
STATUTORY INSTRUMENTS

1997 No. 1675

**EDUCATION, ENGLAND AND WALES
EDUCATION, SCOTLAND**

The Education (Student Loans) Regulations 1997

<i>Made</i>	- - - -	<i>10th July 1997</i>
<i>Laid before Parliament</i>		<i>10th July 1997</i>
<i>Coming into force</i>	- -	<i>1st August 1997</i>

In exercise of the powers conferred by section 1(2) and (7) of and paragraphs 1, 2 and 3 of Schedule 2 to the Education (Student Loans) Act 1990⁽¹⁾, the Secretary of State for Education and Employment, as respects England and Wales, and the Secretary of State for Scotland, as respects Scotland, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Education (Student Loans) Regulations 1997 and shall come into force on 1st August 1997.

Revocation

2. The Education (Student Loans) Regulations 1996⁽²⁾ are hereby revoked.

Interpretation

3.—(1) In these Regulations, except where the context otherwise requires—

“accelerated course” means a course 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 40 weeks in the final year, being a course of two academic years’ duration or a course for the degree of BA(Hons.) with Qualified Teacher Status awarded by St Martin’s College, Lancaster;

“the Act” means the Education (Student Loans) Act 1990;

“borrower” means a person to whom a loan has been made;

(1) 1990 c. 6., amended by the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 67; by the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraphs 12(2) and (3); by the Education Act 1994 (c. 30), Schedule 2, paragraph 9; and by the Education (Student Loans) Act 1996 (c. 9), section 1(1), and the Schedule.

(2) S.I.1996/1812.

“eligible” means eligible for the purposes of section 1 of the Act read with regulation 4 and the Schedule to these Regulations;

“full-time course” means 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)—
 - (i) in the case of a course of one academic year’s duration, for a period of at least 24 weeks; and
 - (ii) in the case of a course of two or more academic years’ duration, for a period of at least 24 weeks in each academic year except the final year and of at least eight weeks in the final 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 sub-paragraph (a) above for the year;

“loan” means a loan (whether made before or after the coming into force of these Regulations) towards a student’s maintenance out of money made available by the Secretary of State for that purpose pursuant to arrangements made by the Secretary of State by virtue of section 1 of the Act, including the interest accrued on the loan and the amount of the loan from time to time outstanding;

“loans administrator” means any person or body for the time being exercising functions in relation to loans under arrangements made with the Secretary of State pursuant to paragraph 3 of Schedule 2 to the Act;

“periods of work experience” means periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outside the institution;

“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⁽³⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽⁴⁾ and any reference to the child of a refugee includes a reference to a person adopted in pursuance of adoption proceedings and a step-child; and

“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 the periods of full-time study for an average of not less than 19 weeks in each year; and for the purpose of calculating his attendance the course shall be treated as beginning with the first period of full-time study and ending with the last such period.

(2) For the purposes of these Regulations an academic year which begins in the month of July in any year shall be deemed to begin in the month of August immediately following that month.

(3) In these Regulations any reference to a regulation is a reference to a regulation of these Regulations, any reference in a regulation to a paragraph is a reference to a paragraph of that regulation, and any reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph.

(3) Cmnd. 9171.

(4) Cmnd. 3906 (Out of print: photocopies are available, free of charge, from Student Support Division, Department for Education and Employment, Mowden Hall, Staindrop Road, Darlington, DL3 9BG or the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

Conditions of eligibility

4.—(1) A student attending a course of higher education of at least one academic year's duration shall be eligible for a loan in relation to an academic year which begins on or after 1st August 1997 if—

- (a) his course of study during that academic year forms part or all of—
 - (i) a full-time course; or
 - (ii) a course (whether or not full-time) for the initial training of teachers which is for the time being designated by or under regulations made by virtue of section 1(2)(b) and (3)(c) of the Education Act 1962⁽⁵⁾; and
 - (b) (i) he satisfies the conditions prescribed in the Schedule to these Regulations; or
 - (ii) in respect of the course he satisfies one of the conditions of eligibility for an allowance set down in Schedule 1 to the Students' Allowances (Scotland) Regulations 1991⁽⁶⁾; or
 - (iii) before the commencement of or at any time during that academic year he is a person, or the spouse or child of a person, who has been recognised as a refugee and who from the time of such recognition has been ordinarily resident in the British Islands; and
 - (c) the loans administrator has received the certified eligibility form referred to in regulation 13(4)(g) or (6)(d) in connection with his application for the loan; and
 - (d) he has agreed with the loans administrator to notify the latter promptly in writing if he ceases to attend his course—
 - (i) because he has completed it on a date earlier than that specified by him in the eligibility form referred to in regulation 13(4)(d) or (6)(a); or
 - (ii) otherwise than because he has completed it; and
 - (e) he has agreed with the loans administrator to accept payment of the loan by direct credit to his bank or building society account and has provided the administrator with a signed direct debiting instruction in favour of the administrator in respect of repayments of the loan from that account; and
 - (f) he has entered into an agreement for the loan not later than the end of the period of 12 months beginning on 1st August in which that academic year begins; and
 - (g) he is not a person to whom paragraph (2) applies.
- (2) This paragraph applies to a person who—
- (a) before the date on which the course begins has attained the age of fifty years; or
 - (b) in respect of the academic year in question is eligible to receive any payment in pursuance of any bursary or award of similar description bestowed on him in pursuance of section 63 of the Health Services and Public Health Act 1968⁽⁷⁾ the amount of which is not calculated by reference to his income; or

(5) 1962 c. 12; the Regulations which will be in force from 1st September 1996 are the Education (Mandatory Awards) Regulations 1995 (S.I. 1995/3321).

(6) S.I. 1991/1522.

(7) 1968 c. 46; section 63 was amended by the National Health Services Reorganisation Act 1973 (c. 32), section 57, Schedule 4, paragraph 124, and Schedule 5, the National Health Service Act 1977 (c. 49), section 129, Schedule 15, paragraph 45 and Schedule 16, the National Health Services (Scotland) Act 1978 (c. 29), section 109, Schedule 16, paragraph 26(2) and Schedule 17, the Health Services Act 1980 (c. 53), sections 1, 2 and Schedule 1, Part I, paragraph 19(3), the Local Government Act 1985 (c. 51), section 102(2) and Schedule 17, the Family Practitioner Committees (Consequential Modifications) Order 1985 (S.I. 1985/39), article 6(1), the Health and Medicines Act 1988 (c. 49), section 20, section 25(2) and Schedule 3, the Local Government (Scotland) Act 1994 (c. 39), section 180(1) and Schedule 13, paragraph 74(1) and (2), and the Health Authorities Act 1995 (c. 17), section 2 and Schedule 1, paragraph 95(2).

- (c) in respect of his attendance at the course is eligible to receive an allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992(8); or
 - (d) is in breach of any obligation contained in any agreement for a loan; or
 - (e) subject to paragraph (3) was under the age of 18 when any agreement for a loan was made with him and who has not ratified that agreement after attaining that age.
- (3) In the case of an agreement for a loan which is subject to the law of Scotland, sub-paragraph (e) of paragraph (2) shall apply only if—
- (a) the agreement referred to in that sub-paragraph was entered into before 25th September 1991; and
 - (b) that agreement was made—
 - (i) with the concurrence of the borrower’s curator; or
 - (ii) at a time when the borrower had no curator.
- (4) A student shall not be eligible for more than one loan in relation to any one academic year.
- (5) A student shall not be eligible for a loan in relation to—
- (a) more than one academic year, or
 - (b) more than one course
- beginning in any period of twelve months beginning on 1st August in any year.

Designation of courses by Secretary of State

5. For the purposes of section 1 of the Act the Secretary of State may designate courses of higher education at institutions other than institutions receiving support from public funds.

Amounts of loans

6.—(1) Subject to paragraphs (3) to (5), in the case of a student attending a course at the University of London or at any institution within the area comprising the City of London and the metropolitan police district, the maximum amount of the loan in relation to any academic year shall be—

- (a) if the year is the final year of the course, **£945** if he resides at his parents’ home, and **£1,520** if he does not; and
- (b) if the year is any other year of the course, **£1,290** if he resides at his parents’ home, and **£2,085** if he does not.

(2) Subject to paragraphs (3) to (5), in the case of any other student the maximum amount of the loan in relation to any academic year shall be—

- (a) if the year is the final year of the course, **£945** if he resides at his parents’ home, and **£1,230** if he does not; and
- (b) if the year is any other year of the course, **£1,290** if he resides at his parents’ home, and **£1,685** if he does not.

(3) Where a student’s course includes a period of residence in a country other than the United Kingdom throughout an academic year, the maximum amount of the loan in relation to that academic year shall be **£1,230** if the year is the final year of the course and **£1,685** if it is not.

(4) Where a student’s course is an accelerated course, paragraph (1)(a) shall have effect as if for **£945** and **£1,520** there were substituted **£1,290** and **£2,085** respectively and paragraph (2)(a) shall have effect as if for **£945** and **£1,230** there were substituted **£1,290** and **£1,685** respectively.

(5) For the purposes of paragraphs (1) to (3), where a postgraduate course of initial training for teachers is of only one academic year's duration that year shall not be treated as a final year, and for the purposes of paragraphs (1) and (2) a student's place of residence is his place of residence on the date a certificate is given in respect of him pursuant to regulation 13.

Interest

7.—(1) Notwithstanding the revocation of the Education (Student Loans) Regulations 1996 loans shall bear interest in respect of the period consisting of the month of August 1997 at the rate specified in regulation 7 of those regulations.

(2) Loans shall bear interest in respect of any period commencing on or after 1st September 1997 at the rate specified in paragraphs (3) and (4), being the rate appearing to the Secretary of State to be requisite for maintaining the value of the loans in real terms.

(3) That rate is the rate of interest per day which, in relation to a loan made on or after 1st September 1997, taking account of the addition of interest to the outstanding amount of the loan in accordance with regulation 8, will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980⁽⁹⁾ which is equal to the percentage specified in paragraph (4).

(4) That percentage is the percentage increase between the retail prices index published by the Central Statistical Office for March 1996 and the retail prices index so published for March 1997.

Time and manner of repayments

8.—(1) Subject to paragraphs (2) **and (3)** and regulations 9 to 12 a borrower shall commence repayment of his loan on such day in the month of April next following the date on which he ceased to attend the course as the loans administrator may determine in his case (referred to below in this regulation as "the determined date").

(2) Where a borrower ceases to attend his course without completing it and on the first day thereafter on which it is reasonably practicable for him to do so begins to attend at the same institution another course which satisfies the requirements of regulation 4(1), paragraph (1) shall apply only in relation to the latter course.

(3) Where a borrower has ceased to attend his course so that paragraph (1) applies but another loan is made to him in respect of his attendance at another course he shall not be obliged to make repayments in respect of the first loan after the date on which the second loan is made, and thereafter the time and manner of repayment of the first loan shall be the same as the time and manner of repayment of the second loan.

(4) Subject to regulations 9 to 12 repayments shall be made in 60 monthly instalments calculated in accordance with paragraphs (7) to (9) in the case of a borrower who has received a loan in relation to less than five academic years and in 84 such instalments calculated as aforesaid in all other cases.

(5) Interest accrued on a loan shall be added to the loan at regular monthly intervals and thenceforth form part of the outstanding amount of the loan.

(6) On or before the determined date, the amount of the monthly repayments shall be calculated in accordance with paragraph (7).

(7) The amount of the loan outstanding on the first day of the month in which the determined date falls and of interest which will accrue during the period of repayment shall be divided by the number of repayments, and the amount so calculated shall be the amount of the monthly repayment until it is re-calculated in accordance with paragraph (8).

⁽⁹⁾ S.I. 1980/51; amended by S.I. 1985/1192, 1989/596.

(8) On 1st September next following the determined date, and on each subsequent 1st September until the loan has been repaid or cancelled, the amount of the loan outstanding on that date and of interest which will accrue during the remaining period of repayment shall be divided by the number of repayments still to be made and the amount so calculated shall be the amount of the monthly repayment.

(9) For the purposes of calculating monthly repayments under paragraphs (7) and (8)—

- (a) no account shall be taken of any repayments due prior to the relevant date which have not been made, but account shall be taken of the amounts of interest which have accrued on such unpaid repayments; and
- (b) it shall be assumed that—
 - (i) the rate of interest will not change during the period of repayment; and
 - (ii) each repayment will be applied to reduce the amount of the loan immediately after the addition of interest in accordance with paragraph (5).

(10) Repayments shall be made by direct debit from the borrower's bank or building society account unless the loans administrator agrees otherwise.

(11) Nothing in this regulation shall be taken to prevent a borrower, after giving notice to the loans administrator, from discharging or with the agreement of the loans administrator reducing his liability in respect of his loan sooner than required by the regulation, and where a borrower wishes so to reduce his liability the amount and time of repayments shall be determined by the loans administrator and the provisions of this regulation (except paragraphs (5) and (10)) shall not longer apply to the loan.

9. Notwithstanding the provisions of regulation 8, the loans administrator may—

- (a) **if it is satisfied that granting a relaxation or indulgence to the borrower which does not vary the agreement for the loan represents a more effective means of recovering the debt due under the agreement than enforcing it according to its terms, grant any such relaxation or indulgence; or**
- (b) **if the borrower is in breach of an obligation to repay any loan instalment, and whether or not the loans administrator has notified him that he is entitled to defer making repayment in respect of other loan instalments under regulation 11, require the borrower to make an immediate repayment of the outstanding amount of the loan.**

Repayment by disabled borrowers

10.—(1) In the case of a borrower receiving any disability-related benefit (as defined in regulation 11(6)) at the beginning of or at any time during the period of repayment determined in accordance with regulation 8, the loans administrator may do all or any of the following, namely:

- (a) allow the borrower to commence repayment of the loan at such date later than that provided by regulation 8 as the loans administrator considers appropriate; or
- (b) allow the borrower to defer making repayments of the loan until such later date; or
- (c) allow the borrower to make repayments of the loan in such greater number of instalments of such lesser amounts than those provided by regulation 8 as the loans administrator considers appropriate:

but interest on the loan shall continue to accrue and to be added to the outstanding amount of the loan during any period in which repayments are not being made or during any extended period of repayment.

(2) The loans administrator may exercise any discretion conferred on it by paragraph (1) notwithstanding that the outstanding amount of the loan will not in consequence be fully repaid

before the borrower's liability in respect thereof is cancelled by virtue of paragraphs (1)(b) and (2) of regulation 12.

Deferment

11.—(1) Subject to the provisions of this regulation, a borrower **who has not been required to make an immediate repayment of the outstanding amount of his loan under regulation 9(b)** shall be entitled to defer making repayments of that loan if he satisfies the loans administrator—

- (a) that his gross income for the month preceding the month in which he applies for deferment does not exceed the product of **£1,316** and the annual adjustment, and
- (b) if the loans administrator so requires, that his gross average monthly income during the three months immediately following the month first referred to in sub-paragraph (a) will not or is unlikely to exceed that amount.

(2) For the purposes of paragraph (1) “the annual adjustment” means the average earnings index for March 1997 divided by the average earnings index for March 1996; and “the average earnings index” means the general index of average earnings (for all employees: whole economy: seasonally adjusted) published by the Department for Education and Employment or, if that index is not published for a month for which it is relevant for the purposes of this regulation, any substituted index or index figures published by that Department.

(3) If a borrower falls within paragraph (1), he shall not be obliged to make repayments during a period of twelve months beginning with such date as may be determined by the loans administrator, being a date not more than **three** months earlier or two months later than the date on which the loans administrator notifies the borrower that he is entitled to defer making repayments.

(4) Notwithstanding deferment a borrower may, after giving notice to the loans administrator, resume making repayments at any time before the end of the period of deferment.

(5) In determining whether a borrower's gross monthly income exceeds, will exceed or is likely to exceed the amount specified in paragraph (1) no account shall be taken of any disability-related benefits paid or which will or are likely to be paid to him in the months in question.

(6) In paragraph (5) “disability-related benefits” means—

- (a) the benefits or allowances payable pursuant to the Social Security Contributions and Benefits Act 1992(**10**) known as long term incapacity benefit(**11**), short term incapacity benefit payable at the higher rate(**12**), severe disablement allowance(**13**), disability living allowance(**14**) and industrial injuries benefit(**15**);
- (b) the amount of any disability premium and severe disability premium included in the applicable amount in calculating the income support payable under the Income Support (General) Regulations 1987(**16**), which amount shall for the purposes of regulations 10(1) and 11(5) be considered to be received, paid or likely to be paid, as the case may be; and
- (c) disability working allowance payable under sections 123(1)(c) and 129 of the Social Security Contributions and Benefits Act 1992.

(7) Interest shall accrue on a loan and shall be added to the outstanding amount thereof during any period of deferment.

(10) 1992 c. 4, amended by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 1 to 3, 5 to 6, 8 to 11 and Schedules 1 and 2.

(11) See section 30A(5).

(12) See sections 30A(1) and 30B(2).

(13) See section 63(b).

(14) See section 63(d).

(15) See section 94(1) and (2).

(16) S.I. 1987/1967 (see Parts III and IV of Schedule 2); the relevant amending regulations are S.I. 1988/663, 1988/2022, 1989/1678, 1991/1559, 1991/2742, 1993/1150, 1993/2119, 1994/2139, 1994/3061, 1995/482, 1995/516 and 1997/543.

Cancellation

- 12.**—(1) A borrower’s liability to make repayments in respect of all loans shall be cancelled if—
- (a) he dies; or
 - (b) he is a person to whom paragraph (2) applies.
- (2) This paragraph applies to a borrower who is not in breach of any obligation in relation to any loan and—
- (a) if he was aged less than forty when he last entered into an agreement for a loan, if he attains the age of fifty or if the loan for which he last entered into an agreement has been outstanding for not less than twenty five years (whichever event is the sooner); or
 - (b) if he was aged not less than forty when he last entered into an agreement for a loan, if he attains the age of sixty.

Duties of governing bodies in relation to loans

- 13.**—(1) This regulation prescribes the steps to be taken by the governing body of each institution at which eligible students are attending courses for the purposes of, or in connection with, applications for loans.
- (2) Where an eligible student attends a course at more than one institution the governing bodies of the institutions may agree in writing that one governing body shall take the steps prescribed by this regulation, in which case that governing body, and not the other governing bodies, shall be required to take those steps.
- (3) An agreement under paragraph (2) may be made in respect of a particular student or in respect of any class or description of students.
- (4) The governing body shall as soon as practicable after the commencement of each academic year—
- (a) issue to any student who requests them to certify his eligibility for a loan an eligibility questionnaire provided by the loans administrator;
 - (b) in respect of each eligibility questionnaire completed by a student and returned to them, take such steps as are reasonably practicable to verify the particulars inserted in the questionnaire by the student relating to his eligibility for a loan;
 - (c) if the student’s eligibility cannot be determined solely by verifying the particulars on the questionnaire, take such other steps as are reasonably practicable for that purpose;
 - (d) issue to each student in relation to whom they have taken the steps required by subparagraphs (a)–(c) and whom they consider to be eligible an eligibility form provided by the loans administrator for completion by the student and return to them;
 - (e) certify to the best of their knowledge and belief the accuracy of the particulars in each completed eligibility form and the amount of loan to which they consider the student to be entitled;
 - (f) issue to each student in relation to whom they have taken all other steps required by the preceding provisions of this paragraph a loan application form provided by the loans administrator; and
 - (g) send each certified eligibility form to the loans administrator.
- (5) The loans administrator on receiving an eligibility form completed and certified in accordance with paragraph (4) shall pay £4 to the governing body which sent it.
- (6) Where a student is a borrower who has obtained an eligibility form from the loans administrator and completed it the governing body shall as soon as practicable after the commencement of each academic year—

- (a) accept the completed eligibility form from any such student who requests them to certify his eligibility;
 - (b) if the loans administrator has requested that any of the particulars inserted in the form should be verified take such steps as are reasonably practicable to verify those particulars;
 - (c) certify to the best of their knowledge and belief the accuracy of the particulars which the loans administrator has requested them to verify and the amount of loan to which they consider the student to be entitled; and
 - (d) send each certified eligibility form to the loans administrator.
- (7) The loans administrator on receiving an eligibility form completed and certified in accordance with paragraph (6) shall pay £2 to the governing body which sent it.
- (8) The governing body shall—
- (a) promptly notify the loans administrator in writing if a person in respect of whom they have certified eligibility (whether under these Regulations or otherwise) ceases to be an eligible student during the academic year in which they certified eligibility or subsequently—
 - (i) because he has completed the course on a date earlier than that specified in the certified eligibility form referred to in paragraph (4)(g) or (6)(d) or notified by them to the loans administrator as the expected date on which he will complete the course,
 - (ii) otherwise than because he has completed the course;
 - (b) keep records and copies of all documents except loan application forms which they are required by this regulation to issue or certify and a record of any steps taken by them to establish a student's eligibility;
 - (c) permit the loans administrator or the Secretary of State to inspect the records and copies at any reasonable time and provide them with reasonable facilities for that purpose;
 - (d) acknowledge receipt of all eligibility and application forms received by them from the loans administrator and provide to it on request brief particulars of such forms which they have issued; and
 - (e) as soon as practicable notify the loans administrator in writing if they believe that a person has fraudulently obtained or attempted to obtain a loan and provide the administrator with the name of the person (if known) and particulars of the circumstances of that person's obtaining or attempting to obtain the loan.
- (9) Without prejudice to the generality of paragraph (4)(b) and (c), the steps to be taken under those paragraphs shall include verifying particulars given in the eligibility questionnaire by reference to—
- (a) in the case of a person in respect of whom an entry was made in a register of births kept in pursuance of the Births and Deaths Registration Act 1953(17) and the Registration Service Act 1953(18) or the Births and Deaths Registration (Northern Ireland) Order 1976(19) a certified copy of that entry;
 - (b) in the case of a person in respect of whom an entry was made in the Adopted Children Register kept in pursuance of section 50 of the Adoption Act 1976(20) or in the Adopted Children Register kept in pursuance of Article 50 of the Adoption (Northern Ireland) Order 1987(21) which contains a record of the date of birth of the person, a certified copy of that entry;

(17) 1953 c. 20.

(18) 1953 c. 37.

(19) S.I. 1976/1041 (N.I. 14).

(20) 1976 c. 36.

(21) S.I. 1987/2203 (N.I. 22).

- (c) in the case of a person in respect of whom an entry was made in a register of births kept in pursuance of the Registration of Births, Deaths and Marriages (Scotland) Act 1965⁽²²⁾, an extract of, or an abbreviated certificate of birth relating to, that entry;
- (d) in the case of a person in respect of whom an entry was made in the Adopted Children Register kept in pursuance of Section 45 of the Adoption (Scotland) Act 1978⁽²³⁾ which contains a record of the date of birth of the person, an extract of that entry; or
- (e) in the case of any other person except a refugee, his passport (if he holds one), and a letter or other document issued by a responsible person which contains particulars of his date, place and country of birth and his names at birth.

(10) Nothing in this regulation shall require the governing body to take any steps to establish whether a student falls within sub-paragraph (1)(c) to (f), or (2)(d) or (e) of regulation 4 (receipt of certified eligibility form, agreement to notify cessation of attendance, direct credit and debit agreement, date of loan agreement, breach of loan agreement and minor’s failure to ratify loan agreement), and in considering whether a student is eligible the governing body shall disregard those sub-paragraphs.

(11) In this regulation—

“eligibility form” means a form requesting particulars from a student relevant to his eligibility for a loan and of his bank or building society account; and

“responsible person” means a consular officer, minister of religion, medical or legal practitioner, established civil servant, teacher or police officer.

⁽²²⁾ 1965 c. 49.
⁽²³⁾ 1978 c. 28.

SCHEDULE

Regulation 4(1)(b)(i)

CONDITIONS OF ELIGIBILITY

1. The conditions prescribed for the purposes of regulation 4(1)(b)(i) are that, subject to paragraphs 3 and 4 below, the student—

- (a) is on the relevant date ordinarily resident in England and Wales for the purposes of the Education Act 1962(24), read with the regulations for the time being in force made under section 1 of and Schedule 1 to that Act (but disregarding any provision in such regulations corresponding to paragraph 3 of this Schedule)(25);
- (b) **is on the relevant date settled in the United Kingdom within the meaning of the Immigration Act 1971(26), unless he is such a person as is mentioned in paragraph 2 below;**
- (c) throughout the three years preceding the relevant date has been ordinarily resident in the British Islands or, in the case of such a person as is mentioned in paragraph 2 below, has been so resident in the European Economic Area; and
- (d) has not during any part of the said three year period been resident in the British Islands or, in the case of such a person as is mentioned in paragraph 2 below, the European Economic Area wholly or mainly for the purpose of receiving full-time education.

2.—(1) The person referred to in paragraph 1(b) to 1(d) above is—

- (a) an EEA migrant worker who is entitled to a loan by virtue of Article 7(2) or (3) of Council Regulation (EEC) No. 1612/68 on freedom of movement of workers within the Community, as extended by the EEA Agreement(27), **or, where he is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member State in relation to matters which are the subject of Article 7(2) and (3);**
- (b) the spouse of an EEA migrant worker who is installed in the United Kingdom with his spouse, or
- (c) the child of an EEA migrant worker who is entitled to a loan by virtue of Article 12 of the above mentioned Council Regulation, **or where his migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member State in relation to matters which are the subject of Article 12.**

(2) In sub-paragraph (1)(c) “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child, **and “child” shall be construed accordingly.**

3. A person shall be treated for the purposes of paragraph 1 above as ordinarily resident in England and Wales, in the British Islands, or in the European Economic Area if he would have been so resident but for the fact that he, his spouse or his parent, guardian or any other person having parental responsibility for him, or any person having care of him while he is a child is, or was, temporarily employed outside England and Wales, outside the British Islands or, as the case may be, outside the European Economic Area and paragraph (1)(d) above shall not apply in the case of such a person.

(24) 1962 c. 12; the relevant provisions, as amended, are set out in Schedule 5 to the Education Act 1980 (c. 20).

(25) The regulations which will be in force from 1st September 1996 are Education (Mandatory Awards) Regulations 1995 (S.I. 1995/3321) and the provision therein corresponding to paragraph 3 of the Schedule to these Regulations is regulation 5(4).

(26) 1971 c. 77; amended by the British Nationality Act 1981 (c. 61), section 39 and Schedule 4, by the Immigration Act 1988 (c. 14), sections 1, 3, 4, 6 and 10 and the Schedule, by the Asylum and Immigration Appeals Act 1993 (c. 23), sections 10 to 12.

(27) OJ No. L257, 19.10.68, p.2 (OJ/SE 1968(II) p.475).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

4. Paragraph 1(b) shall not apply in the case of a person who—

- (a) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom,**
- (b) has been granted leave to enter or remain accordingly, and**
- (c) has been ordinarily resident in the British Islands throughout the period since he was granted leave to enter or remain**

or in the case of the spouse or child of such a person.

5. For the purposes of these Regulations an area which—

- (a) was not part of the area comprised by the member States of the European Community or by 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 Economic Area.

6. In this Schedule—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽²⁸⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽²⁹⁾;

“EEA migrant worker” means a person who is a national of a member State of the European Economic Area who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, as extended by the EEA Agreement; or**
- (b) in circumstances where as a national of the United Kingdom he has an enforceable Community right to be treated no less favourably than a national of another member State in relation to matters which are the subject of the above mentioned Council Regulation.**

“European Community” means the territory comprised by the member states of the European Economic Community as constituted from time to time;

“European Economic Area” means the European Community and subject to the conditions laid down in the EEA Agreement the area comprised by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein; and

“the relevant date” means the first day of the course.

Tessa Blackstone
Minister of State,

Department for Education and Employment

10th July 1997

⁽²⁸⁾ Cmnd. 2073.

⁽²⁹⁾ Cmnd. 2183.

9th July 1997

Donald Dewar
Secretary of State for Scotland

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st August 1997, supersede the Education (Student Loans) Regulations 1996 which are revoked (regulation 2).

Provisions in these Regulations which differ from the corresponding provisions of the 1996 Regulations (except as a result of minor drafting or consequential changes) are indicated by the use of heavy type. Omissions are indicated by the use of dots. The changes of substance made by these Regulations, other than in the maximum amounts of loans and rates of interest, are described below.

The provisions governing time and manner of repayment have been amended, so that a student who has borrowed in relation to different courses, consecutive or otherwise, will repay all his loans on the same payment schedule, determined or redetermined when he completes his most recent course. In the case of courses which are not consecutive the original repayment schedule will be suspended during the second course, and redetermined at the end of it (regulation 8(3)).

The discretion of the loans administrator to grant any relaxation or indulgence has been extended so that it applies not only in cases where the borrower is in breach of an obligation to repay the loan, but in any case where it is satisfied that such action represents a more effective means of recovering the debt due (regulation 9(a)).

It has been made clear that the loans administrator may demand repayment of the full amount of any loan in any case where instalments are in arrear, and the borrower is not entitled to defer repayment of those particular instalments (regulation 9(b)). It has also been made clear that where the loans administrator has demanded repayment of the full amount of any loan repayment of the loan may not be deferred (regulation 11(1)). The power to backdate deferment for up to 12 months from the date a notice of entitlement to deferment is given by the loans administrator has been reduced to a power to backdate for up to 3 months (regulation 11(3)).

The provisions governing eligibility have been amended to include a requirement that students other than European Economic Area migrant workers, their spouses and children, should be settled in the United Kingdom within the meaning of the Immigration Act 1971 (paragraph 1 of the Schedule). Settlement is defined in the Immigration Act as being ordinarily resident in the United Kingdom without being subject under the immigration laws to any restriction on the period for which the person in question may stay.

The provisions relating to European Economic Area migrant workers have been amended to ensure that British migrant workers returning from employment in the EEA have precisely the same entitlement to loans as migrant workers who are nationals of other member States of the EEA (paragraphs 2 and 5 of the Schedule).