

2008 No. 235

EDUCATION

The Graduate Endowment (Scotland) Regulations 2008

Made - - - - *6th June 2008*

Laid before the Scottish Parliament *6th June 2008*

Coming into force - - *30th June 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 73(f) and 73B of the Education (Scotland) Act 1980(a) and all other powers enabling them to do so.

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Graduate Endowment (Scotland) Regulations 2008 and come into force on 30th June 2008.

Interpretation

2. In these Regulations—

“the 2001 Act” means the Education (Graduate Endowment and Student Support) (Scotland) Act 2001(b);

“the 2007 Regulations” means the Graduate Endowment (Scotland) Regulations 2007(c);

“the 2008 Act” means the Graduate Endowment Abolition (Scotland) Act 2008(d);

“academic year”, in relation to a course, means a period beginning on the first day of the first term of an academic year for that course and ending on the last day of the final term of that academic year for that course;

“fundable higher education” has the meaning given in section 5(3) of the Further and Higher Education (Scotland) Act 2005(e).

“graduate endowment liability” is the liability, existing by virtue of section 1 of the 2001 Act and the 2007 Regulations, of a person to pay to the Scottish Ministers the amount of their

(a) 1980 c.44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c.30), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”), section 3(2). Section 73B was inserted by the Teaching and Higher Education Act 1998, section 29(2) and amended by the 2001 Act, section 3(3) and by the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 149. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2001 asp 6.

(c) S.S.I. 2007/155.

(d) 2008 asp 3.

(e) 2005 asp 6.

graduate endowment and “endowment course” means the course in respect of which the graduate endowment liability arose;

“liable graduate” has the meaning given in the 2007 Regulations; and

“liable student” is a student described in regulation 4.

Application of regulations

3. These Regulations apply in respect of graduate endowment liability which–

- (a) has not been extinguished by the 2008 Act; and
- (b) remains outstanding at the date these Regulations come into force,

in respect of any liable student.

PART II

LIABILITY FOR AND PAYMENT OF GRADUATE ENDOWMENT

Liable Students

4. A liable student is a liable graduate who, in the academic year immediately following the end of their endowment course, has undertaken–

- (a) a course of fundable higher education; or
- (b) a series of 2 or more courses of fundable higher education where–
 - (i) after each course in the series is completed, the next course is started in the academic year immediately following the end of the completed course; and
 - (ii) the series comes to an end when a course is completed and no further course is started in the academic year following the completion of that course.

Payment of Graduate Endowment

5. A liable student, before 1st April following the last day of the course referred to in regulation 4(a), or of the final course of the series referred to in regulation 4(b), (as the case may be, may apply to the Scottish Ministers for a loan in accordance with Part III of these Regulations for the purpose of discharging his or her graduate endowment liability.

PART III

LOANS TO PAY THE GRADUATE ENDOWMENT

Eligibility for a loan

6.—(1) The Scottish Ministers must make a loan in accordance with these Regulations in respect of each liable student who applies for a loan in accordance with regulation 7 for the purposes of discharging his or her liability to pay the graduate endowment.

(2) A liable student shall be eligible for such a loan subject to paragraph (3).

(3) The Scottish Ministers may make it a condition of entitlement to payment of any loan that the liable student must provide them with the liable student’s United Kingdom national insurance number.

(4) Where the Scottish Ministers have imposed a condition under paragraph (3), they must not make any payment of the loan to the liable student before they are satisfied that the liable student has complied with that condition.

(5) Notwithstanding paragraph (4), the Scottish Ministers may make a payment of loan to a liable student if they are satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the liable student having complied with the condition imposed under paragraph (3).

Applications for a loan

7.—(1) A liable student must apply for a loan by completing and submitting to the Scottish Ministers an application in such form as the Scottish Ministers may require.

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

- (a) the liable student's United Kingdom national insurance number;
- (b) the liable student's most recent student loan account number, if any; and
- (c) the names, addresses and telephone numbers of 2 persons who know the liable student.

(3) The completed application must also include a declaration, signed by the liable student that—

- (a) the particulars given in the form are correct to the best of his or her knowledge and belief; and
- (b) the liable student will notify the Scottish Ministers of any change in those particulars which might affect his or her eligibility for a loan.

(4) The application form must reach the Scottish Ministers before the date referred to in regulation 5 unless the Scottish Ministers consider that, having regard to the circumstances of the particular case, the time limit should not apply, in which case the application must reach the Scottish Ministers not later than such date as they specify.

(5) A liable student must demonstrate their 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 enquiries as they consider necessary to determine whether the liable student is eligible for a loan.

Information

8.—(1) A liable student applying for a loan under regulation 7 must as soon as reasonably practicable after 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) The Scottish Ministers may at any time require a liable student to enter into an agreement to repay a loan by a particular method.

(3) The Scottish Ministers may at any time request from a liable student sight of his or her valid national identity card, his or her valid passport issued by the state of which he or she is a national or his or her birth certificate.

(4) The Scottish Ministers may at any time verify with the Department for Work and Pensions the United Kingdom national insurance number provided by a liable student or may check with the Department for Work and Pensions whether the liable student has such a number with a view to obtaining it if the liable student does have such a number.

(5) Where the Scottish Ministers have requested information or documents under this regulation, they may withhold any payment of a loan until the liable student provides what has been requested or provides a satisfactory explanation for not complying with the request.

(6) Where the Scottish Ministers have requested an agreement in terms of paragraph (2) as to the method of repayment, they may withhold any payment of a loan until the liable student enters into such an agreement.

Amount of loan

9. The amount of any loan is the amount of the graduate endowment for which the liable student to whom the loan is made is liable.

Purpose of loan

10.—(1) The Scottish Ministers must apply the full amount of any loan made in respect of a liable student for the purpose of discharging the liability of that student to pay the graduate endowment and must not pay any part of the loan to the student or to any other person on his or her behalf.

(2) Where a liable student has made an application for a loan before the date referred to in regulation 5, the Scottish Ministers must apply the amount of his or her loan in accordance with paragraph (1) on the date referred to in regulation 5.

(3) Where a liable student has made an application for a loan after the date referred to in regulation 5, the Scottish Ministers must apply the amount of his or her loan in accordance with paragraph (1) as soon as reasonably practicable.

(4) Any loan made in respect of a liable student in accordance with these Regulations shall be applied for the purpose referred to in paragraph (1) and for no other purpose.

Interest

11.—(1) Subject to paragraph (2), loans must bear interest from the date on which they are applied by the Scottish Ministers in accordance with regulation 10 at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980(a) equal to the percentage increase between the retail prices all items index published by the Office for National Statistics for the month of March immediately preceding the month in which the loan is applied by the Scottish Ministers in accordance with regulation 10 and that index so published for the previous March.

(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(b) loans shall bear interest at the rate so specified.

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

Insolvency

12. Where after the date of sequestration of a liable student's estate, he or she receive, or is entitled to receive, a loan in accordance with these Regulations—

- (a) the sheriff must not, in fixing an amount under section 32(2) of the Bankruptcy (Scotland) Act 1985(c) treat the loan as income of that student;
- (b) for the purpose of section 32(6) the loan must not be treated as estate vesting in, or requiring to be conveyed or delivered to, the student's permanent trustee; and
- (c) any debt or liability to which the student is, or may become, subject in respect of the loan must 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

(a) S.I. 1980/51, amended by S.I. 1999/3177.

(b) 1974 c.39.

(c) 1985 c.66; section 32 was amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 6, the Pensions Act 1995 (c.26), Schedule 3, paragraph 14 and the Welfare Reform and Pensions Act 1999 (c.30), Schedule 2, paragraph 1 and prospectively by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 17, 18 and 19 and schedule 1.

- (ii) from which the 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 the student and the permanent trustee).

St Andrew's House,
Edinburgh
6th June 2008

FIONA HYSLOP
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for graduates liable to pay their graduate endowment on 1st April 2005, 2006 and 2007, but who have undertaken a further course or courses of higher education, to apply for a student loan to pay their graduate endowment on 1st April following the termination of their last course of higher education.

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