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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 200**

**EDUCATION**

**The Education (Student Loans) (Scotland) Regulations 2000**

<i>Made</i>	- - - -	<i>15th June 2000</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>16th June 2000</i>
<i>Coming into force</i>	- -	<i>7th July 2000</i>

The Scottish Ministers, in exercise of the powers conferred upon them by sections 73(f), 73B and 74(1) of the Education (Scotland) Act 1980<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I**  
**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Education (Student Loans) (Scotland) Regulations 2000 and shall come into force on 7th July 2000.

**Interpretation**

2.—(1) In these Regulations—

“academic year”, in relation to a course, means the period of twelve months beginning on the relevant date;

“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;

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

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

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(1) 1980 c. 44. Section 73(f) was amended to permit the Secretary of State to pay loans by section 29(1) of the Teaching and Higher Education Act 1998 (c. 30). Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998. 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).

“designated course” means a course designated by regulation 5 or by the Scottish Ministers under regulation 5;

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

“EEA migrant worker” has the meaning given to it in paragraph (5);

“eligible student” means a person whom the Scottish Ministers have determined is eligible for a loan in connection with his attendance at a course in accordance with regulation 6 or 7;

“European Community” means the territory comprised by the Member States of the European 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;

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

“loan” means a loan towards a student’s maintenance under the Act and any regulations made thereunder, including the interest accrued on the loan and any penalties or charges made in connection with it;

“period”, in relation to an academic year, means one of the periods in that year from 1st January to 31st March, 1st April to 30th June, 1st July to 31st July, or 1st August to 31st December;

“period of work experience” has the meaning given to it in regulation 5(3);

“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> and any reference to the child of a refugee includes a reference to a step-child.

“relevant date”, in relation to a course, means—

- (a) as respects a course starting in the period 1st August to 31st December, 1st August;
- (b) as respects a course starting in the period 1st January to 31st March, 1st January;
- (c) as respects a course starting in the period 1st April to 30 June, 1st April; and
- (d) as respects a course starting in the period 1st July to 31st July, 1st July,

in each case the relevant date being in the year of commencement of the appropriate academic year of the course;

“Repayment Regulations” means the Repayment of Student Loans (Scotland) Regulations 2000<sup>(6)</sup>;

“sandwich course” has the meaning given to it in regulation 5(2);

“student loan account number” means the account number assigned by the lender to a loan made under the Act, the Education (Student Loans) Act 1990<sup>(7)</sup>, the Education (Student

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(2) Cmnd.2073.

(3) Cmnd.2183.

(4) Cmnd.9171.

(5) Cmnd.3906 (Out of print; photocopies are available, free of charge, from the 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).

(6) S.S.I. 2000/110.

(7) 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; by the Education (Student Loans) Act 1996 (c. 9), section 1(1) and the Schedule; by the Education Act 1996 (c. 56), Schedule 37, paragraph 98 and Schedule 38, and by the Education (Student Loans) Act 1998 (c. 1), sections 1 to 3.

Loans) (Northern Ireland) Order 1990<sup>(8)</sup>, the Teaching and Higher Education Act 1998<sup>(9)</sup>, the Education (Student Support) (Northern Ireland) Order 1998<sup>(10)</sup> or any regulations made under any of the foregoing; and

“the 1999 Regulations” means the Education (Student Loans) (Scotland) Regulations 1999<sup>(11)</sup>.

(2) For the purposes of these Regulations a person who is resident in Scotland, England, Northern Ireland, Wales, the Channel Islands or the Isle of Man as a result of having moved from another of those areas for the purpose of attending—

- (a) his present course; or
- (b) a previous designated course which (disregarding any intervening vacation) he was attending immediately before commencing his present course,

shall be considered to be ordinarily resident in the place from which he moved.

(3) For the purposes of these Regulations, including for the purpose of determining whether a person is settled in the United Kingdom within the meaning of the Immigration Act 1971<sup>(12)</sup>, a person shall be treated as ordinarily resident in Scotland, in the United Kingdom, in the United Kingdom and 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 when he is a child is, or was, temporarily employed outside Scotland, the United Kingdom, the United Kingdom and Islands or, as the case may be, outside the European Economic Area and paragraph 7(c) of Schedule 1 shall not apply in the case of such a person.

(4) For the purposes of these Regulations an area which—

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

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

(5) In these Regulations a reference to an EEA migrant worker is a reference to 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 of workers within the Community<sup>(13)</sup> 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.

### Revocations and transitional provisions

3.—(1) The Education (Student Loans) (Scotland) Regulations 1999<sup>(14)</sup> and the Education (Student Loans) (Scotland) Amendment Regulations 1999<sup>(15)</sup> shall be revoked on 1st August 2000.

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<sup>(8)</sup> S.I. 1990/1506 (N.I. 11).

<sup>(9)</sup> 1998 c. 30.

<sup>(10)</sup> S.I. 1998/1760 (N.I.14).

<sup>(11)</sup> S.I. 1999/1001, amended by the Education (Student Loans) (Scotland) Amendment Regulations S.S.I. 1999/124. Regulation 16 of the 1999 Regulations was revoked by the Repayment of Student Loans (Scotland) Regulations 2000.

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

<sup>(13)</sup> O.J. No. L257, 19.10.68, p.2 (O.J./S.E. 1968 (II), p.475).

<sup>(14)</sup> S.I. 1999/1001.

<sup>(15)</sup> S.I. 1999/124.

(2) Notwithstanding paragraph (1), the 1999 Regulations shall continue to apply to the making of loans to students in relation to an academic year which begins before 1st August 2000, and these Regulations shall apply in relation to the making of loans to students in relation to an academic year which begins on or after 1st August 2000, whether anything done under either Regulations is done before or after 1st August 2000.

(3) Accordingly the revocations made by paragraph (1) shall not affect the continued operation of the 1999 Regulations after 1st August 2000 for the purpose of making loans and (subject to paragraph (5)) in relation to loans made as aforesaid.

(4) Notwithstanding any other provision of these Regulations where any person received or was eligible to receive a loan in relation to an academic year of a course under the 1999 Regulations he shall, provided he satisfies the conditions for eligibility in these Regulations, be eligible for a loan under these Regulations in connection with his attendance at the course, or any subsequent designated course which (disregarding any intervening vacation) he starts attending immediately after ceasing to attend that course, calculated in accordance with Part III.

(5) Regulation 15 of the 1999 Regulations shall apply to loans made under the 1999 Regulations until 1st August 2000, and regulation 15 of these Regulations shall apply to such loans and to loans made under these Regulations on and after 1st August 2000.

## PART II

### ELIGIBILITY AND APPLICATIONS

#### Eligible students

4.—(1) The Scottish Ministers may pay a loan, in accordance with the provisions of section 73(f) of the Act and these Regulations, to or in respect of an eligible student.

(2) Subject to and in accordance with these Regulations a person shall be eligible for a loan in connection with his attendance at a designated course if—

- (a) he is a person mentioned in Schedule 1;
- (b) he is—
  - (i) under the age of 50 on the first day of the first academic year of the course; or
  - (ii) aged 50 or over and under the age of 55 on that day and the Scottish Ministers are satisfied that he intends to enter employment after he has completed the course;
- (c) he is not eligible for a loan in relation to an academic year of the course under the Education (Student Loans) Act 1990, the Education (Student Loans) (Northern Ireland) Order 1990, the Teaching and Higher Education Act 1998 or the Education (Student Support) (Northern Ireland) Order 1998, or any regulations made under any of the foregoing;
- (d) he is not eligible to receive in relation to the academic year—
  - (i) a bursary or award of similar description under section 63 of the Health Services and Public Health Act 1968<sup>(16)</sup> the amount of which is not calculated by reference to his income; or

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(16) 1968 c. 46; section 63 was amended by the National Health Services Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 124 and Schedule 5, the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 45 and Schedule 16, the National Health Services (Scotland) Act 1978 (c. 29), 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), 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 etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 74(1) and (2), the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 95(1) and (2), the Local Government

- (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992(17);
  - (e) he is not in breach of any obligation to repay any loan;
  - (f) where the designated course is a part-time course, he has already received fewer than eight loans in connection with his attendance at one or more part-time courses;
  - (g) where the designated course is a part-time course, he has—
    - (i) attained the age of 25 years;
    - (ii) been married for at least 2 years;
    - (iii) no parent living; or
    - (iv) supported himself out of his earnings for periods aggregating not less than 3 years;and
  - (h) subject to paragraph (5), he has ratified any agreement for a loan made with him when he was under the age of 18.
- (3) Notwithstanding that he satisfies the requirements specified in paragraph (2) a person shall not be eligible for a loan if—
- (a) he has, in the opinion of the Scottish Ministers, shown himself by his conduct to be unfitted to receive a loan; or
  - (b) the designated course is a part-time course and the person holds a first degree from an educational institution in the United Kingdom or a comparable qualification from an educational institution outside the United Kingdom.
- (4) For the purposes of paragraph (2)(e), (f) and (h) “loan” means a loan made under the Act, the Education (Student Loans) Act 1990, the Education (Student Loans) (Northern Ireland) Order 1990, the Teaching and Higher Education Act 1998, the Education (Student Support) (Northern Ireland) Order 1998 or under any regulations made under any of the foregoing.
- (5) Paragraph (2)(h) shall only apply, in a case where the agreement for a loan is subject to the law of Scotland, if it was made—
- (a) before 25th September 1991; and
  - (b) with the concurrence of the student’s curator, or at a time when he had no curator.
- (6) A person in respect of whom the first day of the first academic year of the course is on or after 1st August 2000 shall not, at any one time, be eligible for support for more than one designated course.

### **Designated courses**

- 5.—(1) A course shall be designated for the purposes of regulation 4(2) if it is—
- (a) mentioned in Schedule 2;
  - (b) a full-time course, a part-time course or sandwich course;
  - (c) of at least one academic year’s duration and, in the case of a part-time course, does not have a duration in excess of twice the period normally required to complete a full-time course leading to the same qualification; and
  - (d) wholly provided by an educational institution or institutions in the United Kingdom maintained or assisted by recurrent grants out of public funds or is provided by such

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Reorganisation (Wales) Consequential amendments) (No. 2) Order 1996 (S.I. 1996/1008), the Schedule, paragraph 1, and the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 1(4).  
(17) S.I. 1992/580.

an institution or institutions in conjunction with an institution or institutions outside the United Kingdom.

(2) For the purposes of these Regulations a sandwich course is a course, other than a course for the initial training of teachers referred to in paragraph 4 of Schedule 2, 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 purposes 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.

(3) For the purposes of these Regulations “periods of work experience” means—

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

(4) For the purposes of these Regulations a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not it has entered into an agreement with the student to provide the course.

(5) For the purposes of paragraph (1) a university and any constituent college or institution in the nature of a college of a university shall be regarded as maintained or assisted by recurrent grants out of public funds if either the university or the constituent college or institution is so maintained or assisted.

(6) For the purposes of paragraph (1) an institution shall not be regarded as maintained or assisted by recurrent grants out of public funds by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992(18).

(7) For the purposes of these Regulations a course, the standard of which is not higher than a first degree course, which leads to a qualification as a medical doctor, a dentist, a veterinary surgeon, an architect, a landscape architect, a landscape designer, a landscape manager, a town planner or a town and country planner, shall be considered to be a single course for a first degree or for an equivalent qualification notwithstanding that the course may lead to another degree or qualification being conferred before the degree or equivalent qualification, and notwithstanding that part of the course may be optional.

(8) For the purposes of regulation 4(2) the Scottish Ministers may designate courses of higher education which are not designated under paragraph (1).

### **Applications for loans**

6.—(1) A student shall apply for a loan, not exceeding the maximum amount applicable in his case, in connection with his attendance on a course by completing and submitting to the Scottish Ministers an application in such form as the Scottish Ministers may require.

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

- (a) the student’s United Kingdom national insurance number, unless he does not have one;
- (b) the student’s most recent student loan account number, if any; and
- (c) the names, addresses and telephone numbers of two persons who know the student.

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(18) 1992 c. 13; section 65(3A) was inserted by section 27 of the Teaching and Higher Education Act 1998 (c. 30).

- (3) The completed application shall also include a declaration signed by the student that—
- (a) the particulars given in the form are correct to the best of his knowledge and belief;
  - (b) he will notify the Scottish Ministers of any change in them which might affect his eligibility for a loan; and
  - (c) he will, if required to do so, repay to the Scottish Ministers—
    - (i) any amount paid to him which exceeds for whatever reasons the amount of loan to which he is entitled under these Regulations; and
    - (ii) any amount lent to him, together with interest and applicable charges and penalties, in accordance with the Act and any regulations made thereunder from time to time.
- (4) The application form must reach the Scottish Ministers by such date as they may determine from time to time (and different dates may be determined by them in respect of loans for different courses) unless the Scottish Ministers consider that, having regard to the circumstances of the particular case, the time limit should be relaxed, in which case the application must reach the Scottish Ministers not later than such date as they specify.
- (5) A student shall demonstrate his eligibility for a loan by providing such evidence as the Scottish Ministers may require.
- (6) The Scottish Ministers may take such steps and make such inquiries as they consider necessary to determine whether the student is eligible for a loan.
- (7) If the Scottish Ministers determine that a student is eligible for a loan they shall notify him of that fact and of the maximum amount of loan applicable in his case, and thenceforth the student shall be an “eligible student” for the purposes of these Regulations.
- (8) In any case where the Scottish Ministers—
- (a) determine that the maximum amount of loan which has been notified to an eligible student in relation to an academic year should be increased (including an increase from nil), as a result of a reassessment of the student’s contribution or otherwise; and
  - (b) consider that the increase in the maximum amount does not result from the eligible student—
    - (i) failing to provide information promptly which might affect his eligibility for a loan or the amount of loan for which he is eligible; or
    - (ii) providing information which is inaccurate in any material particular,they shall notify him of the increased amount and the eligible student may apply to borrow an additional amount which when added to the amount already applied for shall not exceed the increased maximum.
- (9) An application under paragraph (8) shall be made by completing and submitting to the Scottish Ministers an application in such form as they may require by such date as the Scottish Ministers may determine from time to time (and different dates may be determined by them in respect of loans for different courses) and shall contain a declaration signed by the eligible student in the terms set out in paragraph (3).
- (10) Where an eligible student who has submitted an application for a loan in accordance with paragraph (1) has not applied for the maximum amount of loan to which he is entitled in relation to an academic year under the preceding paragraphs he may apply to borrow an additional amount, which when added to the amount already applied for shall not exceed the maximum applicable in his case.
- (11) An application under paragraph (10) shall be made by completing and submitting to the Scottish Ministers an application in such form as they may require not later than such date as the Scottish Ministers may determine from time to time and shall contain a declaration signed by the student in the terms set out in paragraph (3).

### **Transfers of eligibility**

7.—(1) An eligible student may request that the Scottish Ministers transfer his eligibility in any case where—

- (a) on the recommendation of the academic authority of the institution concerned the eligible student starts to attend another course at the institution;
- (b) with the written consent of the academic authorities of both institutions concerned, given on educational grounds, the eligible student starts to attend a course at another institution;
- (c) with the written consent of the academic authority of the institution concerned, the eligible student ceases to attend a full-time course but starts to attend a part-time course, or ceases to attend a part-time course but starts to attend a full-time course, in either case at the same institution;
- (d) after commencing a course for the Certificate in Education, the eligible student is, on or before the completion of that course, admitted to a course for the degree of Bachelor of Education;
- (e) after commencing a course for the degree (other than an honours degree) of Bachelor of Education the eligible student is, on or before the completion of that course, admitted to a course for the honours degree of Bachelor of Education; or
- (f) after commencing a course for a first degree (other than an honours degree) the eligible student is, before the completion of that course, admitted to a course for an honours degree in the same subject or subjects at the institution.

(2) Subject to paragraph (3) the Scottish Ministers, on being satisfied of the matters referred to in paragraph (1) and that the second course is a designated course, shall transfer the eligible student's eligibility, and thenceforth the eligible student shall for all purposes be an eligible student in connection with his attendance at the second course, whether or not he might have been eligible for a loan if he had applied under regulation 6.

(3) The Scottish Ministers may, after consulting the academic authority concerned, refuse to transfer eligibility where paragraph (1)(a), (b) or (c) applies if they are satisfied that when the student applied for a loan he did not intend to complete the course to which his application related.

(4) For the purposes of the duty of the Scottish Ministers to transfer eligibility where paragraph (1) (d) or (e) applies it shall be immaterial whether or not the two courses are provided by the same institution.

(5) Where the Scottish Ministers have transferred an eligible student's eligibility from a course which is a full-time course to a course which is a part-time course, or from a course which is a part-time course to a course which is a full-time course, in either case during an academic year, then notwithstanding any other provision of these Regulations, the maximum amount of loan applicable in the case of the eligible student in respect of that academic year shall be the amount determined from time to time by the Scottish Ministers under regulation 10 as being applicable in respect of students whose eligibility is so transferred.

(6) The Scottish Ministers shall notify the eligible student of any change in the maximum amount of loan applicable in his case as a result of the transfer of his eligibility.

(7) An eligible student's eligibility for a loan may not be transferred after it has expired or been terminated under regulation 8.

### **Termination of eligibility**

8.—(1) Subject to paragraph (2) an eligible student shall cease to be eligible for a loan on the expiry of the period ordinarily required for the completion of the course, and accordingly he shall then cease to be an "eligible student".



(2) The Scottish Ministers may before or after an eligible student ceases to be an eligible student under paragraph (1) determine that he shall continue to be eligible for a loan for such further period after the expiry of the period referred to in that paragraph as they specify, and accordingly he shall be, or be considered to have been, an “eligible student” throughout that further period until its expiry.

(3) Where an eligible student has withdrawn from a course in circumstances where the Scottish Ministers have not transferred or will not transfer his eligibility to another course under regulation 7, or has abandoned or been expelled from his course, the Scottish Ministers shall determine that he is no longer eligible for a loan, and on such determination he shall then cease to be an “eligible student”.

(4) Where an eligible student has shown himself by his conduct to be unfitted to receive a loan the Scottish Ministers may determine that he is no longer eligible for a loan, and on such determination he shall then cease to be an “eligible student”.

### **Information**

**9.**—(1) Every applicant and every eligible student shall as soon as reasonably practicable after he is requested to do so provide the Scottish Ministers with such information as they consider necessary for the exercise of their functions under these Regulations.

(2) Every applicant and every eligible student shall forthwith inform the Scottish Ministers if any of the following occurs, and provide them with particulars—

- (a) he withdraws from, abandons or is expelled from his course;
- (b) he transfers to another course, at the same or a different institution, whether or not the new course is a designated course;
- (c) he ceases to attend his course and does not intend to, or is not permitted to, return for the remainder of the academic year;
- (d) he is absent from his course for more than 60 days due to illness, or is absent from his course for any period for any other reason;
- (e) the month for the start or completion of the course changes; or
- (f) his home or term time address or telephone number changes.

(3) If the Scottish Ministers are satisfied that an eligible student has wilfully failed to comply with any requirement to provide information, or has provided information that the student knows to be false in a material particular, or has recklessly provided information which is false in a material particular, they may determine that the student shall—

- (a) no longer be eligible for any loan; or
- (b) not be eligible for such a particular loan or particular amount of loan as they consider appropriate in the circumstances.

## **PART III**

### **LOANS**

#### **Maximum amounts of loans**

**10.** The maximum amount of loan in respect of each academic year shall not exceed such amount as may be determined from time to time by the Scottish Ministers and different maximum amounts may be determined for different categories of student.

### Means test

**11.**—(1) In determining the amount of a loan payable under these Regulations, the Scottish Ministers shall take account of the sums, if any, which—

- (a) in accordance with principles determined by them from time to time; and
- (b) after having regard to any sums taken into account under regulation 4(3) of the Student's Allowances (Scotland) Regulations 1999<sup>(19)</sup> in determining the amount of an allowance payable to the eligible student under those Regulations,

the eligible student, the eligible student's parents and the eligible student's spouse can reasonably be expected to contribute towards the eligible student's expenses.

(2) For the purpose of the exercise of their functions under this regulation the Scottish Ministers may require an eligible student to provide from time to time such information as the Scottish Ministers consider necessary as to the income of any person whose means are relevant to the assessment of a contribution under this regulation.

### Hardship loans

**12.**—(1) An eligible student who has applied for the maximum amount of loan in respect of an academic year and has received at least one instalment of that loan may apply on not more than two occasions in each academic year for an additional loan on grounds of hardship, which shall be known as a "hardship loan".

(2) A hardship loan shall be not less than £100 and not more than £500 and shall be a multiple of £100.

(3) The total amount of hardship loans payable to an eligible student in respect of an academic year shall not exceed £500.

(4) An eligible student shall demonstrate hardship by providing such evidence of his requirements and resources as the Scottish Ministers may require.

(5) On being satisfied that due to exceptional financial hardship the student may not be able to continue to attend his course for the remaining part of the academic year the Scottish Ministers shall determine the amount of hardship loan which they consider the student requires, and the student shall be eligible for a hardship loan of that amount.

(6) A student who is eligible for a hardship loan shall apply for a loan not greater than the amount determined by the Scottish Ministers in accordance with the provisions of paragraph (5) by completing and submitting to the Scottish Ministers an application in such form as they may require not later than one month after the date the student receives notice of the determination under paragraph (5) and one month before the end of the academic year.

(7) The student shall sign a declaration on the application form in the terms set out in regulation 6(3).

## PART IV PAYMENTS

### Payment of loans

**13.**—(1) Subject to the following paragraphs the Scottish Ministers may pay loans for which an eligible student has applied under these Regulations at such times and in such number of instalments

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<sup>(19)</sup> S.I. 1999/1131.

(which need not be of equal amounts) as they consider appropriate; and in the exercise of their functions under this paragraph they may, in particular, make provisional payments pending the final calculation of the amount of loan for which the student is eligible.

(2) No instalment of a loan shall be paid in respect of the period of the academic year during which, in the opinion of the Scottish Ministers, the longest of any vacations is taken.

(3) Payments may be made in such manner as the Scottish Ministers consider appropriate, and they may make it a condition of entitlement to payment that the eligible student shall provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(4) Subject to regulation 7, no instalment shall be paid after an eligible student has withdrawn from, abandoned or been expelled from his course.

(5) No instalment shall be paid in respect of a period during any part of which an eligible student is absent from his course, unless in the opinion of the Scottish Ministers in all the circumstances it would be appropriate to pay all or part of the loan.

(6) In deciding whether it would be appropriate to pay all or part of the loan when an eligible student is absent from his course, the circumstances which the Scottish Ministers shall have regard to include the reasons for the student's absence, the length of the absence and the financial hardship which not paying all or part of the instalment of loan would cause.

(7) An eligible student shall not be considered to be absent from his course if he is unable to attend due to illness and his absence has not exceeded 60 days.

(8) If the payment of instalments has been suspended and before the end of the academic year the eligible student commences attending his course again the Scottish Ministers may pay further instalments but so that the amount lent in relation to that year does not exceed such amount as the Scottish Ministers in all the circumstances consider appropriate.

(9) Where the Scottish Ministers have paid any instalment of loan, other than a loan under regulation 12, and the eligible student applies for an additional loan in respect of an academic year the Scottish Ministers shall pay the first instalment as soon as is reasonably practicable after a satisfactory application has been received and any subsequent instalments with instalments already payable.

(10) Where the Scottish Ministers have paid an instalment of loan for which a student is eligible in respect of an academic year and they make a determination that the amount of loan for which the student is eligible is less than the amount previously determined, either by way of revision of a provisional determination or otherwise—

- (a) they shall subtract such amount as is necessary to ensure that the student does not borrow an amount greater than the amount which he is eligible to borrow from any instalments of loan which remain to be paid;
- (b) if the amount to be subtracted is greater than the amount of loan remaining to be paid that amount shall be reduced to nil;
- (c) any remaining overpayment shall be recovered in accordance with regulation 14.

## **Overpayments**

**14.—**(1) Any overpayment of a loan in respect of any academic year may be recovered by the Scottish Ministers if, in their opinion—

- (a) the overpayment is a result of a failure of the student to provide promptly information which might affect his eligibility for a loan or the amount of loan for which he is eligible; or
- (b) any information which he has provided is inaccurate in a material particular,

but otherwise it shall be treated as a loan properly made under these Regulations which shall be repayable in accordance with the Act and any regulations made under it.

(2) Where an overpayment of loan is treated, by virtue of paragraph (1), as a loan properly made, the Scottish Ministers may subtract the overpayment from the amount of loan for which the student is eligible in respect of any other academic year.

(3) Where an overpayment of loan is recoverable in accordance with paragraph (1) it shall be recovered in such one or more of the following ways as the Scottish Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from the amount of loan for which the student is eligible in respect of any other academic year;
- (b) where a student upon completion of his course immediately commences another course (disregarding any intervening vacation) by subtracting the overpayment from the amount of any loan for which he is eligible in respect of any academic year in connection with the second course;
- (c) by taking such other action for the recovery of a payment made without statutory authority as is available to them.

## PART V

### INTEREST AND INSOLVENCY

#### Interest

**15.**—(1) Subject to paragraph (2), loans shall bear interest at the rate which, in relation to a loan made under these Regulations on or after 1st August 2000, will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980<sup>(20)</sup> equal to the percentage increase between the retail prices all items index published by the Office for National Statistics for March 1999 and that index so published for March 2000.

(2) If the rate referred to in paragraph (1) exceeds the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974<sup>(21)</sup> loans shall bear interest at the rate so specified.

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

(4) The index of prices that the Scottish Ministers shall have regard to in prescribing the rate of interest which loans shall bear shall be the retail prices all items index mentioned in paragraph (1).

#### Insolvency

**16.** Where after the date of sequestration of an eligible student's estate, he receives, or is entitled to receive, sums by way of loan—

- (a) the sheriff shall not, in fixing an amount under subsection (2) of section 32 of the Bankruptcy (Scotland) Act 1985<sup>(22)</sup> treat the sums as income of the eligible student;
- (b) for the purpose of subsection (6) of that section the sums shall not be treated as estate vesting in, or requiring to be conveyed or delivered to, the eligible student's permanent trustee; and

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<sup>(20)</sup> S.I. 1980/51, amended by S.I. 1983/1562, 1989/596.

<sup>(21)</sup> 1974 c. 39.

<sup>(22)</sup> 1985 c. 66; section 32 was amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 6, and the Pensions Act 1995 (c. 26), Schedule 3, paragraph 14.

- (c) any debt or liability to which the eligible student is, or may become, subject in respect of the sums shall not be treated as a debt or liability–
- (i) for the purposes of the sequestration (or of any offer of composition to the permanent trustee); or
  - (ii) from which the eligible student is discharged on the expiry of a period after the date of sequestration, under or by virtue of section 54 or 75(4) of that Act (or on an order being made under paragraph 11 of Schedule 4 to that Act as respects him and the permanent trustee).

## PART VI

### AMENDMENTS

#### **Amendment of the Repayment Regulations**

17. In regulation 14(3) of the Repayment Regulations, for “regulation 13” there shall be substituted “regulation 12”.

St Andrew’s House,  
Edinburgh  
15th June 2000

*HENRY McLEISH*  
A member of the Scottish Executive

## SCHEDULE 1

Regulation 4(2)(a)

## ELIGIBLE STUDENTS

1. A person who on the first day of the first academic year of the course—
  - (a) is settled in the United Kingdom within the meaning of the Immigration Act 1971(23); and
  - (b) meets the residence conditions referred to in paragraph 7.
2. A person who is a refugee, ordinarily resident in the United Kingdom and Islands, who has not ceased to be so resident since he was recognised as a refugee, or who is the spouse, child or stepchild of such a refugee, and in each case who meets the residence condition in paragraph 7(23).
3. A person who—
  - (a) has been informed 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 to remain accordingly; and
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain,
 or who is the spouse, child or stepchild of such a person, where the person, or as the case may be the spouse, child or stepchild, meets the residence conditions referred to in paragraph 7.
4. A person who is an EEA migrant worker who—
  - (a) 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(24) 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); and
  - (b) meets the residence conditions referred to in paragraph 7.
5. A person who is the spouse of an EEA migrant worker and who—
  - (a) is installed in the United Kingdom with his spouse; and
  - (b) meets the residence conditions referred to in paragraph 7.
- 6.—(1) A person who is the child of an EEA migrant worker and who—
  - (a) is entitled to support 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; and
  - (b) meets the residence conditions referred to in paragraph 7.
 (2) For the purposes of this paragraph “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.
7. The residence conditions referred to above are that—

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

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

(24) O.J. No. L257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475).

- (a) the person is ordinarily resident in Scotland on the first day of the first academic year of the course;
- (b) the person has been ordinarily resident throughout the three year period preceding the first day of the first academic year of the course, in the case of a person mentioned in paragraphs 1 or 3, in the United Kingdom and Islands, or, in the case of a person mentioned in paragraphs 4, 5 or 6, in the European Economic Area; and
- (c) his residence in the United Kingdom and Islands, or in the European Economic Area, as the case may be, has not during any part of the period referred to in sub-paragraph (b) been wholly or mainly for the purpose of receiving full-time education.

## SCHEDULE 2

Regulation 5(1)(a)

### DESIGNATED COURSES

1. A first degree course other than a course referred to in paragraph 4.
2. A course for the Diploma of Higher Education.
3. A course for the Higher National Diploma or Higher National Certificate of—
  - (a) the Business & Technician Education Council; or
  - (b) the Scottish Qualifications Authority.
4. A course for the initial training for teachers, including such a course leading to a first degree.
5. A course for the further training of teachers or youth and community workers.
6. A course in preparation for a professional examination of a standard higher than that of—
  - (a) examinations at advanced level for the General Certificate of Education or the examination at higher level for the Scottish Certificate of Education; or
  - (b) the examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3,not being a course for entry to which a first degree (or equivalent qualification) is normally required.
7. A course providing education (whether or not in preparation for an examination) the standard of which is—
  - (a) higher than that of courses providing education in preparation for any of the examinations mentioned in paragraph (6)(a) or (b) above, but
  - (b) not higher than that of a first degree course,and for entry to which a first degree (or equivalent qualification) is not normally required.

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

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## EXPLANATORY NOTE

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

These Regulations provide for loans for maintenance for eligible students attending designated courses of higher education. They apply to loans payable for an academic year starting on or after 1st August 2000 (regulation 3(2)). They revoke the Education (Student Loans) (Scotland) Regulations 1999 on 1st August 2000 (regulation 3(1), subject to a savings provision that the 1999 Regulations will continue to apply to students attending a course for which the academic year begins before 1st August 2000 (regulation 3(2) and (3)).

Students are eligible students for the purposes of these Regulations if on the first day of the first academic year of the course they are settled in the United Kingdom for the purposes of the Immigration Act 1971, on that day they are ordinarily resident in Scotland, and for the three years immediately preceding that day they have been ordinarily resident in the United Kingdom and Islands for purposes other than receiving full-time education (regulation 4(2) and Schedule 1, paragraphs 1 and 7). Students may also be eligible if they are refugees, if they have been granted exceptional leave to remain in the United Kingdom, or if they are European Economic Area migrant workers, or the spouses or children of such workers (Schedule 1, paragraphs 2 to 6). Such students must also be ordinarily resident in Scotland on the first day of the course, and in some cases meet other residence conditions (Schedule 1, paragraph 7).

To be eligible students must also attend a designated course, be under the age of 50 on the first day of the course or if aged 50 or over and under 55 they must be intending to enter employment on completion of the course, not be eligible for a loan under the Education (Student Loans) Act 1990 or the Education (Student Loans) (Northern Ireland) Order 1990 (which provides for the existing mortgage style student loans for students who began their course before 1st August 1998, and certain other students) or under the Teaching and Higher Education Act 1998 or the Education (Student Support) (Northern Ireland) Order 1998. In addition they must not be eligible for certain National Health Service bursaries or awards, not be in breach of any obligation to repay any other student loan and have ratified, where appropriate, any other student loan they received when they were under the age of 18. In the case of a part-time student he must also meet certain criteria that identify him as an independent student, must not have received more than 7 loans in connection with attendance on one or more part-time courses and must not hold a first degree. (regulation 4(2) and 4(3)).

Courses which are designated courses for the purposes of these Regulations include full-time and part-time courses for a first degree, for the Diploma of Higher Education, for the Higher National Diploma or Higher National Certificate, for the further training of teachers or youth and community workers, for certain professional examinations, and for courses of initial training for teachers (regulation 5(1) and Schedule 2). Full-time courses must be of at least one academic year's duration and part-time courses must not exceed twice the period normally required to complete a full-time course leading to the same qualification. In either case courses must be provided at least in part by an institution or institutions in the United Kingdom which are maintained or assisted by recurrent grants out of public funds (regulation 5(1)). The Scottish Ministers may designate other courses by administrative act from time to time (regulation 5(8)).

Students are required to apply for a student loan by such date as the Scottish Ministers may determine unless they are satisfied that an extension of time should be granted (regulation 6(4)). Students must agree to repay any amount paid in excess of the amount to which they are entitled and any monies lent to them with interest and applicable charges and penalties (regulation 6(3)). They may apply to borrow such amount not exceeding the relevant maximum amount as they wish. Where the amount



of loan to which a student is entitled is increased, for any reason, that student may apply for a further loan up to that maximum amount (regulation 6(8)). If a student has not applied for the maximum amount first time he may apply once more for a further amount, but not so that the relevant maximum amount is exceeded (regulation 6(10)). If a student makes such a further application or makes an application following notification of increased entitlement he must do so by such date as Scottish Ministers may determine (regulation 6(9) and 6(11)).

Students may be entitled to transfer their entitlement to a loan if in certain circumstances they transfer course and they may also convert their eligibility for a full-time course to a part-time course and vice versa (regulation 7). A loan is normally granted for the period ordinarily required to complete the course (regulation 8(1)), although an extension may be granted (regulation 8(2)).

Students are required to provide the Scottish Ministers with such information as they require (regulation 9(1)). Students must also notify them if specified events occur (regulation 9(2)).

Scottish Ministers may determine different maximum loan amounts for different categories of students (regulation 10). Scottish Ministers have the power to take account of the student's income and that of his parents and spouse in determining the maximum loan that he will be entitled to (regulation 11).

A student who has applied to borrow the maximum amount in relation to an academic year of a full-time course and received at least one instalment, may apply for a hardship loan of not less than £100 and not more than £500 on not more than two occasions (regulation 12(1) and (2)). He must first satisfy the Scottish Ministers that due to exceptional financial hardship he may not be able to continue to attend for the balance of the academic year (regulation 12(3) and (4)).

Loans payable to eligible full-time and part-time students shall be paid at such time and in number of instalments as Scottish Ministers may determine (regulation 13(1)). For the purposes of the Regulations the academic year is divided into four periods regardless of whether the year has terms or semesters, the periods beginning on 1st August, 1st January, 1st April and 1st July (regulation 2(1)).

Payments of instalments, as appropriate, will not be made once a student has withdrawn from, abandoned or been expelled from his course (regulation 13(4)). In the case of absence from the course for more than 60 days as a result of illness, or for any period for any other reason, the Scottish Ministers may decide to suspend payments or to continue to make them if suspension of them would cause exceptional hardship (regulation 13(5) to (7)). When payments are suspended and the student returns to his course the Scottish Ministers may pay further instalments, but the overall amount lent for the year must not exceed the amount the Scottish Ministers consider appropriate, in light of the length and circumstances of the absence (regulation 13(8)).

Provision is made for recovery of overpayments (regulation 14). If the Scottish Ministers are satisfied that the overpayment occurred as a result of information supplied by the student they may deduct the overpayment from loan payments in another academic year, or by taking other action (regulation 14(1) and (3)). In any other case the overpayment will be treated as a loan properly made but the overpayment may be deducted from loans otherwise payable in any other academic year (regulation 14(2)).

Provision is made for the interest which the loans will bear, which is calculated daily and compounded monthly (regulation 15). In accordance with section 73B(6) and (7) of the 1980 Act the prescribed rate is no higher than that which the Scottish Ministers are satisfied is required to maintain the value in real terms of the outstanding amount of loans, and does not exceed the rate specified for the purposes of exemption of certain consumer credit agreements by the Consumer Credit (Exempt Agreements) Order 1998.

Instalments of student loans paid or payable after the commencement of the sequestration of a student's estate shall not form part of his estate, and accordingly cannot be claimed by his trustee. The student will not be discharged from liability to repay loan repayments received after sequestration when he is discharged under or by virtue of section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (regulation 16).

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

These Regulations also amend regulation 14(3) of the Repayment of Students Loans (Scotland) Regulations 2000 to correct an error (regulation 17).