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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 156**

**EDUCATION**

**The Education Maintenance Allowances  
(Scotland) Regulations 2007**

<i>Made</i>	- - - -	<i>6th March 2007</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th March 2007</i>
<i>Coming into force</i>	- -	<i>1st August 2007</i>

The Scottish Ministers in exercise of the powers conferred by section 73(f) of the Education (Scotland) Act 1980(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

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

**Interpretation**

2.—(1) In these Regulations—

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

“course of education” means a full time—

- (a) course of school education;
- (b) course of non-advanced education undertaken at a home within an area of an education authority and approved by that education authority; or
- (c) course of non-advanced education undertaken elsewhere within an area of an education authority under the supervision of that education authority;

“course of non-advanced education” means any course which prepares a person to a standard not higher than that required for—

- (a) a qualification awarded by the Scottish Qualifications Authority; or

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(1) 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), section 3(2). 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 General Certificate of Education qualification of England and Wales or Northern Ireland;

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council<sup>(2)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States;

“education maintenance allowance” means an allowance paid or to be paid under these Regulations;

“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 the United Kingdom; 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 the United Kingdom; 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;

“employed” means working in full-time or part-time employment which, in a normal week, involves a significant number of hours of work and references to employed 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 they became EEA states;

“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;
- (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—

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

- (aa) under the age of 21;
- (bb) dependants of that person or 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; 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;

“Free Movement Regulation” means Council Regulation (EEC) No. 1612/68(3) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area);

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

“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;

“qualifying date” means the first day of the term of the course of education for which an education maintenance allowance is sought;

“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(4) as extended by the Protocol thereto which entered into force on 4th October 1967(5);

“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 employed person” means a Swiss national who–

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

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(3) 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).

(4) Cm. 9171.

(5) Cm. 3906 (Out of Print: photocopies are available, free of charge, from the Students Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

- (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<sup>(6)</sup> 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<sup>(7)</sup>.

### **Exercise of power to grant an education maintenance allowance**

**3.—**(1) Subject to paragraph (3), the Scottish Ministers may pay an education maintenance allowance in accordance with section 73(f) of the Act and these Regulations to any person undertaking a course of education in Scotland who—

- (a) is deemed to have attained the age of 16 years under section 33 of the Act (School leaving dates);
- (b) has not, on the qualifying date, attained the age of 20 years; and
- (c) is described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect as regards determining whether a person is to be treated, for the purposes of Schedule 1, as being, or having been, ordinarily resident in a place at or for a particular time.

(3) The Scottish Ministers shall not pay an education maintenance allowance to any person who attained the age of 16 years prior to 1st March 2004.

### **Amount of education maintenance allowances**

**4.—**(1) The amount of an education maintenance allowance shall be determined by the Scottish Ministers and may include sums in respect of the maintenance of the holder during periods of full time study excluding vacations.

(2) In determining the amount of an education maintenance allowance, the Scottish Ministers may take account of the sums, if any, which in their opinion the holder of the education maintenance allowance, the holder’s parents and the holder’s spouse or the holder’s civil partner can reasonably be expected to contribute towards the holder’s expenses.

(3) The amount of an education maintenance allowance may be revised at any time if the Scottish Ministers think fit having regard to—

- (a) the failure of the holder of the education maintenance allowance to comply with the conditions of the education maintenance allowance;
- (b) all the circumstances of that holder, their parents and their spouse or civil partner; or
- (c) any error made in the computation of the amount of the education maintenance allowance.

(4) In paragraphs (2) and (3)—

<sup>(6)</sup> Cm. 5639.

<sup>(7)</sup> HC 395; relevant amending instrument is HC 164.

- (a) “holder’s spouse” shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not married to each other but who are living together as husband and wife; and
- (b) “holder’s civil partner” shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not civil partners of each other but who are living together as civil partners to each other.

### **Conditions of education maintenance allowance**

5.—(1) Every education maintenance allowance shall be held subject to the following conditions—

- (a) the holder of the educational maintenance allowance shall attend in accordance with any requirements specified by the educational establishment for the course of education in respect of which the education maintenance allowance is awarded;
- (b) the Scottish Ministers shall be satisfied as to the conduct and progress of that holder; and
- (c) that holder shall provide the Scottish Ministers with such information and such documents as they may from time to time require to enable them to exercise their functions under these Regulations.

(2) If the conditions specified in paragraph (1) are not complied with or if the holder receives from any other source any sum which, in the opinion of the Scottish Ministers, makes it unnecessary for the holder to be assisted by means of an education maintenance allowance, the Scottish Ministers may suspend payment of the education maintenance allowance or terminate the education maintenance allowance.

(3) It shall be a condition of payment of an education maintenance allowance that the applicant gives a written undertaking to pay to the Scottish Ministers any amount of which they may request repayment in the circumstances specified in paragraph (4).

(4) Where the Scottish Ministers are satisfied that there has been an overpayment of education maintenance allowance for any reason and request repayment of the overpayment or so much thereof as they think fit, the holder of the education maintenance allowance shall be obliged to pay to the Scottish Ministers the amount requested.

St Andrew’s House,  
Edinburgh  
6th March 2007

*NICOL STEPHEN*  
A member of the Scottish Executive

## SCHEDULE 1

Regulation 3(1)

## PERSONS ELIGIBLE FOR EDUCATION MAINTENANCE ALLOWANCES

1. A person who—
  - (a) is ordinarily resident in the United Kingdom and Islands on the qualifying date in relation to the course of education in respect of which that person seeks an education maintenance allowance;
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years preceding the qualifying date; and
  - (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(8)</sup> on the qualifying date.
  
- 2.—(1) A person who is an EEA migrant worker 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; or
    - (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 qualifying date; and
  - (c) subject to sub paragraph (2), is ordinarily resident in the United Kingdom and Islands on the qualifying date.

(2) Sub paragraph (1)(c) does not apply where the person applying for support falls within paragraph (1)(a)(iii) or (iv).
  
- 3.—(1) A person who—
  - (a) is—
    - (i) the family member of a person mentioned in paragraph 2(1)(a); or
    - (ii) is entitled to support by virtue of Article 12 of the Free Movement Regulation;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date; and
  - (c) subject to sub paragraph (2), is ordinarily resident in the United Kingdom and Islands on the qualifying date.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within paragraph 2(1)(a)(iii) or (iv).
  
- 4.—(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;
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date;

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<sup>(8)</sup> 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date; and
  - (e) in the case where their ordinary residence referred to in 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 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.
5. A person who—
- (a) at the date the Scottish Ministers received their application for an education maintenance allowance is—
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first recognised as a refugee; or
    - (ii) the spouse, civil partner, or child of such a refugee; and
  - (b) is ordinarily resident in Scotland on the qualifying date.
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 that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and that person has been granted leave to enter or remain accordingly;
    - (ii) has been ordinarily resident in the United Kingdom and 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 qualifying date; 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 qualifying date.
7. A person who—
- (a) at the date the Scottish Ministers received that person's application for an education maintenance allowance has been granted temporary protection and has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection;

*Status: This is the original version (as it was originally made).*

- (b) has not attained the age of 18 years on the qualifying date; and
- (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date, provided that an education maintenance allowance paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.

**8.** A person who—

- (a) is a non UK EC national or the child of such a national;
- (b) is ordinarily resident in the United Kingdom and Islands on the qualifying date;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding that date; 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).

**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 3(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 qualifying date;
- (c) is ordinarily resident in United Kingdom and Islands on the qualifying date; 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).

**10.—(1)** Subject to sub paragraph (2), a person to whom, or in respect of whom, an education maintenance allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking an education maintenance allowance, provided that the current application will not result in such a person being awarded an education maintenance allowance for more than 3 years.

(2) Sub paragraph (1) shall not preclude the payment of the monetary value of 3 years education maintenance allowance over a period of 4 years.

(3) Sub paragraph (1) shall not apply where it would result in the payment of an education maintenance allowance to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 7.

## SCHEDULE 2

Regulation 3(2)

### ORDINARY RESIDENCE

**1.—(1)** For the purposes of paragraph 1(a) and paragraph 8(b) of Schedule 1 a person shall be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date if the Scottish Ministers are satisfied that that person was not so resident only because that person, or their spouse or civil partner, or either of their parents was for the time being—

- (a) employed outside the United Kingdom and Islands; or

(b) attending a course of study or undertaking postgraduate research outside the United Kingdom and Islands.

(2) For the purposes of paragraph 1(a) of Schedule 1 and subject to sub paragraph (3), a person shall not be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date if the Scottish Ministers are satisfied that their residence there on that date is in any sense attributable to, or connected with, any period of residence in the United Kingdom and Islands within 3 years immediately preceding the qualifying date 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) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c) 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 and Islands, the European Economic Area or Switzerland (in this paragraph, “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 1(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—

- (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 9(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 in and spent the greater part of their life in the relevant area and that—

- (a) that person’s parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that the person is not an independent person; or
- (b) that person has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of paragraph 1 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 ordinarily resident in the relevant area for the specified period only because that person, their spouse or civil partner, or either of their parents was for the time being—

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

3. In paragraph 2(4)(a), an “independent person” means a person who on the qualifying date—

- (a) is married or in a civil partnership;

*Status: This is the original version (as it was originally made).*

- (b) has no parent or guardian living;
  - (c) does not reside with, has no regular contact with and receives no financial support from a parent or guardian;
  - (d) is a parent to whom child benefit is being paid;
  - (e) is in receipt of income support;
  - (f) is a person being looked after and provided with accommodation by a local authority or equivalent organisation; or
  - (g) is a person, formerly looked after by a local authority or equivalent organisation, who does not reside with, has no regular contact with and receives no financial support from a parent or guardian.
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#### **EXPLANATORY NOTE**

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

These Regulations consolidate the Education Maintenance Allowances (Scotland) Regulations 2004 ([S.S.I. 2004/273](#)) 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 add a definition of “employed” and clarify the definitions of “parent” (including “child”). The definition of “independent person” in Schedule 2 has been extended to include persons in receipt of child benefit or income support, persons who are looked after and accommodated by or who were formerly looked after by a local authority (or equivalent organisation) and those who do not reside with, have no regular contact with and receive no financial support from a parent or guardian.

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 the Regulations and do not have any legal effect.