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STATUTORY INSTRUMENTS

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**1991 No. 1522 (S. 140)**

**EDUCATION, SCOTLAND**

**The Students' Allowances (Scotland) Regulations 1991**

<i>Made</i>	- - - -	<i>3rd July 1991</i>
<i>Laid before Parliament</i>		<i>11th July 1991</i>
<i>Coming into force</i>	- -	<i>1st August 1991</i>

The Secretary of State, in exercise of the powers conferred on him by sections 73(f) and 74(1) of the Education (Scotland) Act 1980(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Students' Allowances (Scotland) Regulations 1991 and shall come into force on 1st August 1991.

**Interpretation**

2.—(1) In these Regulations, except where the context otherwise requires—

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

“employed” includes holding any office or any occupation for gain;

“European Community” means the area consisting of the member states of the European Economic Community (including the United Kingdom) as constituted at the date of these Regulations coming into force;

“national of a member state of the European Community” means a person who is a national for the purposes of the Community Treaties of any member state of the European Economic Community (including the United Kingdom);

“parent” includes step-parent;

“qualifying day” in relation to a course of education for which an allowance is sought means—

(a) as respects a course starting in the autumn term of any year, 30th June in that year;

(b) as respects a course starting in the spring term of any year, 31st October in the year preceding that year; and

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(1) 1980 c. 44; section 74(1) was amended by paragraph 8(17) of Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39).

- (c) as respects a course starting in the summer term of any year, the last day of February in that year;

“refugee” means—

- (a) a person who is recognised by Her Majesty’s Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(2)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(3)</sup>; or
- (b) a person who enjoys asylum in the United Kingdom in pursuance of a decision of Her Majesty’s Government though not so recognised; and

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

- (a) as respects a course starting in the autumn term of any year, the earlier of 31st August in that year or the first day of that term;
- (b) as respects a course starting in the spring term of any year, the earlier of 31st December in the year preceding that year or the first day of that term; and
- (c) as respects a course starting in the summer term of any year, the earlier of 31st March in that year or the first day of that term.

- (2) In these Regulations, except where the context otherwise requires, any reference—

- (a) to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations; and
- (b) in a regulation or Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule, as the case may be.

### **Persons eligible for allowances**

**3.—**(1) The Secretary of State may pay an allowance, in accordance with the provisions of section 73(f) of the Education (Scotland) Act 1980 and these Regulations, to or in respect of any person attending a course of education who is a person described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect as regards determining whether a person is to be treated, for the purposes of Schedule 1, as being, or having been, ordinarily resident in a place at or for a particular time.

### **Amount of allowances**

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

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

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(2) Cmnd 9171.

(3) Cmnd 3906 (Out of print: photocopies are available, free of charge, from Awards Branch, Scottish Office Education Department, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh, EH12 9HH).

(2) An allowance payable to or in respect of a person who is eligible for an allowance only by virtue of paragraph 4 of Schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

(3) In determining the amount of an allowance, the Secretary of State shall take account of the sums, if any, which, in accordance with principles determined by him from time to time, the holder, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(4) The amount of the determination of an allowance may be revised at any time if the Secretary of State thinks fit having regard to—

- (a) the failure of the holder to comply with the requirements of the allowance;
- (b) all the circumstances of the holder or his parents or both as the case may be; or
- (c) any error made in determining the amount of, or entitlement to, the allowance.

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

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

- (a) an application in writing shall be received by the Secretary of State by such date as he may determine in respect of that year, and different dates may be determined by him in respect of different courses; and
- (b) that application shall include an undertaking by the applicant to repay to the Secretary of State any amount of which the Secretary of State requests repayment following a revisal in terms of regulation 4(4) and that undertaking shall, if the applicant is a minor and has any parent or guardian, be consented to in writing by that parent or guardian.

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

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

- (a) the holder shall attend regularly the course of education in respect of which the allowance is awarded;
- (b) the Secretary of State shall be satisfied as to the conduct and progress of the holder;
- (c) the holder shall provide the Secretary of State with such information and such documents as he may from time to time require to enable him to exercise his functions under these Regulations; and
- (d) the holder shall repay to the Secretary of State any sum in respect of which he has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 4(4).

### **Method of payment**

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

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

### **Revocations and saving**

7.—(1) Subject to paragraphs (2) and (3), the Regulations specified in column (1) of Schedule 3 are hereby revoked to the extent set out in column (3) thereof.

(2) The Regulations revoked by Schedule 3 shall continue to apply in all respects as regards allowances awarded under those Regulations.

(3) The provisions of paragraph (2) are without prejudice to the general operation of sections 16 and 17 of the Interpretation Act 1978<sup>(4)</sup>.

St Andrew's House,  
Edinburgh  
3rd July 1991

*Michael B. Forsyth*  
Minister of State, Scottish Office

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(4) 1978 c. 30.

## SCHEDULE 1

Regulation 3(1)

### PERSONS ELIGIBLE FOR ALLOWANCES

1. A person who
  - (a) is ordinarily resident in Scotland on the qualifying day; and
  - (b) has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the relevant date.
2. A person who—
  - (a) is entitled to equality of treatment in relation to the payment of an allowance for the course in respect of which he seeks the allowance by virtue of Article 7 or 12 of Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community<sup>(5)</sup>;
  - (b) has been ordinarily resident in the European Community throughout the period of 3 years immediately preceding the relevant date; and
  - (c)
    - (i) is ordinarily resident in Scotland on the qualifying date; or
    - (ii) seeks an allowance in respect of a course of education at an establishment in Scotland.
3. A person who—
  - (a) at the date of the Secretary of State receiving his application for an allowance, is—
    - (i) a refugee who has been ordinarily resident in the British Islands at all times since he was first recognised as a refugee or was awarded asylum; or
    - (ii) the spouse, child or step-child of such a refugee; and
  - (b)
    - (i) is ordinarily resident in Scotland on the qualifying date; or
    - (ii) seeks an allowance in respect of a course of education at an establishment in Scotland.
4. A person who—
  - (a) is a national, or the child or step-child of a national, of a member state of the European Community;
  - (b) has been ordinarily resident in the European Community throughout the period of 3 years immediately preceding the relevant date;
  - (c) has not been ordinarily resident in the British Islands throughout that 3 year period; and
  - (d) seeks an allowance in respect of a course of education at an establishment in Scotland.
5. A person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations, or with the Students' Allowances (Scotland) Regulations 1987<sup>(6)</sup>, within the year immediately preceding the relevant date.

## SCHEDULE 2

Regulation 3(2)

### ORDINARY RESIDENCE

1. For the purposes of paragraph 1(a) of Schedule 1—

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<sup>(5)</sup> O.J. No L257, 19.10.68, p.2 (O.J/S.E 1968(II) p.475).

<sup>(6)</sup> S.I. 1987/864, as amended by the instruments specified in Schedule 3 to these Regulations.

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- (a) a person shall be treated as being ordinarily resident in Scotland on the qualifying day if the Secretary of State is satisfied that he was not actually so resident only because he, his spouse or his parent was for the time being—
  - (i) employed outside Scotland; or
  - (ii) attending a course of study or undertaking postgraduate research outside Scotland;and
- (b) a person shall not be treated as being ordinarily resident in Scotland on the qualifying day if the Secretary of State is satisfied that his residence there on that day is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 1(b), 2(b) and 4(b) and (c) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the specified period in either the British Islands or the European Community (hereafter referred to in this paragraph as “the relevant area”).

(2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period if the Secretary of State is satisfied that he was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Secretary of State is satisfied that—

- (a) the person was born and has spent the greater part of his life in the relevant area and that—
  - (i) his parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he himself is not an independent student; or
  - (ii) he has been ordinarily resident in the relevant area for at least 1 year of the specified period and no part of that period of residence was wholly or mainly for the purpose of receiving full-time education; or
- (b) the person was not actually ordinarily resident in the relevant area for the specified period only because he, his spouse or his parent was for the time being—
  - (i) employed outside the relevant area; or
  - (ii) attending a course of study or undertaking postgraduate research outside the relevant area.

3.—(1) In paragraph 2(3)(a)(i), “an independent student” means a person who prior to the relevant date has—

- (a) attained the age of 25 years;
- (b) been married for at least 2 years;
- (c) no parent living; or
- (d) supported himself out of his earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having supported himself out of his earnings for any period or periods during which he—

- (a) was in receipt of training in pursuance of programmes and schemes operated from time to time by the Manpower Services Commission, the Training Commission, the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise;

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- (b) was in receipt of unemployment benefit under section 14(1)(a) of the Social Security Act 1975(7);
- (c) before 24th November 1980(8), was registered for employment;
- (d) on and after that date but before 18th October 1982(9), was registered and available for employment;
- (e) on and after 18th October 1982 but before 11th April 1988(10), was for the purposes of section 5(1) of the Supplementary Benefits Act 1976(11) available for employment and, where applicable, also registered for employment;
- (f) on and after 11th April 1988, was for the purposes of section 20(3)(d)(i) and (4) of the Social Security Act 1986(12) available for employment and, where applicable, also registered for employment;
- (g) received sickness benefit, invalidity pension, maternity allowance or severe disablement allowance under section 14(1)(b), 15(1)(b), 22(1) or 36(1) of the Social Security Act 1975(13) or statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(14) or statutory maternity pay under Part V of the Social Security Act 1986;
- (h) held a Scottish Studentship or comparable award; or
- (i) had the care of a person under the age of 18 years who was dependent on him;

any reference in this sub-paragraph to a provision contained in the Social Security Act 1975, the Supplementary Benefits Act 1976 or the Social Security Act 1986 is a reference to that provision as from time to time in force.

## SCHEDULE 3

Regulation 7

## REVOCATIONS

Column (1) Instrument Revoked	Column (2) Reference	Column (3) Extent of Revocation
The Students' Allowances (Scotland) Regulations 1987	<a href="#">S.I. 1987/864</a>	The whole Regulations
The Students' Allowances (Scotland) Amendment Regulations 1988	<a href="#">S.I. 1988/1424</a>	
The whole Regulations		

(7) [1975 c. 14.](#)

(8) On that date Schedule 2 to the Social Security Act 1980 ([c. 30](#)), which made relevant amendments to the Supplementary Benefits Act [1976 \(c. 71\)](#), came into force by virtue of [S.I. 1980/729](#).

(9) On that date section 38 of the Social Security and Housing Benefits Act 1982 ([c. 24](#)), which made relevant amendments to section 5 of the Supplementary Benefits Act 1976, came into force by virtue of [S.I. 1982/893](#).

(10) On that date the relevant parts of section 20 of the Social Security Act 1986 ([c. 50](#)) came into force by virtue of [S.I. 1987/1853](#).

(11) [1976 c. 71](#); section 5 was repealed with effect from 11th April 1988 by Schedule 11 to the Social Security Act 1986 (see [S.I. 1987/1853](#)).

(12) [1986 c. 50](#); section 20(3)(d)(i) was amended by the Social Security Act 1989 ([c. 24](#)), section 13(1).

(13) Section 15(1)(b) was amended by the Social Security Act 1989, Schedule 1, paragraph 5(1); section 22 was substituted by the Social Security Act 1986, Schedule 4, paragraph 13; section 36 was substituted by the Health and Social Security Act 1984 ([c. 48](#)), section 11.

(14) [1982 c. 24.](#)

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Column (1) Instrument Revoked	Column (2) Reference	Column (3) Extent of Revocation
The Students' Allowances (Scotland) Amendment Regulations 1989	<a href="#">S.I. 1989/1112</a>	The whole Regulations
The Students' Allowances (Scotland) Amendment Regulations 1990	<a href="#">S.I. 1990/1348</a>	The whole Regulations
The Education (Fees and Awards, Allowances and Bursaries) (Scotland) Amendment Regulations 1991	<a href="#">S.I. 1991/834</a>	Regulation 3

### EXPLANATORY NOTE

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

These Regulations consolidate with only minor and drafting amendments the Students' Allowances (Scotland) Regulations 1987 (“the 1987 Regulations”) and subsequent amending instruments. They enable the Secretary of State to pay allowances to persons attending courses of education who fulfil certain criteria as to eligibility and they prescribe the conditions and requirements subject to which allowances may be paid.

The eligibility criteria are detailed in Schedule 1, whilst Schedule 2 makes provision as to when a person is to be treated as “ordinarily resident” in a place for or at a particular time.

Regulation 7 revokes the 1987 Regulations, but provides for these to continue to have application as regards allowances awarded prior to revocation.