
STATUTORY INSTRUMENTS

1993 No. 3184 (S.306)

EDUCATION, SCOTLAND

The Education (European Economic Area) (Scotland) Regulations 1993

Made - - - - *16th December 1993*
Laid before Parliament *17th December 1993*
Coming into force - - *1st January 1994*

The Secretary of State, in exercise of the powers conferred on him by sections 49(3), 73(f) and 74(1) of the Education (Scotland) Act 1980(1) and sections 1 and 2 of the Education (Fees and Awards) Act 1983(2), 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 Education (European Economic Area) (Scotland) Regulations 1993 and shall come into force on 1st January 1994.

Education Authority Bursaries

2. The Education Authority Bursaries (Scotland) Regulations 1988((3)) shall be amended as follows:—

(a) in regulation 2(1)—

(i) there shall be inserted at the appropriate places, in alphabetical order, the following definitions:—

““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(4) as adjusted by the Protocol thereto signed at Brussels on 17th March 1993(5);

(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).
(2) 1983 c. 40; section 1 was amended by paragraph 91 of Schedule 12 to the Education Reform Act 1988 (c. 40), by paragraph 8 of Schedule 9 to the Further and Higher Education (Scotland) Act 1992 (c. 37) and by paragraph 19 of Schedule 8 to the Further and Higher Education Act 1992 (c. 13).
(3) S.I. 1988/1042; relevant amending instruments are S.I. 1988/1423, 1990/1347 and 1991/834.
(4) Cmnd. 2073.
(5) Cmnd. 2183.

- “European Economic Area” means the European Community and, subject to the conditions laid down in the EEA Agreement, the area comprised by the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and, from such date as the EEA Council, established by Article 89 of the EEA Agreement, determines that that Agreement shall enter into force as regards the Principality of Liechtenstein, the Principality of Liechtenstein;”;
- (ii) in the definition of the word “refugee” the letter “(a)” and the words from the words “, or (b)” to the end of the definition shall be deleted;
- (b) in regulation 2(5) there shall be substituted for the word “Community” wherever it occurs the words “Economic Area”;
- (c) in regulation 2(5A)(6)–
- (i) for the words “European Community” there shall be substituted the words “European Economic Area”; and
- (ii) in paragraph (b) for the word “that” there shall be substituted the words “the European”;
- (d) in regulation 5–
- (i) in paragraph (b)(i) there shall be inserted after the word “Community” the words “as given effect by the EEA Agreement”;
- (ii) in paragraph (b)(ii) there shall be substituted for the word “Community” the words “Economic Area”;
- (iii) in paragraph (d) the words “or was awarded asylum” shall be deleted; and
- (iv) in paragraph (e)(ii) there shall be substituted for the word “Community” the words “Economic Area”.

Students' Allowances

3. The Students' Allowances (Scotland) Regulations 1991(7) shall be amended as follows:

- (a) in regulation 2(1)–
- (i) there shall be inserted at the appropriate places, in alphabetical order, the following definitions:–
- ““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol thereto signed at Brussels on 17th March 1993;
- “European Economic Area” means the European Community and, subject to the conditions laid down in the EEA Agreement, the area comprised by the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and, from such date as the EEA Council, established by Article 89 of the EEA Agreement, determines that that Agreement shall enter into force as regards the Principality of Liechtenstein, the Principality of Liechtenstein;”;
- (ii) in the definition of the word “refugee” the letter “(a)” and the words from the word “or” to the end of the definition shall be deleted;
- (b) in Schedule 1–
- (i) in paragraph 2(a) there shall be inserted after the word “Community” the words “as given effect by the EEA Agreement”;

(6) Regulation 2(5A) was added by S.I. 1988/1423, amended by S.I. 1991/834.

(7) S.I. 1991/1522.

- (ii) in paragraph 2(b) there shall be substituted for the word “Community” the words “Economic Area”;
 - (iii) in paragraph 3(a)(i) the words “or was awarded asylum” shall be deleted; and
 - (iv) in paragraph 4(b) there shall be substituted for the word “Community” the words “Economic Area”;
- (c) in Schedule 2 in paragraph 2(1) there shall be substituted for the word “Community” the words “Economic Area”.

Fees and Awards

4. The Education (Fees and Awards) (Scotland) Regulations 1983⁽⁸⁾ shall be amended as follows:

- (a) in regulation 2(1) there shall be inserted at the appropriate places, in alphabetical order, the following definitions—
 - ““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol thereto signed at Brussels on 17th March 1993;
 - “European Economic Area” means the European Community and, subject to the conditions laid down in the EEA Agreement, the area comprised by the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and, from such date as the EEA Council, established by Article 89 of the EEA Agreement, determines that that Agreement shall enter into force as regards the Principality of Liechtenstein, the Principality of Liechtenstein;”;
- (b) In Schedule 1—
 - (i) in paragraph 2(2)(a)(i) for the word “Community” there shall be substituted the words “Economic Area”;
 - (ii) in paragraph 2(2)(a)(ii) for the word “that” there shall be substituted the words “the European”; and
 - (iii) there shall be inserted at the end the following paragraph—
 - “7. A person shall be an excepted student if he is a person to whom Article 7(2) or (3) or Article 12 of Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community⁽⁹⁾ applies by virtue of the EEA Agreement, and either—
 - (a) he has, throughout the 3 year period referred to in Regulation 6(a), been ordinarily resident within the territory comprising—
 - (i) the European Economic Area; and
 - (ii) (as regards any period prior to the unification of the Federal Republic of Germany) the former German Democratic Republic, or
 - (b) if he was not so ordinarily resident there throughout that 3 year period it is only because he, his spouse, or his parent was temporarily employed elsewhere.”;
- (c) in Schedule 2—

⁽⁸⁾ S.I. 1983/1215; relevant amending instruments are S.I. 1984/1361, 1985/1223, 1987/1383 and 1991/834.

⁽⁹⁾ O.J. No. L257, 19.10.68, p.2 (OJ/SE 1968 (II), p.475).

- (i) in paragraph 2(a) there shall be inserted after the word “Community” the words “as given effect by the EEA Agreement”;
- (ii) in paragraph 2(b)(i) there shall be substituted for the word “Community” the words “Economic Area”;
- (d) in Schedule 3(10) there shall be substituted in paragraph 2(1) paragraph 3(1) and paragraph 5(2) for the word “Community” wherever it occurs the words “Economic Area”;
- (e) in Schedule 4(11)–
 - (i) in paragraph 3(3)(a)(i) there shall be substituted for the word “Community” the words “Economic Area”;
 - (ii) in paragraph 3(3)(a)(ii) there shall be substituted for the word “that” the words “the European”; and
 - (iii) there shall be inserted at the end the following paragraph:–

“6. A person shall be an excepted candidate if he is a person to whom Article 7(2) or (3) or Article 12 of Council Regulation (EEC) No. 1612/68 on freedom of movement within the Community applies by virtue of the EEA Agreement, and either–

 - (a) he has throughout the 3 year period referred to in Regulation 6(a), been ordinarily resident within the territory comprising–
 - (i) the European Economic Area; and
 - (ii) (as regards any period prior to the unification of the Federal Republic of Germany) the former German Democratic Republic; or
 - (b) if he was not so ordinarily resident there throughout that 3 year period it is only because he, his spouse or his parent was temporarily employed elsewhere.”.

St Andrew’s House,
Edinburgh
16th December 1993

James Douglas-Hamilton
Parliamentary Under Secretary of State, Scottish
Office

(10) Schedule 3 was added by S.I. 1984/1361, amended by S.I. 1987/1383.

(11) Schedule 4 was added by S.I. 1987/1383, amended by S.I. 1991/834.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education Authority Bursaries (Scotland) Regulations 1988 as amended (the “1988 Regulations”), the Students Allowances (Scotland) Regulations 1991 (the “1991 Regulations”) and the Education (Fees and Awards) (Scotland) Regulations 1983 as amended (the “1983 Regulations”) to give effect to certain obligations arising from the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cmnd. 2073) as adjusted by the Protocol signed at Brussels on 17th March 1993 (Cmnd. 2183).

The amendments reflect the fact that Council Regulation (EEC) No. 1612/68 now applies to the European Economic Area and not only to the European Community. Persons who now have rights arising out of Article 7(2), 7(3) or 12 of the Regulation by virtue of the fact that this Regulation now applies to the European Economic Area are now, under these Regulations, entitled to allowances payable under the 1991 Regulations and are also eligible for bursaries payable under the 1988 Regulations. In addition, the tuition fees and other fees charged to such persons in terms of the 1983 Regulations must be no higher than the fees charged in respect of students from the United Kingdom.

The residence requirement which nationals from member States of the European Community and migrant workers must satisfy to qualify for benefits under the 1983, 1988 or 1991 Regulations is extended to apply to residence within the European Economic Area.

These Regulations also amend the definition of the term “refugee” as it is used in the 1988 Regulations and the 1991 Regulations, by confining it to persons who are recognised as refugees within the meaning of the United Nations Convention relating to the Status of Refugees.