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STATUTORY INSTRUMENTS

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**1997 No. 2008 (S. 146)**

**EDUCATION, SCOTLAND**

**The Education (Fees and Awards)  
(Scotland) Amendment Regulations 1997**

*Made - - - - 11th August 1997*  
*Laid before Parliament 20th August 1997*  
*Coming into force - - 10th September 1997*

The Secretary of State, in exercise of the powers conferred on him by sections 1 and 2 of the Education (Fees and Awards) Act 1983(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and extent**

1. These Regulations may be cited as the Education (Fees and Awards) (Scotland) Amendment Regulations 1997, shall come into force on 10th September 1997 and shall extend to Scotland only.

**Application of Regulations**

2. The amendments made by regulation 3 of these Regulations shall not apply to the application of the Education (Fees and Awards) (Scotland) Regulations 1997(2) for the purpose of determining the level of fees chargeable in the case of students commencing their course before 1st September 1998 or the eligibility of candidates for awards in the case of applications for awards made before that date.

**Amendment of the Education (Fees and Awards) (Scotland) Regulations 1997**

3.—(1) The Education (Fees and Awards) (Scotland) Regulations 1997 shall be amended in accordance with the following paragraphs.

(2) At the end of regulation 6 (relevant connection with the United Kingdom and Islands) there shall be added—

“; and

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(1) 1983 c. 40; section 1 was relevantly amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91 and the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraph 8.  
(2) S.I. 1997/93.

(c) at the date referred to in paragraph (a) he is settled in the United Kingdom within the meaning of the Immigration Act 1971(3).”.

(3) For paragraph (c) of regulation 9 (relevant connection with Scotland) there shall be substituted—

“(c) at the date referred to in paragraph (a) he is settled in the United Kingdom within the meaning of the Immigration Act 1971 and, if not a British Citizen, enjoys in the United Kingdom the status of a Commonwealth Citizen.”.

(4) At the end of regulation 12 (relevant connection with England) there shall be added—

“; and

(c) at the date referred to in paragraph (a) he is settled in the United Kingdom within the meaning of the Immigration Act 1971.”.

(5) In Schedule 1 (fees-excepted students) paragraph 4 shall be omitted.

#### **Fees chargeable in respect of certain students commencing course before 1st September 1998**

4. In any case where, in relation to a student who is the spouse of an EEA migrant worker and who is not a national of an EEA State, the date of commencement of the first term of his course is before 1st September 1998, paragraph 6(1)(b) of Schedule 1 to the Education (Fees and Awards) (Scotland) Regulations 1997 shall have effect as if there were substituted for sub-head (i)—

“(i) has been ordinarily resident in the European Economic Area throughout the period of one year preceding the relevant date referred to in regulation 6(a),”.

#### **Fees chargeable in respect of certain students commencing course before 1st September 2000**

5. In any case where the date of commencement of the first term of a student’s course is before 1st September 2000, Schedule 1 to the Education (Fees and Awards) (Scotland) Regulations 1997 shall have effect as if there were inserted after paragraph 3—

“3A.—(1) A person shall be an excepted student if—

- (a) at the date referred to in regulation 6(a) he is settled in the United Kingdom;
- (b) he neither had the right of abode in the United Kingdom nor was settled there at, or at a time before, the beginning of the 3 year period so referred to; and
- (c) at any time during that 3 year period he was ordinarily resident in Hong Kong.

(2) References in this paragraph to a person having the right of abode in the United Kingdom or being settled there have the same meanings respectively as in the Immigration Act 1971.”.

St Andrew’s House,  
Edinburgh  
11th August 1997

*Malcolm Chisholm*  
Parliamentary Under Secretary of State, Scottish  
Office

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(3) 1971 c. 77; amended by the British Nationality Act 1981 (c. 61), section 39 and Schedule 4, the Immigration Act 1988 (c. 14), sections 1, 3, 4, 6 and 10 and the Schedule and the Asylum and Immigration Appeals Act 1993 (c. 23), sections 10 to 12.

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## EXPLANATORY NOTE

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

These Regulations amend the Education (Fees and Awards) (Scotland) Regulations 1997 (the 1997 Regulations), Part II of which permits further and higher education institutions to charge a higher fee to overseas students than to home students. The criteria set by the 1997 Regulations for qualification for the home student fee are 3 years ordinary residence in the United Kingdom and Islands prior to the start of a course, no part of this residence having been wholly or mainly for the purpose of receiving full-time education. These Regulations amend the 1997 Regulations to add a further qualifying condition that the student should also be “settled in the United Kingdom” within the meaning of the Immigration Act 1971. Parts III and IV of the 1997 Regulations allow the rules of eligibility for certain awards to restrict the awards to candidates having a relevant connection with Scotland or England respectively. The relevant connection is a residential qualification similar to that for the home student fee. These Regulations again add the requirement that the candidate should be “settled in the United Kingdom”. Regulation 2 provides that the new condition will not apply to students commencing their course before 1st September 1998.

Regulation 4 amends the effect of paragraph 6(1)(b) of Schedule 1 to the 1997 Regulations, which provides for the spouse of a European Economic Area (EEA) migrant worker to be an “excepted student”, and thus charged home student fees, if certain conditions are fulfilled. One condition is that the spouse must have been ordinarily resident in the EEA for a 3 year period. Regulation 4 reduces this period to 1 year where the spouse is not an EEA national. This is in line with the position in England and Wales under the Education (Fees and Awards) Regulations 1994 (S.I. [1994/3042](#)) as amended by the Education (Fees and Awards) (Amendment) Regulations 1996 (S.I. [1996/1640](#)). The amendment has effect only until 1st September 1998 after which it is intended to require a 3 year period both in England and Wales and in Scotland.

Regulation 5 amends the effect of Schedule 1 to the 1997 Regulations to add a further category of “excepted student” in relation to students commencing their course before 1st September 2000. This category covers certain persons recently settled in the United Kingdom who have been ordinarily resident in Hong Kong at any time in the 3 years prior to the start of their course.