

2013 No. 80

EDUCATION

**The Education (Fees, Awards and Student Support)
(Miscellaneous Amendments) (Scotland) Regulations 2013**

Made - - - - - *26th February 2013*

Laid before the Scottish Parliament *28th February 2013*

Coming into force in accordance with regulation 1(2) and (3)

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

Citation and commencement

1.—(1) These Regulations may be cited as the Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2013.

(2) These Regulations, with the exception of regulations 17 to 19 and 31 to 33, come into force on 1st April 2013.

(3) Regulations 17 to 19 and 31 to 33 come into force on 1st August 2013.

Amendment of the Education (Access Funds) (Scotland) Regulations 1990

2. The Education (Access Funds) (Scotland) Regulations 1990(c) are amended in accordance with regulation 3 below.

3. At the end of regulation 2(e) insert—

“(f) a college of further education other than one mentioned in paragraphs (c) to (e), to any person responsible for the management of the college.”.

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- (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 was amended by the 2001 Act, section 3(3); by the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, Part 2, paragraph 149; and by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 34(1). 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”).
- (b) 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. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.
- (c) S.I. 1990/1534, amended by S.I. 1992/1597 and S.I. 1993/1892.

Amendment of the Repayment of Student Loans (Scotland) Regulations 2000

4. The Repayment of Student Loans (Scotland) Regulations 2000(a) are amended in accordance with regulations 5 to 7.

5. In regulation 10 (interpretation), omit the definition “Eurostat”.

6.—(1) Regulation 13A (repayment by income related instalments) is amended as follows.

(2) For paragraph (3) substitute—

“(3) The Scottish Ministers must determine the amount of each instalment and must ensure that the total amount of all instalments paid in the period up to 12 months from the date of the first instalment referred to in paragraph (2) does not exceed the relevant amount.”.

(3) In paragraph (5), for “the instalment” substitute “each instalment”.

7.—(1) Regulation 13B (calculation of fixed instalment and applicable threshold) is amended as follows.

(2) For paragraph (4) substitute—

“(4) Price level indices shall be calculated using the most recent provisional comparative price level indices measured in gross domestic product produced by the World Bank’s Development Indicators.”.

(3) Omit paragraph (5).

(4) In paragraph (6), omit “or (5)”.

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

8. The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006(b) are amended in accordance with regulations 9 and 10.

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

““family member” means, in relation to any person—

(a) their spouse or civil partner; or

(b) their direct descendants or those of their spouse or civil partner who are—

(i) under the age of 21; or

(ii) their dependants or those of their spouse or civil partner; or

(c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

10. In paragraph 3(1)(a)(ii) of Schedule 1 (eligible students) for “Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union(c)”.

Amendment of the Education Authority Bursaries (Scotland) Regulations 2007

11. The Education Authority Bursaries (Scotland) Regulations 2007(d) are amended in accordance with regulations 12 and 13.

(a) S.S.I. 2000/110, amended by S.S.I. 2001/227, 2005/314, 2006/326, 2007/159, 2009/102 and 2012/22 and S.I. 2008/1879.

(b) S.S.I. 2006/333, amended by S.S.I. 2007/158 and 503, 2009/188, 189 and 309, 2010/300, 2012/72 and S.I. 2010/1010.

(c) OJ L 141, 27.5.2011, p.3.

(d) S.S.I. 2007/149, amended by S.S.I. 2007/503, 2009/188 and 309 and 2012/72.

- 12.** For the definition of “family member” in regulation 2(1) (interpretation) substitute—
- ““family member” means, in relation to any person—
- (a) their spouse or civil partner; or
 - (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21; or
 - (ii) their dependants or those of their spouse or civil partner; or
 - (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

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

(2) In paragraph 3(a)(ii) for “Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union”.

(3) In paragraph 9—

(a) in sub-paragraph (1) for paragraph (a) substitute—

“(a) is, on the relevant date—

- (i) an EC national; or
- (ii) the family member of an EC national accompanying or joining that EC national in the United Kingdom;”;

(b) in sub-paragraph (3) for paragraph (b) substitute—

“(b) a United Kingdom national has utilised a right of residence if that person has—

- (i) 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) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom; and
 - (bb) of which that person is a national,

in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement.”.

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

14. The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(a) are amended in accordance with regulations 15 and 16.

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

““family member” means, in relation to any person—

- (a) their spouse or civil partner; or
- (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21; or
 - (ii) their dependants or those of their spouse or civil partner; or
- (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

(a) S.S.I. 2007/151, amended by S.S.I. 2007/503, 2008/206, 2009/188 and 309 and 2012/72.

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

(2) In paragraph 3(1)(a)(ii) for “Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union”.

(3) In paragraph 9—

(a) in sub-paragraph (1) for paragraph (a) substitute—

“(a) is, on the relevant date—

(i) an EC national, or

(ii) the family member of an EC national accompanying or joining that EC national in the United Kingdom;”;

(b) in sub-paragraph (3) for paragraph (b) substitute—

“(b) a United Kingdom national has utilised a right of residence if that person has—

(i) 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) resided in a state—

(aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom; and

(bb) of which that person is a national,

in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement.”.

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

17. The Education (Fees and Awards) (Scotland) Regulations 2007(a) are amended in accordance with regulations 18 and 19.

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

““family member” means, in relation to any person—

(a) their spouse or civil partner; or

(b) their direct descendants or those of their spouse or civil partner who are—

(i) under the age of 21; or

(ii) their dependants or those of their spouse or civil partner; or

(c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

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

(2) In paragraph 3(b) for “Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union”.

(3) In paragraph 9—

(a) in sub-paragraph (1) for paragraph (a) substitute—

“(a) is, on the date referred to in regulation 5(a)—

(i) an EC national; or

(a) S.S.I. 2007/152, amended by S.S.I. 2007/503, 2009/188 and 309, 2010/325, 2011/389 and 2012/72.

- (ii) the family member of an EC national accompanying or joining that EC national in the United Kingdom;” and
 - (b) in sub-paragraph (3) for paragraph (b) substitute—
 - “(b) a United Kingdom national has utilised a right of residence if that person has—
 - (i) 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) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom; and
 - (bb) of which that person is a national,
- in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement.”.

Amendment of the Students’ Allowances (Scotland) Regulations 2007

20. The Students’ Allowances (Scotland) Regulations 2007(a) are amended in accordance with regulations 21 to 23.

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

(2) For the definition of “family member” in paragraph (1) substitute—

““family member” means, in relation to any person—

- (a) their spouse or civil partner; or
- (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21; or
 - (ii) their dependants or those of their spouse or civil partner; or
- (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

(3) In paragraph (3) for “paragraph 1(a)” substitute “paragraphs 1(a), 5(b), 6(a)(iii) and (b), 6A(a)(iii) and (b) and 7(c).

(4) In paragraph (4) for “paragraph 1(a)” substitute “paragraphs 1(a), 5(b), 6(a)(iii) and (b), 6A(a)(iii) and (b) and 7(c)”.

22. At the end of Regulation 3(1) (persons eligible for allowances) insert “but a person shall not be eligible for an allowance if the person has, in the opinion of the Scottish Ministers, as determined by them, shown themselves by their conduct to be unfitted to receive an allowance.”.

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

(2) In paragraph 3(1)(a)(ii) for “Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union”.

(3) In paragraph 9—

(a) in sub-paragraph (1) for paragraph (a) substitute—

“(a) is, on the relevant date—

- (i) an EC national; or

(a) S.S.I. 2007/153, amended by S.S.I. 2007/503, 2008/206, 2009/188 and 309 and 2012/72.

- (ii) the family member of an EC national accompanying or joining that EC national in the United Kingdom;” and
 - (b) in sub-paragraph (3) for paragraph (b) substitute—
 - “(b) a United Kingdom national has utilised a right of residence if that person has—
 - (i) 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) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom; and
 - (bb) of which that person is a national,
- in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement.”.

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

24. The Education (Student Loans) (Scotland) Regulations 2007(a) are amended in accordance with regulations 25 to 27.

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

““family member” means, in relation to any person—

- (a) their spouse or civil partner; or
- (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21; or
 - (ii) their dependants or those of their spouse or civil partner; or
- (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.

26. In regulation 11(1) (means test) for “shall” substitute “may”.

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

(2) In paragraph 3(1)(a)(ii) for “Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union(b)”.

(3) In paragraph 8A—

(a) in sub-paragraph (1) for paragraph (a) substitute—

“(a) is, on the first day of the first academic year of the course—

- (i) an EU national; or
- (ii) the family member of an EU national accompanying or joining that EU national in the United Kingdom;” and

(b) in sub-paragraph (3) for paragraph (b) substitute—

“(b) a United Kingdom national has utilised a right of residence if that person has—

- (i) 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

(a) S.S.I. 2007/154, amended by S.S.I. 2007/503, 2008/205 and 206, 2009/188, 189 and 309, 2010/300 and 2012/72 and S.I. 2010/1010.

(b) OJ L 141, 27.5.2011, p.3.

- (ii) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom; and
 - (bb) of which that person is a national,
 in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement.”.

Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007

28. The Education Maintenance Allowances (Scotland) Regulations 2007(a) are amended in accordance with regulations 29 and 30.

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

- (a) for the definition of “family member” substitute—
 - ““family member” means, in relation to any person—
 - (a) their spouse or civil partner; or
 - (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21; or
 - (ii) their dependants or those of their spouse or civil partner; or
 - (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”;
 - (b) omit the definition “Free Movement Regulation”.

30. In paragraph 3(1)(a)(ii) of Schedule 1 (persons eligible for education maintenance allowances) for “Article 12 of the Free Movement Regulation” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, as extended by the EEA agreement”.

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

31. The Education (Fees) (Scotland) Regulations 2011(b) are amended in accordance with regulations 32 and 33.

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

- (2) For the definition of “family member” in paragraph (1) substitute—
 - ““family member” means, in relation to any person—
 - (a) their spouse or civil partner; or
 - (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21; or
 - (ii) their dependants or those of their spouse or civil partner; or
 - (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;”.
 - (3) In paragraph (3) after “regulation 3(a)” insert “and paragraphs 4(b), 5(a)(iii) and (b), 6(a)(iii) and (b) and 7(c) of Schedule 1”.
 - (4) In paragraph (4) after “regulation 3(a)” insert “and paragraphs 4(b), 5(a)(iii) and (b), 6(a)(iii) and (b) and 7(c) of Schedule 1”.

(a) S.S.I. 2007/156, amended by S.S.I. 2007/503, 2009/188 and 309, 2011/261 and 2012/72 and S.I. 2008/1879.
 (b) S.S.I. 2011/389, amended by S.S.I. 2012/72.

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

(2) In paragraph 2(a)(ii) for “Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers” substitute “Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union”.

(3) In paragraph 10—

(a) in sub-paragraph (1) for paragraph (a) substitute—

“(a) is, on the relevant date—

(i) an EU national; or

(ii) the family member of an EU national accompanying or joining that EU national in the United Kingdom;”;

(b) in sub-paragraph (3) for paragraph (b) substitute—

“(b) a United Kingdom national has utilised a right of residence if that person has—

(i) 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) resided in a state—

(aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom; and

(bb) of which that person is a national,

in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement.”.

MICHAEL RUSSELL

A member of the Scottish Government

St Andrew’s House,
Edinburgh
26th February 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Access Funds) Regulations 1990 (“the Access Funds Regulations”), the Repayment of Student Loans (Scotland) Regulations 2000 (“the Repayment Regulations”), 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”).

Regulation 3 amends regulation 2 (making of grants) of the Access Funds Regulations to provide that, in addition to paying grants to the managers of the types of college of further education for which provision is made in paragraphs (c) to (e) of regulation 2 of the Access Funds Regulations, the Scottish Ministers may make grants to the managers of any other college of further education.

Regulations 5 to 7 amend the Repayment Regulations. Regulation 5 removes the definition “Eurostat” from regulation 10 (interpretation) of the Repayment Regulations. Regulation 6 amends regulation 13A (repayment by income related instalments) of the Repayment Regulations by substituting a new paragraph (3) to provide that the Scottish Ministers must determine the amount of each instalment and must ensure that instalments over a period of 12 months from the first instalment do not exceed the “relevant amount” (for which provision is made in regulation 13A(4)) and by making a corresponding amendment to paragraph (5) to reflect that instalments may be of different amounts. Regulation 7 amends regulation 13B (calculation of fixed income instalment) of the Repayment Regulations to substitute a new paragraph (4) to provide that price level indices shall be calculated using the most recent provisional comparative price level indices measured in gross domestic product produced by the World Bank’s Development Indicators, to remove paragraph (5) and to remove the reference to paragraph (5) in paragraph (6).

Regulations 9, 12, 15, 18, 21(2), 25, 29(a) and 32(2) amend the definition of “family member” in all of the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the 2007 Fees Regulations, the Allowances Regulations, the Loans Regulations, the EMA Regulations and the 2011 Fees Regulations. Regulation 21(3) and (4) amends regulation 2(3) and (4) of the Allowances Regulations to clarify the interpretation of not only paragraph 1(a) of Schedule 1 to those Regulations but also paragraphs 5(b), 6(a)(iii) and (b), 6A(a)(iii) and (b) and 7(c) of Schedule 1. Regulation 32(3) and (4) makes equivalent amendments to the 2011 Fees Regulations. Regulation 29(b) removes the definition “Free Movement Regulation” from the EMA Regulations.

Regulations 10, 13, 16, 19, 23, 27, 30 and 33 amend Schedule 1 to each of the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the 2007 Fees Regulations, the Allowances Regulations, the Loans Regulations, the EMA Regulations and the 2011 Fees Regulations. Regulation 10 amends paragraph 3(1)(a)(ii) of Schedule 1 to the SLTF Regulations to remove the reference to Article 12 of the now repealed Council Regulation (EEC) No. 1612/68 on the free movement of workers and to replace it with a reference to Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, which has been extended by the EEA agreement. Regulations 13(2), 16(2), 19(2), 23(2), 27(2), 30 and 33(2)) make equivalent amendments to, respectively, the Bursaries Regulations, the Nursing Regulations, the 2007 Fees Regulations, the Allowances Regulations, the Loans Regulations, the EMA Regulations and the 2011 Fees Regulations. Regulation 13(3) amends paragraph 9 of Schedule 1 to the Bursaries Regulations, first to substitute a new sub-paragraph (1)(a) to provide that the paragraph applies to a person who is an EC national or the family member of an EC national accompanying or joining the EC national in the United Kingdom and, second, to substitute a new sub-paragraph (3)(b) to provide for the circumstances in which a United Kingdom national will be considered to have utilised a right of

residence for the purposes of that paragraph. Regulations 16(3), 19(3), 23(3), 27(3), and 33(3)) make equivalent amendments to, respectively, the Nursing Regulations, the 2007 Fees Regulations, the Allowances Regulations, the Loans Regulations and the 2011 Fees Regulations.

Regulation 22 amends regulation 3(1) (persons eligible for allowances) of the Allowances Regulations to provide that a person will not be eligible for an allowance if the person has, in the opinion of the Scottish Ministers, shown themselves by their conduct to be unfitted to receive an allowance.

Regulation 26 amends regulation 11(1) (means test) of the Loans Regulations to provide the Scottish Ministers with a discretion as to the means testing of loans payable under the Loans Regulations (rather than obliging the Scottish Ministers to means test such loans on the basis set out there).

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£5.75

S2013022712 03/2013 19585

<http://www.legislation.gov.uk/id/ssi/2013/80>

ISBN 978-0-11-101981-8



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