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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 389**

**EDUCATION**

**The Education (Fees) (Scotland) Regulations 2011**

<i>Made</i>	- - - -	<i>2nd November 2011</i>
<i>Laid before the Scottish</i>		
<i>Parliament</i>	- - - -	<i>4th November 2011</i>
<i>Coming into force</i>	- -	<i>1st August 2012</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1 of the Education (Fees and Awards) Act 1983<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Education (Fees) (Scotland) Regulations 2011 and come into force on 1st August 2012.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 of the Nationality, Immigration and Asylum Act 2002<sup>(2)</sup>;

“Directive 2004/38” means Directive 2004/38 of the European Parliament and of the Council<sup>(3)</sup> on the rights of the citizens of the Union and their family members to move and reside freely in the territory of the member States;

“education” includes post-graduate research otherwise than in the course of employment;

“EEA frontier self-employed person” means an EEA national who—

(a) is a self-employed person (within the meaning of Article 7 of Directive 2004/38) in the United Kingdom; and

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(1) 1983 c.40; section 1 was relevantly amended by the Education Reform Act 1988 (c.40), Schedule 12, paragraph 91 and the Further and Higher Education (Scotland) Act 1992 (c.37), Schedule 9, paragraph 8. 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).

(2) 2002 c.41.

(3) OJ No L 158, 30.4.2004, p.77.

- (b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker (within the meaning of Article 7 of Directive 2004/38) in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of Article 7 of Directive 2004/38, but who is not an EEA frontier worker;

“EEA national” means a national of an EEA state other than the United Kingdom;

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of Article 7 of Directive 2004/38, but who is not an EEA frontier self-employed person;

“employment” means full-time or part-time employment which, in a normal week, involves a significant number of hours of work and “employed” shall be construed accordingly, and the references to employment include references to the holding of any office and to any occupation for gain;

“EU national”, unless the context otherwise requires, means a person who is a national of any member State for the purposes of the EU Treaties;

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland, Mayotte, Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon, and Wallis and Futuna Islands;

“European Economic Area” means the area of the EEA states and includes those states at any time before they became EEA states;

“excluded medical student” means a student who—

- (a) has been accepted on to a Bachelor of Medicine and Bachelor of Surgery degree course or a Bachelor of Science degree course in medicine which is a preparatory course for the study of a Bachelor of Medicine and Bachelor of Surgery degree course at a fundable body and has agreed in writing with that fundable body, during the period beginning on 1st August 2005 and ending on 31st July 2011, to defer entry to that course; and
- (b) has a relevant connection with Scotland, or is an excepted student, within the meaning of these Regulations;

“family member” means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, an EEA self-employed person, a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;

- (b) in relation to an EU national who is not self-sufficient within the meaning of Article 7(1) (b) of Directive 2004/38—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; and
- (c) in relation to an EU national who is self-sufficient within the meaning of Article 7(1) (c) of Directive 2004/38 or, for the purposes of paragraph 3 of Schedule 1, a United Kingdom national—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;

“fees” includes charges however described;

“fundable body” means a fundable body providing fundable higher education in terms of section 5(3) of the Further and Higher Education (Scotland) Act 2005<sup>(4)</sup>;

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

“new deferred student” means a student, who is not an excluded medical student, who has been accepted on to a course of education at a fundable body and has agreed in writing with that fundable body before 1st August 2011, to defer entry to that course;

“non UK EU national” means a person who is a national of any member State other than the United Kingdom;

“parent” includes a step-parent, a guardian, any other person having parental responsibilities for a child and any person having care of a child, and “child” shall be construed accordingly;

“post 2011/12 student” means a student, who is not a new deferred student, who commences a course of education at a fundable body on or after 1st August 2012;

“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>(5)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(6)</sup>;

“relevant date” in relation to a course of education commenced by a post 2011/12 student means—

- (a) for a course of education starting in the period 1st August to 31st December, 1st August in that year;
- (b) for a course of education starting in the period 1st January to 31st March, 1st January in that year;
- (c) for a course of education starting in the period 1st April to 30th June, 1st April in that year; and
- (d) for a course of education starting in the period 1st July to 31st July, 1st July in that year;

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<sup>(4)</sup> 2005 asp 6.

<sup>(5)</sup> Cm. 9171.

<sup>(6)</sup> Cm. 3906 (Out of print: photocopies are available, free of charge, from the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

“relevant fees” means the aggregate of—

- (a) any fees for admission, registration or matriculation (including matriculation exemption);
- (b) any sessional or tuition fees;
- (c) any composition fee; and
- (d) any graduation fee,

in each case excluding any element thereof representing or attributable to—

- (i) any fees charged by an external body in respect of an examination or validation of a course of education or otherwise charged by such a body whose requirements must (for the purposes of a course) be met; and
- (ii) charges for board and lodging;

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier worker;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA state, other than the United Kingdom, and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“Swiss frontier worker” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;

“Switzerland Agreement” means the Agreement between the EU and its member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999<sup>(7)</sup> and which came into force on 1st June 2002;

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules<sup>(8)</sup>;

“Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in Scotland; and
- (b) is, or has been, lawfully employed in the United Kingdom; and

“young asylum seeker” means an unaccompanied asylum-seeking child.

(2) Notwithstanding section 11 of the Interpretation Act 1978<sup>(9)</sup>, section 3(2) of the Education (Fees and Awards) Act 1983<sup>(10)</sup> (references to the United Kingdom to include references to the Islands) does not apply for the purpose of the interpretation of these Regulations.

<sup>(7)</sup> Cm. 5639.

<sup>(8)</sup> HC 395; relevant amending instrument is HC 164.

<sup>(9)</sup> 1978 c.30.

<sup>(10)</sup> 1983 c.40.

(3) For the purposes of regulation 3(a) a post 2011/12 student who is ordinarily resident in Scotland as a result of having moved from the Islands for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the Islands.

(4) For the purposes of regulation 3(a) a post 2011/12 student who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the part of the United Kingdom from where they moved.

(5) For the purposes of these Regulations, and subject to paragraph (6), in assessing whether a post 2011/12 student has a relevant connection with Scotland or is an excepted student for the charging of relevant fees, a course of education is deemed to have started on the date that the first constituent part of any programme of education which contributes to the final award for that course of education commenced.

(6) In assessing whether a post 2011/12 student has a relevant connection with Scotland or is an excepted student for the charging of relevant fees—

(a) a programme of education leading to—

(i) a Degree;

(ii) a Higher National Diploma; or

(iii) a Higher National Certificate; and

(b) such other programmes of education as the Scottish Ministers may determine,

are to be treated as separate and distinct courses of education.

### **Relevant connection with Scotland**

3. For the purposes of regulation 4(1), a post 2011/12 student has a relevant connection with Scotland if that post 2011/12 student—

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

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

(c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(11)</sup> on the relevant date.

### **Charging of higher relevant fees**

4.—(1) Subject to paragraph (2), it is lawful to charge higher relevant fees in the case of post 2011/12 students who do not have a relevant connection with Scotland than in the case of post 2011/12 students having such a connection.

(2) It is not lawful to charge higher relevant fees in the case of a post 2011/12 student who is an excepted student within the meaning of Schedule 1.

### **Ordinary Residence**

5. Schedule 2 has effect as regards determining whether a post 2011/12 student is to be treated, for the purposes of regulation 3 or Schedule 1, as being, or having been, ordinarily resident in a place at, or for, a particular time.

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(11) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).

## **The Education (Fees and Awards) (Scotland) Regulations 2007**

6. After regulation 3 of the Education (Fees and Awards) (Scotland) Regulations 2007(12) insert—

### **“Application of this Part**

**3A.** This Part does not apply to a post 2011/12 student within the meaning of regulation 2(1) of the Education (Fees) (Scotland) Regulations 2011.”.

St Andrew’s House,  
Edinburgh  
2nd November 2011

*MICHAEL RUSSELL*  
A member of the Scottish Executive

## SCHEDULE 1

Regulation 4(2)

### FEES - EXCEPTED STUDENTS

1. A post 2011/12 student is an excepted student if that post 2011/12 student—
  - (a) is—
    - (i) an EEA migrant worker or an EEA self-employed person;
    - (ii) a Swiss employed person or a Swiss self-employed person;
    - (iii) an EEA frontier worker or an EEA frontier self-employed person; or
    - (iv) a Swiss frontier worker or a Swiss frontier self-employed person; and
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
2. A post 2011/12 student is an excepted student if that post 2011/12 student—
  - (a) is—
    - (i) the family member of a person mentioned in paragraph 1(a); or
    - (ii) has a right not to be charged higher relevant fees by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(13)</sup>, as extended by the EEA agreement; and
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
- 3.—(1) A post 2011/12 student is an excepted student if that post 2011/12 student—
  - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date;
  - (b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any way attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;
  - (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
  - (d) in the case where the ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (c).

(2) For the purposes of this paragraph, a post 2011/12 student has utilised a right of residence if that post 2011/12 student—
  - (a) is—
    - (i) a United Kingdom national;
    - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38<sup>(14)</sup> (or under corresponding provisions in the EEA agreement or the Switzerland Agreement<sup>(15)</sup>);

<sup>(13)</sup> OJ No L 257, 19.10.68, p.2 (OJ/SE 1968(II) p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

<sup>(14)</sup> OJ No 158, 30.4.2004, p.77.

<sup>(15)</sup> Cm. 5639.

- (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
- (b) either—
  - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom; or
  - (ii) in the case of a post 2011/12 student who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory comprising the European Economic Area and Switzerland of which that post 2011/12 student is a national or of which the person, in relation to whom that post 2011/12 student is a family member, is a national.
- (3) Sub-paragraph (1)(a) does not apply where the post 2011/12 student falls within sub-paragraph (2)(a)(ii).
- 4. A post 2011/12 student is an excepted student if that post 2011/12 student—
  - (a) is—
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first recognised as a refugee; or
    - (ii) the spouse, civil partner or child of such a refugee; and
  - (b) is ordinarily resident in Scotland on the relevant date.
- 5. A post 2011/12 student is an excepted student if —
  - (a) that post 2011/12 student—
    - (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and that person has been granted leave to enter or remain accordingly;
    - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain; and
    - (iii) is ordinarily resident in Scotland on the relevant date; or
  - (b) that post 2011/12 student is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.
- 6. A post 2011/12 student is an excepted student if that post 2011/12 student—
  - (a) is an Iraqi national who—
    - (i) has been granted indefinite leave to enter the United Kingdom under the Locally Engaged Staff Assistance Scheme (Direct Entry) operated by the Home Department;
    - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted indefinite leave to enter the United Kingdom; and
    - (iii) is ordinarily resident in Scotland on the relevant date; or
  - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.
- 7. A post 2011/12 student is an excepted student if that post 2011/12 student—
  - (a) is a person who has been granted temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection;



- (b) did not attain the age of 18 years prior to the beginning of the current academic year of the student's course; and
  - (c) is ordinarily resident in Scotland on the relevant date.
- 8.** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is the child of an asylum seeker or is a young asylum seeker;
  - (b) is resident in Scotland on the relevant date;
  - (c) has been resident in Scotland throughout the period of 3 years immediately preceding the relevant date;
  - (d) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1st December 2006; and
  - (e) is under 25 years old on the relevant date.
- 9.—(1)** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is, on the relevant date, a non UK EU national or the family member of such a national;
  - (b) is ordinarily resident in Scotland on the relevant date;
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and
  - (d) in the case where their ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (c).
- (2) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EU national on the relevant date is treated as being satisfied.
- 10.—(1)** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is, on the relevant date, an EU national or a family member of such national; and
  - (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.
- (2) Sub-paragraph (1)(b) does not apply to a family member of an EU national where that EU national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.
- (3) For the purposes of this paragraph—
- (a) an EU national does not include a United Kingdom national who has not utilised a right of residence; and
  - (b) a United Kingdom national has utilised a right of residence if that person has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom.
- (4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EU national on the relevant date is treated as being satisfied.
- 11.** A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) is the child of a Swiss national in respect of whom it is not lawful to charge higher relevant fees by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
- (c) in the case where the ordinary residence referred to in sub-paragraph (b) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-paragraph (b).

**12.** A post 2011/12 student is an excepted student if that post 2011/12 student was admitted to the course of education in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.

**13.** A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Scotland on the relevant date; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.

## SCHEDULE 2

Regulation 5

### ORDINARY RESIDENCE

**1.—(1)** For the purposes of regulation 3(a) and paragraph 9(1)(b) of Schedule 1, a post 2011/12 student is to be treated as being ordinarily resident in Scotland on the relevant date if that post 2011/12 student was not actually so resident only because—

- (a) that post 2011/12 student or their spouse or civil partner or either of their parents; or
- (b) in the case of a dependant direct relative in the ascending line, the child upon whom that post 2011/12 student was dependent or that child's spouse or civil partner,

was temporarily—

- (i) employed outside Scotland; or
- (ii) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of regulation 3(a) and subject to sub-paragraph (3), a post 2011/12 student is not to be treated as being ordinarily resident in Scotland on the relevant date if that post 2011/12 student's residence there on that date is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(3) Sub-paragraph (2) does not apply to a post 2011/12 student who has acquired settled status in the United Kingdom under the Immigration Act 1971<sup>(16)</sup> as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

**2.—(1)** Sub-paragraphs (2) to (5) apply in determining, for the purposes of regulation 3(b) and paragraphs 1(b), 2(b), 3(1)(c), 9(1)(c), 10(1)(b), 11(b) and 13(c) of Schedule 1, whether a post 2011/12 student is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (in this paragraph, “the specified period”) in the United Kingdom and

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(16) 1971 c.77.

Islands, the European Economic Area, Switzerland, the EU overseas territories or Turkey (in this paragraph, “the relevant area”).

(2) A post 2011/12 student is not to be treated as having been ordinarily resident in the relevant area for the specified period in regulation 3(b) if that post 2011/12 student was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless the post 2011/12 student has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the post 2011/12 student must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A post 2011/12 student is not to be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 10(1)(b) of Schedule 1 if that post 2011/12 student was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(4) A post 2011/12 student is to be treated as having been ordinarily resident in the relevant area for the specified period if that post 2011/12 student was born and has spent the greater part of their life in the relevant area and—

- (a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that post 2011/12 student is not an independent student; or
- (b) that post 2011/12 student has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of regulation 3 or paragraph 10 of Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(5) A post 2011/12 student is to be treated as having been ordinarily resident in the relevant area for the specified period if that post 2011/12 student was not actually ordinarily resident in the relevant area for the specified period only because—

- (a) that post 2011/12 student, or their spouse or civil partner, or either of their parents; or
- (b) in the case of a dependent direct relative in the ascending line, the child upon whom that post 2011/12 student was dependent or that child’s spouse or civil partner,

was temporarily—

- (i) employed outside the relevant area; or
- (ii) attending a course of study or undertaking postgraduate research outside the relevant area.

**3.—(1)** In paragraph 2(4)(a), “an independent student” means a post 2011/12 student who prior to the relevant date—

- (a) has attained the age of 25 years;
- (b) is married or in a civil partnership;
- (c) has no parent living;
- (d) had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them; or
- (e) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A post 2011/12 student is to be regarded as having been self-supporting out of their earnings for any period during which that post 2011/12 student—

- (a) was participating in arrangements for training for the unemployed under any scheme operated, sponsored or funded by any state authority or agency, national, regional or local;

- (b) was in receipt of benefit payable by any state authority or agency, national, regional or local, in respect of a person who is available for employment but who is unemployed;
- (c) was available for employment and had complied with any requirement of registration imposed by a body referred to in paragraphs (a) or (b) as a condition of entitlement for participation in arrangements for training or receipt of benefit;
- (d) received any pension, allowance or other benefit paid by reason of a disability to which that post 2011/12 student is subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, national, regional or local, by an employer or any former employer or by any other person; or
- (e) held an advance postgraduate or other comparable award.

## EXPLANATORY NOTE

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

These Regulations provide that it is lawful for a fundable body to charge certain students fees at a higher level than other students. “Fundable body” means a fundable body providing fundable higher education in terms of section 5(3) of the Further and Higher Education (Scotland) Act 2005.

The Regulations apply in the case of any student who is a “post 2011/12 student” within the meaning of the Regulations. A “post 2011/12 student” is defined in regulation 2(1) as a student who is not a “new deferred student” who commences a course of education at a fundable body on or after 1st August 2012.

Regulation 3 provides that a post 2011/12 student has a relevant connection with Scotland if that post 2011/12 student (a) is ordinarily resident in Scotland on the relevant date; (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date.

Regulation 4(1) provides that it is lawful to charge higher relevant fees in the case of post 2011/12 students who do not have a relevant connection with Scotland than in the case of post 2011/12 students having such a connection unless those students are excepted students within the meaning of Schedule 1. Schedule 1 makes provision for 13 categories of excepted student. “Relevant fees” is defined in regulation 2(1).

Regulation 5 gives effect to Schedule 2 which makes provision as regards determining whether a person is to be treated, for the purposes of regulation 3 or Schedule 1, as being, or having been, ordinarily resident in a place at, or for, a particular time.

Regulation 6 amends the Education (Fees and Awards) (Scotland) Regulations 2007 by inserting a new regulation 3A to provide that Part II of those Regulations does not apply to a “post 2011/12 student”.