitions. Regulation 19 also inserts new regulation 2(5) and (6) into the 2007 Fees Regulations to provide an aid to the interpretation of Schedule 1 so far as the various paragraphs of Schedule 1 require an assessment to be made of a student’s position in relation to a particular ‘course’. Similar amendments are made to the SLTF Regulations (see regulation 4), the Allowances Regulations (see regulation 26) and the Loans Regulations (see regulation 33). Regulation 25 also adds new regulation 2(3) and (4) into the Allowances Regulations as further provision which clarifies the interpretation of paragraph 1(a) of Schedule 1 to those Regulations.

Regulations 4, 5 and 7 amend regulations 3 (eligible students) and 4 (designated courses) of, and Schedule 2 to, the SLTF Regulations. Regulations 33, 34 and 36 amend regulations 3 (eligible students) and 4 (designated courses) of, and Schedule 2 to, the Loans Regulations (see also regulation 32(2)(c) which amends the definition of “loan” in the Loans Regulations and regulation 35(5) which inserts a new paragraph 8A into Schedule 1 to the Loans Regulations). These amendments facilitate the payment of loans in respect of tuition fees to certain postgraduate students.

Regulations 6, 10, 16, 22, 29, 35, 39 and 43 amend Schedule 1 to each of the instruments amended (in order to effect minor changes to the various categories of ‘eligible student’ - or, in the case of the 2007 Fees Regulations, ‘excepted student’ – for the purposes of those instruments).

Regulations 11, 17, 30, 40 and 44 make amendments to Schedule 2 (ordinary residence) to the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the EMA Regulations and the 2011 Fees Regulations respectively. Similar provisions are found in regulation 2 (interpretation) of each of the SLTF Regulations and the Loans Regulations and amendments are also made to those provisions (see regulation 3 in relation to the SLTF Regulations and regulation 32 in relation to the Loans Regulations). Regulation 23 inserts a new Schedule 1A (ordinary residence) into the 2007 Fees Regulations. Schedule 1A replaces and supplements the ‘ordinary residence’ provisions which were contained in paragraphs 11 and 12 of Schedule 1 to the 2007 Fees Regulations and which have now been omitted (see regulation 22).

Regulations 14 and 27 amend regulation 4(3) of the Nursing Regulations and the Allowances Regulations respectively to clarify that the Scottish Ministers may, though are not obliged to, ‘means test’ the amount of any allowance payable in terms of the Regulations.

Regulations 15 and 28 amend regulation 5(1) of the Nursing Regulations and the Allowances Regulations respectively to add additional conditions of payment of every allowance for each academic year in terms of those Regulations, being conditions in relation to recovery of any amount

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

of which the Scottish Ministers request repayment following a revisal in terms of regulation 4(4) of those two sets of Regulations.

Regulation 21 revokes Part III (post-graduate agricultural studentships) of, and Schedules 2 (post-graduate agricultural studentships – excepted candidates) and 3 (fees awards – excepted candidates) to, the 2007 Fees Regulations.