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STATUTORY INSTRUMENTS

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**1995 No. 1739 (S.119)**

**EDUCATION, SCOTLAND**

**The Education Authority Bursaries (Scotland) Regulations 1995**

<i>Made</i>	- - - -	<i>7th July 1995</i>
<i>Laid before Parliament</i>		<i>10th July 1995</i>
<i>Coming into force</i>	- -	<i>1st August 1995</i>

The Secretary of State, in exercise of the powers conferred on him by section 49(3) of the Education (Scotland) Act 1980(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Education Authority Bursaries (Scotland) Regulations 1995 and shall come into force on 1st August 1995.

**Interpretation**

2.—(1) In these Regulations—

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

“British Islands” means the United Kingdom, the Channel Islands and the Isle of Man;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(2) as adjusted by the Protocol thereto signed at Brussels on 17th March 1993(3);

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

“bursary” means a bursary, scholarship or other allowance granted under section 49(1) or (2) of the Act;

“employment” shall include the holding of any office and any occupation for gain, and “employed” shall be construed accordingly;

“European Economic Area” means the area of the EEA States, and includes—

- (a) those States at any time before the EEA Agreement came into force in relation to them; and

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(1) 1980 c. 44.  
(2) Cmnd. 2073.  
(3) Cmnd. 2183.

(b) as regards any time prior to the unification of the Federal Republic of Germany, the former German Democratic Republic;

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

“parent” is to be construed in accordance with the definition below of person’s child;

“person’s child” includes a reference to a person adopted in pursuance of adoption proceedings, a stepchild, and an illegitimate child of whom the person concerned is the mother or in whose case the person has admitted paternity or has been adjudged the putative father;

“qualification” includes authorisation, recognition, registration, enrolment, approval and certification;

“qualifying day” in relation to a course of study for which a bursary is sought means—

- (a) as respects a course starting in the autumn term of any year, 30th June in that year;
- (b) as respects a course starting in the spring term of any year, 31st October in the year preceding that year; and
- (c) as respects a course starting in the summer term of any year, the last day of February in that year;

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

“relevant date” in relation to a course of study for which a bursary is sought means—

- (a) as respects a course starting in the autumn term of any year, a reference to the earlier of 31st August in that year or the first day of that term;
- (b) as respects a course starting in the spring term of any year, a reference to the earlier of 31st December in the year preceding that year or the first day of that term; and
- (c) as respects a course starting in the summer term of any year, a reference to the earlier of 31st March in that year or the first day of that term.

(2) In these Regulations, except where the context otherwise requires, any reference—

- (a) to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations; and
- (b) in a regulation or Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule, as the case may be.

### **Exercise of power to grant a bursary**

**3.—**(1) The power of an education authority to grant a bursary in accordance with section 49(1) or (2) of the Act—

- (a) shall be exercised in accordance with the following provisions of these Regulations; and
- (b) shall not be exercised except in relation to a person described in one or more paragraphs of Schedule 1.

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<sup>(4)</sup> Cmnd. 9171.

<sup>(5)</sup> Cmnd. 3906. (Out of print: photocopies are available free from the Students Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, Edinburgh EH12 9HH.)

(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.

### **Amount of bursaries**

4.—(1) The amount of a bursary shall be determined by the education authority and may include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the bursary;
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in attending the course of study in respect of which the bursary is awarded;
- (c) the maintenance of the holder and of any person dependent on him during periods of full-time study and during vacations;
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) A bursary payable to or in respect of a person who is eligible for a bursary only by virtue of paragraph 4 of Schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

(3) In determining the amount of a bursary, the education authority may take account of the sums, if any, which in their opinion the holder of the bursary, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(4) The amount of a bursary may be revised at any time if the education authority think fit having regard to—

- (a) the failure of the holder to comply with the conditions of the bursary; or
- (b) all the circumstances of the holder or his parents or both as the case may be; or
- (c) any error made in the computation of the amount of the bursary.

### **Conditions of bursary**

5.—(1) Every bursary shall be held subject to the following conditions:—

- (a) the holder shall attend regularly the course of study in respect of which the bursary is awarded;
- (b) the education authority shall be satisfied as to the conduct and progress of the holder; and
- (c) the holder shall provide the education authority 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 education authority, makes it unnecessary for him to be assisted by means of a bursary, the education authority may suspend payment of the bursary or terminate the bursary.

(3) It shall be a condition of payment of a bursary that the applicant gives a written undertaking to pay to the education authority any amount of which they may request repayment in the circumstances specified in paragraph (4) and that, if the applicant is a minor and has any parent or guardian, the parent or guardian shall consent to the undertaking.

(4) Where the education authority are satisfied that there has been an overpayment of bursary for any reason and request repayment of the overpayment or so much thereof as they think fit, and the holder of the bursary has given an undertaking under paragraph (3) above, the holder of the bursary shall be obliged to pay to the education authority the amount requested.

### **Revocations and saving**

6.—(1) Subject to paragraphs (2) and (3), the Regulations specified in column (1) of Schedule 3 are hereby revoked to the extent set out in column (3) thereof.

(2) The Regulations revoked by Schedule 3 shall continue to apply in all respects as regards bursaries awarded under those Regulations.

(3) The provisions of paragraph (2) are without prejudice to the general operation of sections 16 and 17 of the Interpretation Act 1978<sup>(6)</sup>.

St Andrew's House,  
Edinburgh  
7th July 1995

*James Douglas-Hamilton*  
Minister of State, Scottish Office

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(6) 1978 c. 30.

## SCHEDULE 1

Regulation 3(1)

### PERSONS ELIGIBLE FOR BURSARIES

1. A person who—
  - (a) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which he seeks a bursary; and
  - (b) has been ordinarily resident in the British Islands throughout the period of 3 years preceding the relevant date.
2. A person who—
  - (a) is entitled to equality of treatment in relation to the payment of a bursary for the course in respect of which he seeks the bursary by virtue of Article 7 or 12 of Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement)(7); and
  - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date; and
    - (i) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he seeks a bursary; or
    - (ii) is not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.
3. A person who—
  - (a) at the date of the education authority receiving his application for a bursary is—
    - (i) a refugee who has been ordinarily resident in the British Islands at all times since he was first recognised as a refugee; or
    - (ii) the spouse, or child, of such a refugee; and
  - (b) (i) is ordinarily resident in the area of the education authority on the qualifying date; or  
(ii) seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.
4. A person who—
  - (a) is a national, or the child of a national, of a member state of the European Community;
  - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date;
  - (c) has not been ordinarily resident in the British Islands throughout that 3 year period; and
  - (d) seeks a bursary in respect of a course of study at an establishment in the area of the education authority.
5. A person to whom, or in respect of whom, a bursary has been paid in accordance with these Regulations or those revoked by them within the year immediately preceding the relevant date.

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(7) O.J. No L257, 19.10.68, p.2 (O.J./S.E 1968(II) p.475), amended by Council Regulation EEC No. 2434/92 (O.J. No. L245, 26.8.92 p.1).

## SCHEDULE 2

Regulation 3(2)

## ORDINARY RESIDENCE

## 1. For the purposes of paragraph 1(a) of Schedule 1—

- (a) a person shall be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that he was not so resident only because he, his spouse or his parents was for the time being—
  - (i) employed outside Scotland; or
  - (ii) attending a course of study or undertaking postgraduate research outside Scotland; and
- (b) a person shall not be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that his residence there on that day is in any sense attributable to, or connected with, any period of residence within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 1(b), 2(b) and 4(b) and (c) 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 (“the specified period”) in either the British Islands or the European Economic Area.

(2) A person shall not be treated as having been ordinarily resident in the British Islands or European Economic Area for the specified period if the education authority are satisfied that he was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person shall be treated as having been “ordinarily resident” in the British Islands or in the European Economic Area for the specified period if the education authority are satisfied that—

- (a) the person was born and spent the greater part of his life in the British Islands or, as the case may be, the European Economic Area and that either—
  - (i) his parents or either of them have been ordinarily resident in the British Islands or, as the case may be, the European Economic Area throughout the specified period and he himself is not an independent person; or
  - (ii) whether or not he is an independent person, he has been ordinarily resident for at least one year of the specified period in the British Islands or, as the case may be, the European Economic Area provided that the education authority are also satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; and
- (b) the person was not so resident only because he, his spouse, or his parent was for the time being—
  - (i) employed outside the British Islands or, as the case may be, the European Economic Area; or
  - (ii) attending a course of study or undertaking post graduate research outside the British Islands or, as the case may be, the European Economic Area.

(4) In paragraph 2(3)(a)(i) an “independent person” means a person who prior to the relevant date has—

- (a) attained the age of 25 years; or
- (b) been married for at least 2 years; or
- (c) supported himself out of his earnings for periods aggregating not less than 3 years; or

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- (d) no parent living.
- (5) A person will be regarded as having supported himself out of his earnings for any period or periods for which—
- (a) he was in receipt of training in pursuance of training programmes and schemes operated from time to time by or on behalf of the Manpower Services Commission, the Training Commission, the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise; or
  - (b) before 1st July 1992 he was in receipt of unemployment benefit under section 14(1)(a) of the Social Security Act 1975(8); or
  - (c) on or after 1st July 1992 he was in receipt of unemployment benefit under section 25(1) of and Part I of Schedule 4 to the Social Security Contributions and Benefits Act 1992(9); or
  - (d) before 24th November 1980(10) he was for the purposes of section 5 of the Supplementary Benefits Act 1976(11) registered for employment; or
  - (e) on or after 24th November 1980 but before 18th October 1982(12), he was for the purposes of section 5 of the said Act of 1976 available for employment and, where applicable, registered for employment; or
  - (f) on or after 18th October 1982 but before 11th April 1988(13), he was for the purposes of section 5(1) of the said Act of 1976 available for employment and, where applicable, registered for employment; or
  - (g) on or after 11th April 1988 but before 9th October 1989(14), he was for the purposes of section 20(3)(d)(i) and 20(4) of the Social Security Act 1986(15) available for employment and, where applicable, also registered for employment; or
  - (h) on or after 9th October 1989 but before 1st July 1992(16) he was for the purpose of section 20(3)(d)(i) and 20(4) of the Social Security Act 1986 available for and actively seeking employment and where applicable, also registered for employment; or
  - (i) on or after 1st July 1992 he was for the purpose of section 124(1)(d)(i) and 124(3) of the Social Security Contributions and Benefits Act 1992 available for and actively seeking employment and, where applicable, also registered for employment; or
  - (j) he held a Scottish Studentship or comparable award; or
  - (k) before 1st July 1992(17) he received sickness benefit, invalidity pension, maternity allowance or severe disablement allowance under section 14(1)(b), 15(1)(b), 22(1) or 36(1) of the Social Security Act 1975(18) or statutory sick pay under Part I of the Social

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(8) 1975 c. 14. On that date the Social Security Contributions and Benefits Act 1992 (c. 4) section 25(1) and Schedule 4, Part I, amended and consolidated the said section 14(1)(a).

(9) 1992 c. 4.

(10) On that date Schedule 2 to the Social Security Act 1980 (c. 30), which made relevant amendments to the Supplementary Benefits Act 1976 (c. 71), came into force by virtue of S.I. 1980/729.

(11) 1976 c. 71.

(12) On that date section 38 of the Social Security and Housing Benefits Act 1982 (c. 24), which made relevant amendments to the Supplementary Benefits Act 1976, came into force by virtue of S.I. 1982/893.

(13) On that date the relevant parts of section 20 of the Social Security Act 1986 (c. 50) came into force by virtue of S.I. 1987/1853.

(14) On that date section 13(1) of the Social Security Act 1989 (c. 24), which amended section 20(3)(d)(i) of the Social Security Act 1986 (c. 50) to insert after the words “available for” the words “and actively seeking”, came into force by virtue of S.I. 1989/1238.

(15) 1986 c. 50.

(16) On that date section 20(3)(d)(i) and 20(4) of the Social Security Act 1986 were consolidated as section 124(1)(d)(i) and 124(3) of the Social Security Contributions and Benefits Act 1992 (c. 4).

(17) On that date the Social Security Act 1975 was repealed by the Social Security Contributions and Benefits Act 1992 (c. 4) and the said sections of the Social Security Act 1975 were consolidated as sections 31(1), 33(1), 35(1) and 68(1) of that Act and Part I of the Social Security and Housing Benefits Act 1982 and Part V of the Social Security Act 1986 were consolidated respectively as Parts XI and XII of that Act.

(18) Section 22 was substituted by the Social Security Act 1986, Schedule 4, paragraph 13; section 36 was substituted by section 11 of the Health and Social Security Act 1984 (c. 48).

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Security and Housing Benefits Act 1982(19) or statutory maternity pay under Part V of the Social Security Act 1986; or

- (l) on or after 1st July 1992 he received maternity allowance or severe disability allowance under section 35(1) or 68(1) of the Social Security Contributions and Benefits Act 1992 or statutory sickness benefit under Part XI of or statutory maternity allowance under Part XII of the Social Security Contributions and Benefits Act 1992; or
- (m) on or after 1st July 1992 but before 13th April 1995(20) he received sickness benefit or invalidity pension under section 31(1) or 33(1) of the Social Security Contributions and Benefits Act 1992; or
- (n) on or after 13th April 1995 he received incapacity benefit under section 30A(1) of the Social Security Contributions and Benefits Act 1992(21); or
- (o) he had the care of a person under the age of 18 years who was dependent on him.

### SCHEDULE 3

Regulation 6

#### REVOCATIONS

Column (1) Instrument Revoked	Column (2) Reference	Column (3) Extent of Revocation
The Education Authority Bursaries (Scotland) Regulations 1988	<a href="#">S.I. 1988/1042</a>	The whole Regulations
The Education Authority Bursaries (Scotland) Amendment Regulations 1988	<a href="#">S.I. 1988/1423</a>	The whole Regulations
The Education Authority Bursaries (Scotland) Amendment Regulations 1989	<a href="#">S.I. 1989/1113</a>	The whole Regulations
The Education Authority Bursaries (Scotland) Amendment Regulations 1990	<a href="#">S.I. 1990/1347</a>	The whole Regulations
The Education (Fees and Awards, Allowances and Bursaries) Amendment Regulations 1991	<a href="#">S.I. 1991/834</a>	Regulation 4
The Education (European Economic Area) (Scotland) Regulations 1993	<a href="#">S.I. 1993/3184</a>	Regulation 2
The Education (European Community Enlargement) (Scotland) Regulations 1994	<a href="#">S.I. 1994/3148</a>	Regulation 2

(19) [1982 c. 24.](#)

(20) On that date sections 31(1) and 33(1) of the Social Security Contributions and Benefits Act 1992 were repealed by the Social Security (Incapacity for Work) Act [1994 \(c. 18\)](#), s.11 and sch. 2, by virtue of [S.I. 1994/2926](#).

(21) Section 30A of the Social Security Contributions and Benefits Act 1992 was inserted by section 1 of the Social Security (Incapacity of Work) Act 1994 and came into force on 13th April 1995 by virtue of [S.I. 1994/2926](#).

## EXPLANATORY NOTE

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

These Regulations consolidate with only minor and drafting amendments the Education Authority Bursaries (Scotland) Regulations 1988 (“the 1988 Regulations”) and subsequent amending instruments. They regulate the exercise by education authorities of their powers under section 49 of the Education (Scotland) Act 1980 to pay bursaries to persons attending courses of study. They prescribe that bursaries may only be paid to persons who fulfil certain criteria as to eligibility and they prescribe the conditions and requirements subject to which allowances may be paid.

The eligibility criteria are detailed in Schedule 1, whilst Schedule 2 makes provision as to when a person is to be treated as “ordinarily resident”.

Regulation 6 revokes the 1988 Regulations, but provides for these to continue to have application as regards bursaries awarded prior to revocation.