

**2019 No. 70**

**EXITING THE EUROPEAN UNION**

**EDUCATION**

**The Education (Fees and Student Support) (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019**

*Made* - - - - 21st February 2019

*Laid before the Scottish Parliament* 25th February 2019

*Coming into force* - - 6th April 2019

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(a), section 1 of the Education (Fees and Awards) Act 1983(b), and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Education (Fees and Student Support) (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 and come into force on 6 April 2019.

**Amendment of the Repayment of Student Loans (Scotland) Regulations 2000**

2. In the Repayment of Student Loans (Scotland) Regulations 2000(c), regulation 9 (refunds) is amended as follows—

- (a) at the end of paragraph (5)(b) delete “and”,
- (b) in paragraph (5)(c) after “Part 4 of the Collection Regulations” insert “in respect of the year of assessment ending on 5 April 2019 or any previous year of assessment”, and
- (c) after paragraph (5)(c) insert—  
“; and

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(a) 1980 c.44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c.30) (“the 1998 Act”), 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 1998 Act, section 29(2) and was amended by the 2001 Act, section 3(3); by the Income Tax (Earnings and Pensions) Act 2003 (c.1), schedule 6, Part 2, paragraph 149; by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 34(1); and by the Bankruptcy (Scotland) Act 2016 (asp 21), schedule 8, paragraph 8. Section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 82(1) and schedule 10, paragraph 8(17). 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) 1983 c.40. Section 1 was amended by the Education Reform Act 1988 (c.40), section 237(1) and schedule 12, paragraph 91; by the Further and Higher Education Act 1992 (c.13), section 93(1) and schedule 8, paragraph 19; and by the Further and Higher Education (Scotland) Act 1992 (c.37), section 62(2) and 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.

(c) S.S.I. 2000/110, amended by S.S.I. 2000/200, S.S.I. 2001/227, S.S.I. 2005/314, S.S.I. 2006/326, S.S.I. 2007/159, S.S.I. 2009/102, S.S.I. 2012/22, S.S.I. 2013/65, S.S.I. 2013/80, S.S.I. 2013/142, S.S.I. 2016/82, S.S.I. 2018/307 and S.I. 2008/1879.

- (d) where an amount is deducted by an employer under Part 4 of the Collection Regulations in respect of the year of assessment beginning on 6 April 2019 or any subsequent year of assessment, a repayment of that amount is considered to have been received by the Scottish Ministers on—
  - (i) the day on which it was deducted by the employer, or
  - (ii) where an adjustment is made in relation to the deduction, on such other day as HMRC specifies in order to take account of that adjustment.”.

### **Amendment of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006**

**3.** In schedule 1 (eligible students) of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006(a)—

(a) after paragraph 6D insert—

“**6E.**—(1) A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in Scotland on the first day of the first academic year of the course.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.”, and

(b) after paragraph 11 insert—

“**12.** A person who would have fallen within one or more of paragraphs 1 to 11 immediately before exit day is to be treated as falling within the same paragraph or paragraphs on and after exit day.”.

### **Amendment of the Education Authority Bursaries (Scotland) Regulations 2007**

**4.** In schedule 1 (persons eligible for bursaries) of the Education Authority Bursaries (Scotland) Regulations 2007(b)—

(a) After paragraph 6D insert—

“**6E.**—(1) A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the British Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in the area of the education authority on the qualifying day, or seeks a bursary in respect of a course of education at an educational establishment in the area of the education authority.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.”, and

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(a) S.S.I. 2006/333, amended by S.S.I. 2007/158, S.S.I. 2007/503, S.S.I. 2009/188, S.S.I. 2009/189, S.S.I. 2009/309, S.S.I. 2010/300, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2015/212, S.S.I. 2016/82, S.S.I. 2017/180, S.S.I. 2018/171 and S.I. 2010/1010.

(b) S.S.I. 2007/149, amended by S.S.I. 2007/503, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82, S.S.I. 2017/180 and S.S.I. 2018/171.

(b) after paragraph 12 insert—

“**13.** A person who would have fallen within one or more of paragraphs 1 to 12 immediately before exit day is to be treated as falling within the same paragraph or paragraphs on and after exit day.”.

#### **Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007**

**5.** In schedule 1 (persons eligible for allowances) of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(**a**)—

(a) after paragraph 6D insert—

“**6E.**—(1) A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery;
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom; and
- (c) is ordinarily resident in Scotland on the relevant date.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.”, and

(b) after paragraph 12 insert—

“**13.** A person who would have fallen within one or more of paragraphs 1 to 12 immediately before exit day is to be treated as falling within the same paragraph or paragraphs on and after exit day.”.

#### **Amendment of the Students’ Allowances (Scotland) Regulations 2007**

**6.**—(1) The Students’ Allowances (Scotland) Regulations 2007(**b**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2—

- (a) in paragraph (3) after “6B(a)(iii) and (b)” insert “, 6C(a)(iii) and (b), 6D(a)(iii) and (b), 6E(1)(c)”, and
- (b) in paragraph (4) after “6B(a)(iii) and (b)” insert “, 6C(a)(iii) and (b), 6D(a)(iii) and (b), 6E(1)(c)”.

(3) In schedule 1 (persons eligible for allowances)—

(a) after paragraph 6D insert—

“**6E.**—(1) A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery;
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom; and
- (c) is ordinarily resident in Scotland on the relevant date.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.”, and

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(a) S.S.I. 2007/151, amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82, S.S.I. 2017/180 and S.S.I. 2018/171.

(b) S.S.I. 2007/153, amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82, S.S.I. 2017/180 and S.S.I. 2018/171.

(b) after paragraph 12 insert—

“13. A person who would have fallen within one or more of paragraphs 1 to 12 immediately before exit day is to be treated as falling within the same paragraph or paragraphs on and after exit day.”.

### **Amendment of the Education (Student Loans) (Scotland) Regulations 2007**

7.—(1) The Education (Student Loans) (Scotland) Regulations 2007(a) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation), in the definition of “loan”—

- (a) in sub-paragraph (a) after “Postgraduate masters degree,” insert “or undertaking a full-time or part-time research course leading to a Postgraduate masters degree,”,
- (b) in sub-paragraph (aa) after “Postgraduate masters degree,” insert “or undertaking a full-time (but not a part-time) research course leading to a Postgraduate masters degree,”.

(3) In regulation 3(2)(d) (eligible students)—

- (a) at the end of head (iii), omit “or”, and
- (b) after head (iv) insert—

“or

- (v) any allowance, bursary or award of a similar description paid by United Kingdom Research and Innovation(b), where that person is undertaking a research course leading to a Postgraduate masters degree,”.

(4) In regulation 4 (designated courses)—

- (a) in paragraph (1)(b)(i) after “Postgraduate masters degree,” insert “or in relation to a research course leading to a Postgraduate masters degree,”,
- (b) in paragraph (1)(d) after “Postgraduate masters degree,” insert “or to a research course leading to a Postgraduate masters degree,”, and
- (c) after paragraph (4A) insert—

“(4AA) For the purposes of these Regulations, a research course means a course where the primary manner of study and assessment is based on independent research conducted by the student.”.

(5) In schedule 1 (eligible students)—

(a) after paragraph 6D insert—

“6E.—(1) A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in Scotland on the first day of the first academic year of the course.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.”.

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(a) S.S.I. 2007/154, amended by S.S.I. 2007/503, S.S.I. 2008/205, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/189, S.S.I. 2009/309, S.S.I. 2010/300, S.S.I. 2012/272, S.S.I. 2013/380, S.S.I. 2015/212, S.S.I. 2016/82, S.S.I. 2017/180 and S.S.I. 2018/171.

(b) United Kingdom Research and Innovation is a body corporate established under section 91 of the Higher Education and Research Act 2017 (c.29).

- (b) in paragraph 8A(1)(c) after “Postgraduate masters degree” insert “, or a research course leading to a Postgraduate masters degree,”, and
- (c) after paragraph 11 insert—

“**12.** A person who would have fallen within one or more of paragraphs 1 to 11 immediately before exit day is to be treated as falling within the same paragraph or paragraphs on and after exit day.”.

- (6) In schedule 2 (designated courses) after paragraph 9 insert—

“**9A.** A research course leading to a Postgraduate masters degree.”.

### **Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007**

**8.**—(1) The Education Maintenance Allowances (Scotland) Regulations 2007(a) are amended in accordance with paragraphs (2) and (3).

- (2) In regulation 2—

- (a) in paragraph (2) after “6B(a)(iii) and (b)” insert “, 6C(a)(iii) and (b), 6D(a)(iii) and (b), 6E(1)(c)”, and
- (b) in paragraph (3) after “6B(a)(iii) and (b)” insert “, 6C(a)(iii) and (b), 6D(a)(iii) and (b), 6E(1)(c)”.

- (3) In schedule 1 (persons eligible for education maintenance allowances)—

- (a) after paragraph 6D insert—

“**6E.**—(1) A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in Scotland on the qualifying date.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.”, and

- (b) after paragraph 11 insert—

“**12.** A person who would have fallen within one or more of paragraphs 1 to 11 immediately before exit day is to be treated as falling within the same paragraph or paragraphs on and after exit day.”.

### **Amendment of the Education (Fees) Scotland Regulations 2011**

**9.**—(1) The Education (Fees) (Scotland) Regulations 2011(b) are amended in accordance with paragraphs (2) and (3).

- (2) In regulation 2—

- (a) in paragraph (3) after “6A(a)(iii) and (b)” insert “, 6B(a)(iii) and (b), 6C(a)(iii) and (b), 6D(a)(iii) and (b), 6E(1)(c)”, and
- (b) in paragraph (4) after “6A(a)(iii) and (b)” insert “, 6B(a)(iii) and (b), 6C(a)(iii) and (b), 6D(a)(iii) and (b), 6E(1)(c)”.

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(a) S.S.I. 2007/156, amended by S.S.I. 2007/503, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2011/261, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82, S.S.I. 2017/180 and S.S.I. 2018/171.

(b) S.S.I. 2011/389, amended by S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82 and S.S.I. 2018/171.

(3) In schedule 1 (fees-excepted students)—

(a) after paragraph 6C insert—

“**6D.**—(1) A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in Scotland on the relevant date.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.”, and

(b) after paragraph 13 insert—

“**14.** A post 2011/12 student is an excepted student on or after exit day if that post 2011/12 student would have been an excepted student immediately before exit day by virtue of falling within one or more of paragraphs 1 to 13.”.

*RICHARD LOCHHEAD*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
21st February 2019

## **EXPLANATORY NOTE**

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

These Regulations amend the Repayment of Student Loans (Scotland) Regulations 2000 (“the Repayment Regulations”), the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the SLTF Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing Regulations”), the Students’ Allowances (Scotland) Regulations 2007 (“the Allowances Regulations”), the Education (Student Loans) (Scotland) Regulations 2007 (“the Loans Regulations”), the Education Maintenance Allowances (Scotland) Regulations 2007 (“the EMA Regulations”) and the Education (Fees) (Scotland) Regulations 2011 (“the Fees Regulations”).

### **Amendments relating to student loan repayments**

Regulation 2 amends the Repayment Regulations to make provision for when the amount of a student loan paid by a borrower via deductions by their employer under Part 4 of the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) is to be considered to have been paid by the borrower and received by the Scottish Ministers.

### **Amendments relating to student support eligibility for victims of modern slavery**

Regulations 3(a), 4(a), 5(a), 6(3)(a), 7(5)(a), 8(3)(a) and 9(3)(a) extend to victims of modern slavery access to student funding and restrictions on the level of fees that may be charged under the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the Loans Regulations, the EMA Regulations and the Fees Regulations. To be eligible, individuals must have been granted discretionary leave to remain in the UK as a result of being recognised as a victim of modern slavery; have been ordinarily resident in the UK and Islands at all times since they were first granted such discretionary leave to remain; and be ordinarily resident in Scotland at the commencement of their course.

### **Amendments relating to tuition fee loans for postgraduate research masters courses**

Regulation 7(2), (3), (4), (5)(b) and (6) extend the eligibility criteria in the Loans Regulations to make student loans for tuition fees and maintenance available to students undertaking research masters courses on the same basis as students undertaking taught courses leading to a Postgraduate Diploma or Postgraduate masters degree. A research course is defined as one where the main method of study and assessment is based on a student’s own research. Research masters students will be ineligible for student loans if they are in receipt of any allowance, bursary or award of a similar description from United Kingdom Research and Innovation, the national funding agency for science and research in the UK.

### **Amendments relating to the UK’s withdrawal from the EU**

Regulations 3(b), 4(b), 5(b), 6(3)(b), 7(5)(c), 8(3)(b) and 9(3)(b) ensure that the eligibility criteria relating to student funding and tuition fees under the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the Loans Regulations, the EMA Regulations and the Fees Regulations continue to apply to the same categories of persons after the UK’s withdrawal from the European Union.

### **Consequential amendments**

Regulations 6(2), 8(2) and 9(2) make consequential amendments to the Allowances Regulations, the Loans Regulations and the EMA Regulations to apply the meaning of ordinary residence in Scotland in relation to the new residence categories inserted into those regulations by these Regulations and by the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2018 (S.S.I. 2018/171).

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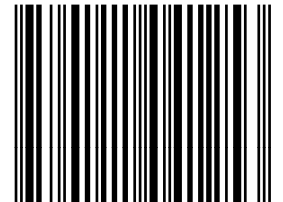
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