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STATUTORY INSTRUMENTS

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**1997 No. 93 (S.5)**

**EDUCATION, SCOTLAND**

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

*Made* - - - - *16th January 1997*  
*Laid before Parliament* *24th January 1997*  
*Coming into force* - - *17th February 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:

**PART I**  
**GENERAL**

**Citation, commencement and extent**

1. These Regulations may be cited as the Education (Fees and Awards) (Scotland) Regulations 1997, shall come into force on 17th February 1997 and shall extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

- “award” means a fees award or a maintenance award or both as the context may require;
- “education” includes post-graduate research otherwise than in the course of employment;
- “education authority” has the same meaning as in the Education (Scotland) Act 1980(2);
- “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(3) as adjusted by the Protocol thereto signed at Brussels on 17th March 1993(4);

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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) 1980 c. 44; the relevant definition in section 135(1) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 118(9).  
(3) Cmnd. 2073.  
(4) Cmnd. 2183.

“EEA migrant worker” means a person who is a national of an EEA State who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No. 1612/68<sup>(5)</sup> on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement); or
- (b) in circumstances where as a national of the United Kingdom he has an enforceable Community right to be treated no less favourably than a national of another EEA State in relation to matters which are the subject of the above mentioned Council Regulation;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“employment” means full-time employment or part-time employment which, in a normal week, involves a significant number of hours of work and “employed” shall be construed accordingly, and for the purposes hereof the references to employment include references to the holding of any office and to any occupation for gain;

“European Economic Area” means the area of the EEA States and includes those States at any time before the EEA Agreement came into force in relation to them;

“fees” includes charges however described;

“fees award” means an award in respect of any fees payable by the candidate for the award other than any element of those fees representing or attributable to charges for his maintenance;

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

“maintenance award” means any award other than a fees award;

“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 Community (including the United Kingdom) as constituted from time to time;

“parent” in relation to a student, includes a guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995<sup>(6)</sup>) in relation to, or has care of, the student;

“refugee” means 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>(7)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(8)</sup>.

(2) In these Regulations a reference to a person’s child includes a reference to a person adopted in pursuance of adoption proceedings, a step-child and a child in whose case the person concerned has admitted paternity or been adjudged the putative father.

(3) Notwithstanding section 11 of the Interpretation Act 1978<sup>(9)</sup>, section 3(2) of the Education (Fees and Awards) Act 1983 (references to the United Kingdom to include references to the Islands) shall not apply for the purpose of the interpretation of these Regulations.

(4) In these Regulations, unless the context otherwise requires, a reference to a regulation, Part or Schedule is a reference to a regulation or Part of these Regulations or to a Schedule thereto, a reference in a regulation or Schedule to a paragraph is a reference to a paragraph of that regulation or Schedule and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.

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(5) OJ No. L257, 19.10.68, p. 2 (OJ/SE 1968 (II), p. 475), amended by Council Regulation (EEC) No. 2434/92 (OJ No. L245, 26.8.92, p. 1).

(6) 1995 c. 36.

(7) Cmnd. 9171.

(8) Cmnd. 3906 out of print: photocopies of the English text are available, free of charge, from Higher Education Division, The Scottish Office Education and Industry Department, 1-B, Victoria Quay, Edinburgh EH6 6QQ.

(9) 1978 c. 30.

## **Lawful acts**

3.—(1) Nothing in Part II shall be construed as rendering unlawful any discrimination arising from the remission in whole or in part of any fee (on grounds of financial hardship or otherwise) if it would have been lawful had these Regulations not been made.

(2) Nothing in Part III or IV shall be construed as rendering unlawful any discrimination arising from any rule of eligibility for an award if it would have been lawful had these Regulations not been made.

## **PART II**

### **FEES FOR TUITION ETC.**

#### **Scope of Part II**

4. This Part shall have effect as respects the charging of relevant fees in respect of students attending a course provided by—

- (a) an institution within the higher education sector for the purposes of section 56(2) of the Further and Higher Education (Scotland) Act 1992<sup>(10)</sup>;
- (b) a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980<sup>(11)</sup>; or
- (c) a further education establishment provided by an education authority or managed by a board of management in terms of Part I of the Further and Higher Education (Scotland) Act 1992,

and any reference in this Part to a student shall be construed accordingly.

#### **Relevant fees**

5.—(1) For the purpose of this Part “relevant fees” means the aggregate of—

- (a) any fees for admission, registration or matriculation (including matriculation exemption);
- (b) any sessional or tuition fees;
- (c) any composition fee; and
- (d) any graduation fee,

in each case excluding any element thereof representing or attributable to such fees as are mentioned in paragraph (2).

(2) The fees last referred to in paragraph (1) are—

- (a) any fees charged by an external body in respect of an examination or validation of a course or otherwise charged by such a body whose requirements must (for the purposes of a course) be met; and
- (b) charges for board and lodging.

#### **Relevant connection with the United Kingdom and Islands**

6. For the purposes of this Part a student has a relevant connection with the United Kingdom and Islands if—

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(10) 1992 c. 37.

(11) 1980 c. 44, to which no relevant amendment has been made.

- (a) he has been ordinarily resident there throughout the 3 year period immediately preceding 1st September, 1st January or 1st April closest to the beginning of the first term of the student's course; and
- (b) his residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

#### **Charging of higher relevant fees**

7. Subject to Schedule 1, it shall be lawful to charge higher relevant fees in the case of students who do not have a relevant connection with the United Kingdom and Islands than in the case of students having such a connection.

### **PART III**

#### **POST-GRADUATE AGRICULTURAL STUDENTSHIPS**

##### **Scope of Part III**

8. This Part shall have effect as respects the adoption by the Secretary of State of rules of eligibility for awards (however described) made by him in pursuance of section 4 of the Small Landholders (Scotland) Act 1911(12) and any reference in this Part to an award or a candidate for an award shall be construed accordingly.

##### **Relevant connection with Scotland**

9. For the purposes of this Part a candidate for an award has a relevant connection with Scotland if—

- (a) he has been ordinarily resident there throughout the 3 year period immediately preceding the date of his application for an award;
- (b) his residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education; and
- (c) he is a British citizen or otherwise enjoys in the United Kingdom the status of a Commonwealth citizen.

##### **Authorised eligibility rules**

10. Subject to Schedules 2 and 3, it shall be lawful to adopt rules of eligibility for awards which confine the awards to candidates having a relevant connection with Scotland.

### **PART IV**

#### **AWARDS BY NEWBATTLE ABBEY COLLEGE, DALKEITH**

##### **Scope of Part IV**

11. This Part shall have effect as respects the adoption by that further education establishment known as Newbattle Abbey College, Dalkeith of rules of eligibility for awards (however described) made by that establishment in connection with courses of education or training, or in connection

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(12) 1911 c. 49.

with the undertaking of research, and any reference in this Part to an award, a candidate for an award, or the maker of an award, shall be construed accordingly.

### **Relevant connection with England**

**12.** For the purposes of this Part a candidate for an award has a relevant connection with England if—

- (a) he has been ordinarily resident there throughout the 3 year period immediately preceding the date of his application for an award; and
- (b) his residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

### **Authorised eligibility rules**

**13.** Subject to Schedules 2 and 3, it shall be lawful to adopt rules of eligibility for awards which confine the awards to candidates having a relevant connection with England on 30th June next following the date of their applications.

## **PART V**

### **MISCELLANEOUS**

#### **Revocations**

**14.** The Regulations specified in column 1 of Schedule 4 are revoked to the extent specified in column 3 thereof.

St Andrew's House Edinburgh  
16th January 1997

*Raymond S Robertson*  
Parliamentary Under Secretary of State, Scottish  
Office

## SCHEDULE 1

Regulation 7

## FEES—EXCEPTED STUDENTS

1. It shall not be lawful in pursuance of regulation 7 to charge higher fees in the case of a student who is an excepted student within the meaning of this Schedule.

2.—(1) A person who is—

- (a) a national of a member state of the European Community; or
- (b) the child of such a national,

shall be an excepted student if he satisfies the conditions specified in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) he has been ordinarily resident in the European Economic Area throughout the 3 year period referred to in regulation 6(a); and
- (b) his residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

3. A person shall be an excepted student if he—

- (a) (i) is a refugee, or
- (ii) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom and he has been granted leave to enter or remain accordingly,

and he has been ordinarily resident in the United Kingdom and Islands throughout the period since he was recognised as a refugee or, as the case may be, granted leave to enter or remain in the United Kingdom and Islands; or

- (b) is the spouse or child of a person of the kind described in sub-paragraph (a).

4.—(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; and
- (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.

(2) References in this paragraph to a person having a right of abode in the United Kingdom or being settled there have the same meanings respectively as in the Immigration Act 1971(13).

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

- (a) he has not been ordinarily resident in the United Kingdom and Islands throughout the 3 year period referred to in regulation 6(a); or
- (b) being a national of a member state of the European Community or the child of such a national he has not been ordinarily resident in the European Economic Area throughout that 3 year period,

by reason only that he, his spouse or his parent was temporarily employed outside the United Kingdom and Islands or, as the case may be, outside the European Economic Area.

6.—(1) A person shall be an excepted student if he is—

- (a) an EEA migrant worker—

(13) 1971 c. 77, amended by section 39 of the British Nationality Act 1981 (c. 61).

- (i) who satisfies the conditions mentioned in sub-paragraph (2), and
  - (ii) in whose case it is not lawful to charge higher fees by virtue of Article 7(2) or (3) of Council Regulation (EEC) No. 1612/68 on freedom of movement of workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement) or, where he is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);
- (b) the spouse of an EEA migrant worker and he–
- (i) satisfies the conditions mentioned in sub-paragraph (2), and
  - (ii) is installed in the United Kingdom with his spouse; or
- (c) the child of an EEA migrant worker and–
- (i) he satisfies the conditions mentioned in sub-paragraph (2), and
  - (ii) in his case it is not lawful to charge higher fees by virtue of Article 12 of the above mentioned Council Regulation or, where his migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12.
- (2) The conditions referred to in sub-paragraph (1) are that–
- (a) he has been ordinarily resident in the European Economic Area throughout the three year period referred to in regulation 6(a), and
  - (b) his residence there during any part of that three year period has not been wholly or mainly for the purpose of receiving full-time education.
7. A person shall be an excepted student if he fails to satisfy the criterion specified in paragraph 6(2)(a) by reason only that he, his spouse or his parent was temporarily employed elsewhere.
8. A person shall be an excepted student if he was admitted to his course in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.
9. For the purpose of this Schedule fees shall be considered to be charged on the last date or dates on which they are required to be paid by the student, and not on the date or dates on which the student enters an agreement to pay them or on which he receives an account in respect of them.

## SCHEDULE 2

Regulations 10 and 13

### POST-GRADUATE AGRICULTURAL STUDENTSHIPS AND NEWBATTLE ABBEY COLLEGE MAINTENANCE AWARDS - EXCEPTED CANDIDATES

1.—(1) It shall not be lawful in pursuance of regulation 10 or 13 to adopt rules of eligibility for maintenance awards which exclude from eligibility a person who is an excepted candidate within the meaning of this Schedule.

(2) In this Schedule, “the relevant date” means, in relation to a candidate for a maintenance award, the date of his application therefor.

2.—(1) A person shall be an excepted candidate if he is–

- (a) an EEA migrant worker who–

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- (i) satisfies the conditions mentioned in sub-paragraph (2), and
  - (ii) is eligible for a maintenance award by virtue of Article 7(2) or (3) of Council Regulation (EEC) No. 1612/68 on freedom of movement of workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement) or, where he is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);
- (b) the spouse of an EEA migrant worker and he—
- (i) satisfies the conditions mentioned in sub-paragraph (2), and
  - (ii) is installed in the United Kingdom with his spouse; or
- (c) the child of an EEA migrant worker and he—
- (i) satisfies the conditions mentioned in sub-paragraph (2), and
  - (ii) is eligible for a maintenance award by virtue of Article 12 of the above mentioned Council Regulation or, where his migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12.
- (2) The conditions referred to in sub-paragraph (1) are that—
- (a) he has been ordinarily resident in the European Economic Area throughout the period of three years immediately preceding the relevant date, and
  - (b) his residence there during any part of that three year period has not been wholly or mainly for the purpose of receiving full-time education.
3. Subject to paragraph 5, a refugee ordinarily resident in the United Kingdom and Islands who has not ceased to be ordinarily resident there since he was recognised as a refugee, and the spouse or child of such a refugee, shall be an excepted candidate.
- 4.—(1) Subject to paragraph 5, a person shall be an excepted candidate—
- (a) for the purposes of Part III if he does not have the relevant connection with Scotland mentioned in regulation 9,
  - (b) for the purposes of Part IV if he does not have the relevant connection with England mentioned in regulation 12,
- by reason only that—
- (i) he, his spouse or his parent was temporarily employed outside Scotland or England, as the case may be; or
  - (ii) he or his spouse was temporarily receiving full-time education outside Scotland or England, as the case may be.
- (2) Subject to paragraph 5, a person shall be an excepted candidate if he fails to satisfy the criterion specified in paragraph 2(2)(a) by reason only that—
- (a) he, his spouse or his parent was temporarily employed outside the European Economic Area; or
  - (b) he or his spouse was temporarily receiving full-time education outside the European Economic Area.
5. Such persons as are mentioned in paragraph 3 or 4 shall be excepted candidates only where the maker of the awards has so determined.



## SCHEDULE 3

Regulations 10 and 13

### FEES AWARDS - EXCEPTED CANDIDATES

1. In this Schedule “the relevant date” means, in relation to a candidate for a fees award, the date of his application therefor.

2. It shall not be lawful in pursuance of regulation 10 or 13 to adopt rules of eligibility for fees awards which exclude from eligibility a person who is an excepted candidate within the meaning of this Schedule.

3.—(1) A person who is an excepted candidate within the meaning of Schedule 2 shall be an excepted candidate within the meaning of this Schedule.

(2) Subject to paragraph 4, a person who—

- (a) is a national of a member state of the European Community; or
- (b) is the child of such a national

shall be an excepted candidate if he satisfies the conditions mentioned in sub-paragraph (3).

(3) The conditions referred to in sub-paragraph (2) are that—

- (a) he has been ordinarily resident in the European Economic Area throughout the 3 year period immediately preceding 1st September, 1st January or 1st April closest to the beginning of the first term of his intended course; and
- (b) his residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

4. A candidate who would, but for this paragraph, be an excepted candidate by virtue of paragraph 3(2) and (3) shall not be an excepted candidate in a case where rules of eligibility confine awards to candidates having a relevant connection with part only of the United Kingdom and Islands and he is, on the relevant date, ordinarily resident in some other part of the United Kingdom and Islands.

5. A person shall be an excepted candidate if he fails to satisfy the criterion specified in paragraph 3(3)(a) by reason only that—

- (a) he, his spouse or his parent was temporarily employed outside the European Economic Area, or
- (b) he or his spouse was temporarily receiving full-time education outside the European Economic Area.

## SCHEDULE 4

Regulation 14

### REVOCATIONS

Column 1 <i>Instruments revoked</i>	Column 2 <i>References</i>	Column 3 <i>Extent of revocation</i>
The Education (Fees and Awards) (Scotland) Regulations 1983	S.I.1983/1215	The whole Regulations
The Education (Fees and Awards) (Scotland) Amendment Regulations 1984	S.I. 1984/1361	The whole Regulations

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Column 1 <i>Instruments revoked</i>	Column 2 <i>References</i>	Column 3 <i>Extent of revocation</i>
The Education (Fees and Awards) (Scotland) Amendment Regulations 1985	S.I. <a href="#">1985/1223</a>	The whole Regulations
The Education (Fees and Awards) (Scotland) Amendment Regulations 1987	S.I. <a href="#">1987/1383</a>	The whole Regulations
The Education (Fees and Awards, Allowances and Bursaries) (Scotland) Amendment Regulations 1991 The Education (Fees and Awards) (Scotland) Amendment Regulations 1993	S.I. <a href="#">1991/834</a>	Regulation 2
The Education (European Economic Area) (Scotland) Regulations 1993	S.I. <a href="#">1993/525</a>	The whole Regulations
The Education (European Economic Area) (Scotland) Regulations 1993	S.I. <a href="#">1993/3184</a>	The whole Regulations so far as still in force
The Education (European Community Enlargement) (Scotland) Regulations 1994	S.I. <a href="#">1994/3148</a>	The whole Regulations so far as still in force
The Education (Fees and Awards) (Scotland) Amendment Regulations 1995	S.I. <a href="#">1995/1271</a>	The whole Regulations

## EXPLANATORY NOTE

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

These Regulations, which come into force on 17th February 1997, consolidate the Regulations revoked by regulation 14, with some modifications. In particular, they introduce an amendment to confer on the spouse of an EEA migrant worker (defined in regulation 2) the right to pay “home rate” as opposed to higher “overseas rate” fees at institutions referred to in Part II of the Regulations. They also prohibit rules of eligibility for certain awards referred to in Parts III and IV from excluding such spouses from eligibility.

The Regulations provide that, subject to specified exceptions, in the cases mentioned below it shall be lawful to differentiate between students with, and those without, a specified connection with the United Kingdom, including the Channel Islands and the Isle of Man, or with a particular part of the United Kingdom either as respects fees charged or in rules of eligibility for awards. Nothing in the Regulations is to be construed as rendering unlawful anything done which would have been lawful had the Regulations not been made (regulation 3).

Part II relates to tuition and certain other fees (“relevant fees”) in respect of courses provided by higher education institutions, central institutions and further education establishments (regulations 4 and 5). Students who have not been ordinarily resident in the United Kingdom and Islands for three years or who have been so resident but at any time during the three year period have been resident wholly or mainly for the purpose of receiving full-time education may be charged higher relevant fees unless they are “excepted students”. “Excepted students” for the purpose of Part II include nationals of member states of the European Community with a corresponding connection with the European Economic Area, refugees and EEA migrant workers (regulations 6 and 7 and Schedule 1).

Part III deals with rules of eligibility for post-graduate agricultural studentships (regulation 8) and makes provision similar to that for Part II except that, firstly, the required connection is with Scotland instead of the United Kingdom and Islands and secondly, the candidate must be a British or Commonwealth citizen (regulations 9 and 10). Schedules 2 and 3 provide for exceptions in relation to maintenance and fee awards for “excepted candidates”. Such candidates include the children and spouses of EEA migrant workers. If the maker of the award so determines, they also include refugees and candidates who do not have the relevant connection with Scotland only because they, their spouses or their parents were temporarily employed elsewhere or they or their spouses were temporarily receiving full-time education elsewhere. In relation to fee awards “excepted candidates” also include nationals of member states of the European Community and the children of such nationals who have a relevant connection with the European Economic Area.

Part IV relates to the rules of eligibility for scholarships tenable at Newbattle Abbey College, Dalkeith (regulation 11) and makes provision similar to that for Part III except that the required connection is with England instead of the United Kingdom and Islands (regulations 12 and 13) and the candidate need not be a British or Commonwealth citizen. Schedules 2 and 3 apply to provide the exceptions noted in the preceding paragraph in relation to maintenance and fee awards for “excepted candidates”.