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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 72**

**The Education (Fees, Awards and Student Support)  
(Miscellaneous Amendments) (Scotland) Regulations 2012**

**Amendment of the Students' Allowances (Scotland) Regulations 2007**

**29.**—(1) Schedule 1 (persons eligible for allowances) is amended as follows.

(2) In paragraph 2(1)(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 4—

(a) in sub-paragraph (1)—

(i) in paragraph (a) after “1971” insert “on the relevant date”; and

(ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and

(b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.

(4) For paragraph 8 substitute—

“**8.**—(1) A person who—

(a) is, on the relevant date, a non UKEC national or the family member of such a national;

(b) is ordinarily resident in Scotland on the relevant date;

(c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant 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).

(2) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EC national on the relevant date is treated as being satisfied.”.

(5) For paragraph 9 substitute—

“**9.**—(1) A person who—

(a) is, on the relevant date, an EC national or a family member of such national;

(b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and

(c) seeks an allowance in respect of a course of education at an establishment in Scotland.

(2) Sub-paragraph (1)(b) does not apply to a family member of an EC national where that EC national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.

(3) For the purposes of this paragraph—

- (a) an EC national does not include a United Kingdom national who has not utilised a right of residence; and
- (b) a United Kingdom national has utilised a right of residence if that person 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.

(4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EC national on the relevant date is treated as being satisfied.”

(6) In paragraph 11(b) and (c) for “first day of the first academic year of the course” substitute “relevant date”.

(7) After paragraph 11 insert—

“12.—(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance, provided the person is continuing to undertake the same course of education.

(2) Where sub-paragraph (1) applies to a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance where that person qualified only by virtue of paragraph 7A or paragraph 9, an allowance payable to, or in respect of, the person may include sums only in respect of tuition and other fees payable in respect of that person.

(3) Sub paragraph (1) does not apply where it would result in payment of an 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.”