SCOTTISH STATUTORY INSTRUMENTS

2007 No. 154

The Education (Student Loans) (Scotland) Regulations 2007

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Education (Student Loans) (Scotland) Regulations 2007 and shall come into force on 1st August 2007.

Interpretation

2.—(1) In these Regulations–

"academic year", in relation to a course, means the period of twelve months beginning on the relevant date;

"the Act" means the Education (Scotland) Act 1980;

"designated course" means a course designated in terms of regulation 4;

"Directive 2004/38" means Directive 2004/38/EC of the European Parliament and of the Council(**1**) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States;

"EEA frontier self-employed person" means an EEA national who–

(a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and

(b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

"EEA frontier worker" means an EEA national who–

(a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and

(b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

"EEA migrant worker" means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;

"EEA national" means a national of an EEA state other than the United Kingdom;

"EEA self-employed person" means an EEA national in the United Kingdom who is a self employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;

(**1**) O.J. No. L 158, 30.04.04, p.77.

"eligible student" means a person whom the Scottish Ministers have determined is eligible for a loan in connection with their undertaking a course in accordance with regulation 5 or 6;

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

"European Community" means the territory comprised by the member States of the European Community as constituted from time to time;

"European Economic Area" means the European Community and, subject to the conditions laid down in the EEA agreement, the area comprised by Norway, Iceland and Liechtenstein;

"family member" means–

(a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self employed person, or an EEA self-employed person–

  (i) their spouse or civil partner;

  (ii) their child or the child of their spouse or civil partner;

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

(b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person–

  (i) their spouse or civil partner;

  (ii) their child or the child of their spouse or civil partner;

(c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–

  (i) their spouse or civil partner;

  (ii) their direct descendants or those of their spouse or civil partner who are–

    (aa) under the age of 21;

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

(d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–

  (i) their spouse or civil partner;

  (ii) their direct descendants or those of their spouse or civil partner who are–

    (aa) under the age of 21;

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

  (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner; and

(e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1–

  (i) their spouse or civil partner;

  (ii) their direct descendants or those of their spouse or civil partner who are–

    (aa) under the age of 21;

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

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

"Islands" means the Channel Islands and the Isle of Man;

"loan" means a loan towards a student's maintenance under the Act and any regulations made thereunder, including the interest accrued on the loan and any penalties or charges made in connection with it;

"non UK EC national" means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;

"parent" includes a step-parent, a guardian, any other person having parental responsibilities for a child and any person having care of a child, and "child" shall be construed accordingly;

"period", in relation to an academic year, means one of the periods in that year from 1st January to 31st March, 1st April to 30th June, 1st July to 31st July, or 1st August to 31st December;

"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(**2**) as extended by the Protocol thereto which entered into force on 4th October 1967(**3**);

"relevant date", in relation to a course, means–

(a) as respects a course starting in the period 1st August to 31st December, 1st August;

(b) as respects a course starting in the period 1st January to 31st March, 1st January;

(c) as respects a course starting in the period 1st April to 30th June, 1st April; and

(d) as respects a course starting in the period 1st July to 31st July, 1st July,

in each case the relevant date being in the year of commencement of the appropriate academic year of the course;

"Repayment Regulations" means the Repayment of Student Loans (Scotland) Regulations 2000(**4**);

"student loan account number" means the account number assigned by the lender to a loan made under the Act, the Education (Student Loans) Act 1990(**5**), the Education (Student Loans) (Northern Ireland) Order 1990(**6**), the Teaching and Higher Education Act 1998(**7**), the Education (Student Support) (Northern Ireland) Order 1998(**8**) or any regulations made under any of the foregoing;

"Swiss employed person" means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier employed person;

"Swiss frontier worker" means a Swiss national who–

(a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and

(b) resides in Switzerland or in the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

"Swiss frontier self-employed person" means a Swiss national who–

(**2**) Cm. 9171.
(**3**) Cm. 3906 (Out of print: photocopies are available, free of charge, from the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).
(**4**) S.S.I. 2000/110.
(**5**) 1990 c. 6, amended by the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 67; by the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraphs 12(2) and (3); by the Education Act 1994 (c. 30), Schedule 2, paragraph 9; by the Education (Student Loans) Act 1996 (c. 9), section 1(1) and the Schedule; by the Education Act 1996 (c. 56), Schedule 37, paragraph 98 and Schedule 38, and by the Education (Student Loans) Act 1998 (c. 1), sections 1 to 3.
(**6**) S.I.1990/1506 (N.I. 11).
(**7**) 1998 c. 30.
(**8**) S.I. 1998/1760 (N.I. 14).

(a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and

(b) resides in Switzerland or in the territory of an EEA state, other than the United Kingdom, and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

"Swiss self-employed person" means a Swiss national in the United Kingdom who is a self employed person (within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;

"Switzerland Agreement" means the Agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999(**9**) and which came into force on 1st June 2002; and

"temporary protection" means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules(**10**).

(2) For the purposes of these Regulations a person who is resident in Scotland, England, Northern Ireland, Wales, or the Islands as a result of having moved from another of those areas for the purpose of undertaking–

(a) that person's present course; or

(b) a previous designated course which (disregarding any intervening vacation) that person was undertaking immediately before commencing that person's present course,

shall be considered to be ordinarily resident in the place from which that person moved.

(3) For the purposes of paragraph 1(a) and 8(b) of Schedule 1, a person shall be treated as ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that that person was not actually resident only because–

(a) that person, or their spouse or civil partner, or parent; or

(b) in the case of a dependant direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner,

was temporarily either employed or studying outside Scotland.

(4) For the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c) and 9(b) of Schedule 1, a person shall be treated as having been ordinarily resident in the area specified and for the period specified in those paragraphs if the Scottish Ministers are satisfied that the person was not actually ordinarily resident in the relevant area for the specified period only because–

(a) that person, or their spouse or civil partner, or parent; or

(b) in the case of a dependant direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner,

was for the time being temporarily either employed or studying outside the relevant area.

(5) For the purposes of paragraph 1(a) of Schedule 1 and subject to paragraph (6), a person shall not be treated as being ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that their 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 first day of the first academic year of the course as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(**9**) Cm. 5639.
(**10**) HC 395; relevant amending instrument is HC 164.

(6) Paragraph (5) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971(**11**) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

(7) For the purposes of paragraph 1(b) of Schedule 1, a person shall not be treated as having been ordinarily resident in the United Kingdom and Islands for the 3 year period, if the Scottish Ministers are satisfied that that person was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless–

(a) the person is treated as ordinarily resident in accordance with paragraph (4); or

(b) the person has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the person must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(**11**) 1971 c. 77.