

2007 No. 155

EDUCATION

The Graduate Endowment (Scotland) Regulations 2007

Made - - - - *6th March 2007*

Laid before the Scottish Parliament *6th March 2007*

Coming into force - - *1st August 2007*

The Scottish Ministers, in exercise of the powers conferred by section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001^(a) and by sections 73(f) and 73B of the Education (Scotland) Act 1980^(b) and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I

GENERAL

Citation and commencement

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

Interpretation

2. In these Regulations—

“academic year”, in relation to a course, means a period beginning on the first day of the first term of an academic year for that course and ending on the last day of the final term of that academic year for that course;

“the Act” means the Education (Graduate Endowment and Student Support) (Scotland) Act 2001;

“continuous programme of higher education” means a programme of education undertaken by an individual comprising—

(a) either—

(i) a course leading to a Higher National Certificate immediately followed by a course leading to a Higher National Diploma (disregarding any intervening vacation); or

(ii) a course leading to a Higher National Diploma; and

^(a) 2001 asp 6.

^(b) 1980 c.44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c.30), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”), section 3(2). Section 73B was inserted by the Teaching and Higher Education Act 1998, section 29(2) and amended by the 2001 Act, section 3(3) and by the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 149. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

- (b) a course of higher education not of a kind referred to in paragraph (a) above which commences in the academic year immediately following the end of the course referred to in paragraph (a) or in the following academic year;

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

“due date” means 1st April immediately following the last day of the last academic year of the course of higher education in respect of which the liability to pay the graduate endowment arises;

“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 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;

“full-time course of higher education” means a course of fundable higher education, other than a course treated as not falling within section 5(3) of the Further and Higher Education (Scotland) Act 2005^(b) by virtue of regulation 5, which is a sandwich course or a course—

- (a) which persons undertaking it are normally required by the institution providing it to attend (whether at premises of the institution or elsewhere) for a period of at least 24 weeks in each academic year except the final academic year and of at least eight weeks in the final academic year; and
- (b) the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each academic year to an average of at least 21 hours a week as respects the periods of attendance mentioned in paragraph (a) above for the year;

“liable graduate” means a graduate who is liable to pay the graduate endowment;

“loan” means a loan for the purposes of discharging the liability of a liable graduate to pay the graduate endowment made under the 1980 Act and these Regulations, including the interest accrued on the loan and any penalties or charges made in connection with it;

“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;

“periods of work experience” means—

- (a) periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outwith the institution; and
- (b) in the case of a course which includes the study of one or more modern languages for not less than one half of the time spent studying on the course, and which includes periods of residence in a country whose language is a language of the course, such periods of residence during which the student is employed;

“relevant day” means the first day of the first academic year of a full-time course of higher education;

“sandwich course” means a course consisting of alternate periods of full-time study in an institution and periods of work experience so organised that, taking the course as a whole, the student attends for the periods of full-time study for an average of not less than 19 weeks in each year, and for the purposes of calculating their attendance the course shall be treated as beginning with the first period of full-time study and ending with the last such period; and

“the 1980 Act” means the Education (Scotland) Act 1980.

^(a) O.J. No. L 158, 30.04.04, p.77.

^(b) 2005 asp 6.

PART II

LIABILITY FOR THE GRADUATE ENDOWMENT

Liable Graduates

3.—(1) Subject to the following paragraphs and regulations 4 and 5, a graduate of the following description shall be liable to pay the graduate endowment under section 1(1) of the Act, namely a graduate who—

- (a) has undertaken a full-time course of higher education which commenced on or after 1st August 2001 which is the first full-time course of higher education undertaken by them;
- (b) has undertaken that course for a period of at least 3 academic years or, where that course is undertaken as part of a continuous programme of higher education, for a period of at least 2 academic years; and
- (c) is a person mentioned in paragraphs 2 to 7 of Schedule 1.

(2) A graduate who has undertaken a full-time course of higher education which commenced on or after 1st August 2001 shall not be liable to pay the graduate endowment if that course is undertaken as part of a continuous programme of higher education which commenced prior to 1st August 2001.

(3) This paragraph applies to graduates who have undertaken a full-time course of higher education who prior to the completion of that course—

- (a) transferred from one institution to another to undertake the same or any other full-time course of higher education;
- (b) ceased to undertake that course but transferred to another full-time course of higher education at the same institution; or
- (c) ceased to undertake that course but transferred to another course of higher education which is not a full-time course of higher education.

(4) In the case of a graduate to whom paragraph (3) applies, for the purposes of paragraph (1)—

- (a) all of the full-time courses of higher education undertaken by them which follow on immediately from the preceding course (disregarding any intervening vacation) shall be treated as a single course of full-time higher education; and
- (b) the period taken into account for the purposes of paragraph (1)(b) above shall be the entire period during which the graduate undertook the full-time courses of higher education referred to in sub-paragraph (a) above.

Exempt Graduates

4.—(1) A graduate shall be exempt from liability for the graduate endowment if, on the relevant day applicable to the course of higher education in respect of which the graduate would otherwise be liable to pay the graduate endowment, the graduate—

- (a) has attained the age of 25 years;
- (b) is married or in a civil partnership; or
- (c) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A graduate shall be exempt from liability for the graduate endowment if, at any time during the course of higher education in respect of which the graduate would otherwise be liable to pay the graduate endowment, the graduate—

- (a) is eligible for an allowance under the Students' Allowances (Scotland) Regulations 2007(a) in respect of their being a lone parent;

(a) S.I. 2007/153.

- (b) is eligible for an allowance under those Regulations in respect of their being a disabled student; or
- (c) is a person mentioned in paragraph 8 of Schedule 1 and would have been eligible for either of the allowances mentioned in sub-paragraphs (a) and (b) above if the graduate had been a person mentioned in paragraph 2 of that Schedule.

(3) For the purposes of paragraph (1)(c) above, a person shall be regarded as having been self-supporting out of their earnings for any period or periods during which that person satisfies any of the conditions set out in paragraph 3(2) of Schedule 2.

(4) For the purposes of paragraph (1) above, the relevant day applicable to a course of higher education shall be—

- (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 first academic year in which the graduate undertook the course of higher education.

Exempt Courses

5.—(1) For the purposes of section 1 of the Act, the following classes of course shall be treated as not falling within section 5(3) of the Further and Higher Education (Scotland) Act 2005:—

- (a) a course at a higher level in preparation for a higher diploma or certificate;
- (b) a course of post-graduate studies (including a higher degree course); and
- (c) a course at a higher level in preparation for a qualification from a professional body.

(2) For the purposes of section 1 of the Act, the following courses shall be treated as not falling within the said section 5(3):—

- (a) a first degree course in nursing or midwifery; or
- (b) a first degree course in one of the subjects listed in Schedule 3 to these Regulations.

Provision of Information

6.—(1) Every liable graduate, and any person whom the Scottish Ministers consider may become a liable graduate, shall, as soon as reasonably practicable after being requested to do so, provide the Scottish Ministers with such information as they consider necessary arising out of or in connection with their liability for, or the payment by them of, the graduate endowment.

(2) Every institution which provides any course of higher education shall, as soon as reasonably practicable after being requested to do so, provide the Scottish Ministers with such information as they consider necessary in respect of liable graduates and persons who may become liable graduates.

PART III

AMOUNT AND PAYMENT OF GRADUATE ENDOWMENT

Amount of Graduate Endowment

7.—(1) Subject to paragraph (2) below, the amount of the graduate endowment which a liable graduate shall be liable to pay to the Scottish Ministers shall be the amount of the graduate endowment prevailing on the first day of the first academic year in which the graduate undertook the course of higher education in respect of which they are liable to pay the graduate endowment.

(2) If a liable graduate undertakes a course of higher education in respect of which they are liable to pay the graduate endowment as part of a continuous programme of higher education, the amount of the graduate endowment which that liable graduate shall be liable to pay to the Scottish Ministers shall be that prevailing on the first day of the first academic year of the course referred to in paragraph (b) of the definition of “continuous course of higher education” in regulation 2 undertaken as part of that continuous course of higher education.

(3) For the period from 1st August 2001 to 31st July 2002, the amount of the graduate endowment shall be £2000.

(4) For any subsequent period of one year commencing on 1st August, the amount of the graduate endowment shall be the amount of the graduate endowment for the previous period increased by the appropriate percentage for that subsequent period and if the resulting amount is not a whole number of pounds, it shall be rounded down to the nearest pound.

(5) The appropriate percentage for any period is the percentage by which the retail prices index for the month of July immediately preceding that period has increased compared with the retail prices index for the previous July.

Payment of Graduate Endowment

8.—(1) Subject to the following paragraph, each liable graduate shall pay the full amount of the graduate endowment for which they are liable to the Scottish Ministers on the due date.

(2) A liable graduate may apply to the Scottish Ministers for a loan in accordance with Part IV of these Regulations for the purposes of discharging their liability to pay the graduate endowment, and paragraph (1) shall not apply to a liable individual who makes such an application before the due date.

PART IV

LOANS TO PAY THE GRADUATE ENDOWMENT

Eligibility for a loan

9.—(1) The Scottish Ministers shall make a loan in accordance with these Regulations in respect of each liable graduate who applies for a loan in accordance with regulation 10 for the purposes of discharging their liability to pay the graduate endowment.

(2) A liable graduate shall be eligible for such a loan subject to paragraph (3).

(3) The Scottish Ministers may make it a condition of entitlement to payment of any loan that the liable graduate must provide them with the liable graduate’s United Kingdom national insurance number.

(4) Where the Scottish Ministers have imposed a condition under paragraph (3), they must not make any payment of the loan to the liable graduate before they are satisfied that the liable graduate has complied with that condition.

(5) Notwithstanding paragraph (4), the Scottish Ministers may make a payment of loan to a liable graduate if they are satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the liable graduate having complied with the condition imposed under paragraph (3).

Applications for a loan

10.—(1) A liable graduate shall apply for a loan by completing and submitting to the Scottish Ministers an application in such form as the Scottish Ministers may require.

(2) The completed application shall include such information as the Scottish Ministers require, including the following particulars:—

- (a) the liable graduate's United Kingdom national insurance number;

- (b) the liable graduate's most recent student loan account number, if any; and
 - (c) the names, addresses and telephone numbers of two persons who know the liable graduate.
- (3) The completed application shall also include a declaration, which shall be signed by the liable graduate that—
- (a) the particulars given in the form are correct to the best of their knowledge and belief; and
 - (b) they will notify the Scottish Ministers of any change in those particulars which might affect their eligibility for a loan.
- (4) The application form must reach the Scottish Ministers by such date as they may determine from time to time (and different dates may be determined by them in respect of loans for different liable graduates) unless the Scottish Ministers consider that, having regard to the circumstances of the particular case, the time limit should not apply, in which case the application must reach the Scottish Ministers not later than such date as they specify.
- (5) A liable graduate shall demonstrate their eligibility for a loan by providing such evidence as the Scottish Ministers may require.
- (6) The Scottish Ministers may take such steps and make such enquiries as they consider necessary to determine whether the liable graduate is eligible for a loan.

Information

- 11.—**(1) Every liable graduate applying for a loan under regulation 10 shall as soon as reasonably practicable after requested to do so provide the Scottish Ministers with such information as they consider necessary for the exercise of their functions under these Regulations.
- (2) The Scottish Ministers may at any time require a liable graduate to enter into an agreement to repay a loan by a particular method.
- (3) The Scottish Ministers may at any time request from a liable graduate sight of their valid national identity card, their valid passport issued by the state of which they are a national or their birth certificate.
- (4) The Scottish Ministers may at any time verify with the Department for Work and Pensions the United Kingdom national insurance number that a liable graduate has provided or may check with the Department for Work and Pensions whether the liable graduate has such a number with a view to obtaining it if the liable graduate does.
- (5) Where the Scottish Ministers have requested information or documents under this regulation, they may withhold any payment of a loan until the liable graduate provides what has been requested or provides a satisfactory explanation for not complying with the request.
- (6) Where the Scottish Ministers have requested an agreement as to the method of repayment under this regulation, they may withhold any payment of a loan until the liable graduate provides what has been requested.

Amount of Loan

- 12.** The amount of any loan shall be the amount of the graduate endowment for which the liable graduate to whom the loan is made is liable.

Purpose of Loan

- 13.—**(1) The Scottish Ministers shall apply the full amount of any loan made in respect of a liable graduate for the purpose of discharging the liability of that liable graduate to pay the graduate endowment, and shall not pay any part of the loan to the liable graduate or to any other person on their behalf.
- (2) Where a liable graduate has made an application for a loan prior to the due date, the Scottish Ministers shall apply the amount of their loan in accordance with paragraph (1) on the due date.

(3) Where a liable graduate has made an application for a loan after the due date, the Scottish Ministers shall apply the amount of their loan in accordance with paragraph (1) as soon as reasonably practicable.

(4) Any loan made in respect of a liable graduate in accordance with these Regulations shall be applied for the purpose referred to in paragraph (1) and for no other purpose.

Interest

14.—(1) Subject to paragraph (2), loans shall bear interest from the date on which they are applied by the Scottish Ministers in accordance with regulation 13 at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980^(a) equal to the percentage increase between the retail prices all items index published by the Office for National Statistics for the month of March immediately preceding the month in which the loan is applied by the Scottish Ministers in accordance with regulation 13 and that index so published for the previous March.

(2) If the rate referred to in paragraph (1) exceeds the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974^(b) loans shall bear interest at the rate so specified.

(3) Interest shall be calculated on the principal outstanding daily, and shall be added to the principal monthly.

Insolvency

15. Where after the date of sequestration of a liable graduate's estate, they receive, or are entitled to receive, a loan in accordance with these Regulations—

- (a) the sheriff shall not, in fixing an amount under subsection (2) of section 32 of the Bankruptcy (Scotland) Act 1985^(c) treat the loan as income of the eligible student;
- (b) for the purpose of subsection (6) of that section the loan shall not be treated as estate vesting in, or requiring to be conveyed or delivered to, the eligible student's permanent trustee; and
- (c) any debt or liability to which the eligible student is, or may become, subject in respect of the loan shall not be treated as a debt or liability—
 - (i) for the purposes of the sequestration (or of any offer of composition to the permanent trustee); or
 - (ii) from which the liable graduate is discharged on the expiry of a period after the date of sequestration, under or by virtue of section 54 or 75(4) of that Act (or on an order being made under paragraph 11 of Schedule 4 to that Act as respects the liable graduate and the permanent trustee).

NICOL STEPHEN

A member of the Scottish Executive

St Andrew's House,
Edinburgh
6th March 2007

^(a) S.I. 1980/51, amended by S.I. 1999/3177.

^(b) 1974 c.39.

^(c) 1985 c.66; section 32 was amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 6, the Pensions Act 1995 (c.26), Schedule 3, paragraph 14 and the Welfare Reform and Pensions Act 1999 (c.30) Schedule 2, paragraph 1; and prospectively by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 17, 18 and 19 and schedule 1.

SCHEDULE 1

Regulations 3(1)(c) and 4(2)(c)

LIABLE GRADUATES

1.—(1) In this Schedule—

“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;

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland Henderson, Mayotte, Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon and Wallis and Futuna Islands;

“EU overseas territories national” means a national of any of the EU overseas territories;

“family member” means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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 or an EU overseas territories national—
 - (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 or an EU overseas territories national—

- (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 5 of this Schedule–
 - (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;

“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;

“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 worker;

“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–

- (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^(a) and which came into force on 1st June 2002; and

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

(2) For the purposes of this Schedule, an area which–

- (a) was previously not part of the European Community or the European Economic Area, but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of those areas,

shall be considered to have always been part of the European Community or the European Economic Area, as the case may be.

^(a) Cm. 5639.

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

2. A person who—

- (a) is ordinarily resident in Scotland on the relevant day;
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the period of 3 years immediately preceding the relevant day; and
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971^(a) on the relevant day.

3.—(1) A person who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) an EEA frontier worker or an EEA frontier self-employed person;
 - (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant day.

(2) Sub-paragraph (1)(c) does not apply where the person falls within sub-paragraph (1)(a)(iii) or (iv).

4.—(1) A person who—

- (a) is—
 - (i) the family member of a person mentioned in paragraph 3(1)(a); or
 - (ii) is entitled to the payment of an allowance by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers^(b), as extended by the EEA agreement;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant day.

(2) Sub-paragraph (1)(c) does not apply where the person is a family member of a person falling within paragraph 3(1)(a)(iii) or (iv).

5.—(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
- (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full-time education;
- (c) is ordinarily resident in Scotland on the relevant day;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and

^(a) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).

^(b) O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

- (e) in the case where their ordinary residence referred to in sub-sub-paragraph (d) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-sub-paragraph (d).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if that person—
- (a) is—
 - (i) a United Kingdom national;
 - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA agreement or the Switzerland Agreement); or
 - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
 - (b) either—
 - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom; or
 - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.
- 6. A person who—**
- (a) (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although the person is considered not to qualify for recognition as a refugee, it is thought right to allow them to enter or remain in the United Kingdom and they have been granted leave to enter or remain accordingly;
 - (ii) has been ordinarily resident in the United Kingdom and the Islands at all times since that person was first granted such leave to enter or remain; and
 - (iii) is ordinarily resident in Scotland on the relevant day; or
 - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant day.
- 7. A person who—**
- (a) is a non UK EC national or the child of such a national;
 - (b) is ordinarily resident in Scotland on the relevant day;
 - (c) has been ordinarily resident in the United Kingdom and the Islands throughout the 3 year period preceding that day; and
 - (d) in the case where their ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (c).
- 8. A person who—**
- (a) is a non UK EC national or an EU overseas territories national or a family member of either;
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant day; and
 - (c) seeks funding in respect of fees in respect of a full-time course of higher education at an establishment in Scotland.

9. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article (6) of Annex 1 to the Switzerland Agreement;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day;
- (c) is ordinarily resident in Scotland on the relevant day; and
- (d) in the case where their ordinary residence referred to in paragraph (b) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (b).

SCHEDULE 2

Regulation 4(3) and
Schedule 1 paragraph 1(3)

ORDINARY RESIDENCE

1.—(1) For the purposes of paragraph 2(a) and paragraph 7(b) of Schedule 1 a person shall be treated as being ordinarily resident in Scotland on the relevant day if the Scottish Ministers are satisfied that they were not actually so resident only because—

- (a) that person, or their spouse or civil partner, or either of their parents; or
- (b) in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner,

was for the time being—

- (c) employed outside Scotland; or
- (d) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of paragraph 2(a) of Schedule 1 and subject to sub-paragraph (3), a person shall not be treated as being ordinarily resident in Scotland on the relevant day 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 relevant day as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(3) Sub-paragraph (2) shall not apply to a person who 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.

2.—(1) Sub-paragraphs (2) to (5) below shall apply in determining, for the purposes of paragraphs 2(b), 3(1)(b), 4(1)(b), 5(1)(d), 7(c), 8(b) and 9(b) of Schedule 1 whether a person is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (in this paragraph, “the specified period”) in the United Kingdom, the European Economic Area or Switzerland or the EU overseas territories (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 in paragraph 2(b) of Schedule 1 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 sub-paragraph (5); 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.

(3) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 8(b) of Schedule 1 if the Scottish Ministers are satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education, unless that person is treated as ordinarily resident by virtue of sub-paragraph (5).

(4) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that the person was born and has spent the greater part of their life in the relevant area and that—

- (a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that person is not an independent student; or

- (b) that person has been ordinarily resident in the relevant area for at least 1 year of the specified period and, in the case of those qualifying by virtue of paragraph 2 or 8 of Schedule 1, no part of that period of residence was wholly or mainly for the purpose of receiving full-time education.

(5) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that the person was not actually so resident in the relevant area for the specified period only because—

- (a) that person, or their spouse or civil partner, or either of their parents; or
- (b) in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner,

was for the time being—

- (c) employed outside the relevant area; or
- (d) attending a course of study or undertaking postgraduate research outside the relevant area.

3.—(1) In paragraph 2(4)(a) above, “an independent student” means a person who on the relevant day—

- (a) has attained the age of 25 years;
- (b) is married or in a civil partnership; or
- (c) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having been self-supporting out of their earnings for any period or periods during which that person—

- (a) was participating in arrangements for training for the unemployed under any scheme operated, sponsored or funded by any state authority or agency, national, regional or local; or
- (b) was in receipt of benefit payable by any state authority or agency, national, regional or local, in respect of a person who is available for employment but who is unemployed; or
- (c) was available for employment and had complied with any requirement of registration imposed by a body referred to in paragraphs (a) or (b) as a condition of entitlement for participation in arrangements for training or receipt of benefit; or
- (d) received any pension, allowance or other benefit paid by reason of a disability to which that person is subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, national, regional or local, by an employer or any former employer, or by any other person; or
- (e) held a Scottish Studentship or comparable award; or
- (f) could not reasonably be expected to be self-supporting out of their earnings because that person had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them.

SCHEDULE 3

Regulation 5(2)

EXEMPT COURSES

For the purposes of regulation 5(2)(b) a first degree course in one of the following subjects shall not be treated as falling within section 5(3) of the Further and Higher Education (Scotland) Act 2005^(a)–

- (a) Dental Hygiene
- (b) Dental Therapy
- (c) Podiatry
- (d) Dietetics
- (e) Occupational Therapy
- (f) Orthoptics
- (g) Physiotherapy
- (h) Radiography (Diagnostic and Therapeutic)
- (i) Prosthetics and Orthotics
- (j) Speech and Language Therapy

^(a) 2005 asp 6.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Graduate Endowment (Scotland) Regulations 2001 (S.S.I. 2001/280) and certain amending instruments, which are revoked with transitional provisions by the Education (Graduate Endowment, Student Fees and Support) (Scotland) Revocation Regulations 2007 (S.S.I. 2007/ 148).

In addition to minor and drafting alterations, these Regulations clarify the definition of “full-time course of higher education” and insert a new definition for “employment” (including “employed”).

New definitions have also been inserted for “EU overseas territories” and “EU overseas territories national”. An amendment has been made to Schedule 1 to ensure that any national of EU overseas territories who has received funding in respect of fees is liable to pay the graduate endowment.

Regulation 9 includes provisions to enable the Scottish Ministers to make it a condition of entitlement to payment of a loan that the liable graduate provides a United Kingdom national insurance number.

Regulation 11 sets out in more detail the information that may be required by the Scottish Ministers.

Tables of Derivations and Destinations have been prepared identifying individual regulations in these Regulations with the equivalent provisions in the superseded Regulations and vice versa. Copies of the Tables may be obtained from the Scottish Executive, Higher Education and Learner Support Division, Europa Building, 450 Argyle Street Glasgow, G2 8LG. The Tables have been prepared to assist readers of these Regulations and do not have any legal effect.

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