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STATUTORY INSTRUMENTS

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**1988 No. 1042 (S.99)**

**EDUCATION, SCOTLAND**

**The Education Authority Bursaries (Scotland) Regulations 1988**

<i>Made</i>	- - - -	<i>9th June 1988</i>
<i>Laid before Parliament</i>		<i>23rd June 1988</i>
<i>Coming into force</i>	- -	<i>1st August 1988</i>

The Secretary of State, in exercise of the powers conferred on him by section 49(3) of the Education (Scotland) Act 1980(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Education Authority Bursaries (Scotland) Regulations 1988 and shall come into force on 1st August 1988.

**Interpretation**

2.—(1) In these Regulations—

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

“bursary” means a bursary, scholarship or other allowance granted under section 49(1) or (2) of the Act;

“employment” includes the holding of any office and any occupation for gain, and “employed” shall be construed accordingly;

“European Community” means the area consisting of the member states of the European Economic Community (including the United Kingdom) as constituted from time to time;

“national of a member state of the European Community” means a person who is a national for the purposes of the Community Treaties of any member state of the European Economic Community (including the United Kingdom) as constituted from time to time;

“qualification” includes authorisation, recognition, registration, enrolment, approval and certification;

“refugee” means—

- (a) 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>(2)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(3)</sup>, or
- (b) a person who enjoys asylum in the United Kingdom in pursuance of a decision of Her Majesty’s Government though not so recognised;

“relevant power” means any of the powers conferred on an education authority by section 49(1) or (2) of the Act;

“vocational training establishment” means a further education establishment being a vocational school within the meaning of Article 7 of Council Regulation (EEC) No. 1612/68<sup>(4)</sup> on freedom of movement of workers within the Community.

(2) In these Regulations any reference to a “qualifying day” in relation to a course of study means—

- (a) as respects a course starting in the autumn term of any year, 30th June in that year;
- (b) as respects a course starting in the spring term of any year, 31st October in the year preceding that year; and
- (c) as respects a course starting in the summer term of any year, the last day of February in that year.

(3) In these Regulations any reference to a “relevant date” in relation to a course of study is—

- (a) as respects a course starting in the autumn term of any year, a reference to the earlier of 31st August in that year or the first day of that term;
- (b) as respects a course starting in the spring term of any year, a reference to the earlier of 31st December in the year preceding that year or the first day of that term; and
- (c) as respects a course starting in the summer term of any year, a reference to the earlier of 31st March in that year or the first day of that term.

(4) In these Regulations any reference to a person being “ordinarily resident” in the area of the education authority on the qualifying day includes—

- (a) a person whom the education authority are satisfied to have been not so resident only because he, his spouse, or his parent was for the time being—
  - (i) employed outside Scotland; or
  - (ii) attending a course of study or undertaking postgraduate research outside Scotland; and
- (b) a person who, in accordance with regulation 9(3)(c) of the Education (Mandatory Awards) Regulations 1987<sup>(5)</sup>, is treated as ordinarily resident in the area in which the establishment providing his course is situated, if that establishment is in the area of the education authority.

(5) In these Regulations any reference to a person being “ordinarily resident” in the British Islands or in the European Community for a period includes—

- (a) a person whom the education authority are satisfied to have been born and to have spent the greater part of his life in the British Islands or, as the case may be, the European Community, and either—

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(2) Cmnd. 9171.

(3) Cmnd. 3906. (Out of print: photocopies are available free from Awards Branch, Scottish Education Department, Haymarket House, Clifton Terrace, Edinburgh EH12).

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

(5) S.I.1987/1261

- (i) his parents or either of them have been ordinarily resident in the British Islands or, as the case may be, the European Community throughout the period of 3 years immediately preceding the relevant date (as defined in paragraph (3) above) and he himself is not an independent person; or
  - (ii) whether or not he is an independent person, he has been ordinarily resident for at least one year of that period in the British Islands or, as the case may be, the European Community, provided that the education authority are also satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; and
- (b) a person whom the education authority are satisfied to have been not so resident only because he, his spouse, or his parent was for the time being—
- (i) employed outside the British Islands or, as the case may be, the European Community; or
  - (ii) attending a course of study or undertaking post graduate research outside the British Islands or, as the case may be, the European Community.
- (6) In these Regulations any reference to an “independent person” means a person who prior to the relevant date (as defined in paragraph (3) above) has—
- (i) attained the age of 25 years; or
  - (ii) been married for at least 3 years; or
  - (iii) supported himself out of his earnings for periods aggregating not less than 3 years; or
  - (iv) no parent living;
- and a person will be regarded as having supported himself out of his earnings for any period or periods, for which—
- (a) he was in receipt of training in pursuance of the Manpower Services Commission’s Training programmes and schemes from time to time in operation; or
  - (b) he was in receipt of unemployment benefit under section 14(1)(a) of the Social Security Act 1975(6); or
  - (c) before 24th November 1980(7), he was for the purposes of section 5 of the Supplementary Benefits Act 1976(8) registered for employment; or
  - (d) on and after 24th November 1980 but before 18th October 1982(9), he was for the purposes of section 5 of the said Act of 1976 available for employment and, where applicable, registered for employment; or
  - (e) on and after 18th October 1982 but before 11th April 1988(10), he was for the purposes of section 5(1) of the said Act of 1976 available for employment and, where applicable, registered for employment; or
  - (f) on and after 11th April 1988, he was for the purposes of section 20(3)(d)(i) and 20(4) of the Social Security Act 1986(11) available for employment and, where applicable, also registered for employment; or
  - (g) he held a Scottish Studentship or comparable award; or

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(6) 1975 c. 14

(7) On that date Schedule 2 to the Social Security Act 1980 (c. 30), which made relevant amendments to the Supplementary Benefits Act 1976 (c. 71), came into force by virtue of S.I. 1980/729

(8) 1976 c. 71

(9) On that date section 38 of the Social Security and Housing Benefits Act 1982 (c. 24), which made relevant amendments to the Supplementary Benefits Act 1976, came into force by virtue of S.I. 1982/893

(10) On that date the relevant parts of section 20 of the Social Security Act 1986 (c. 50) came into force by virtue of S.I. 1987/1853

(11) 1986 c. 50

- (h) he received sickness benefit, invalidity pension, maternity allowance or severe disablement allowance under section 14(1)(b), 15(1)(b), 22(1) or 36(1) of the Social Security Act 1975(12); or
- (i) he had the care of a person under the age of 18 years who was dependent on him; and for the purposes of this definition any reference to a provision contained in the Social Security Act 1975 or Social Security Act 1986 is a reference to that provision as from time to time in force.

(7) In these Regulations any reference to a person's child includes a reference to a person adopted in pursuance of adoption proceedings, a stepchild, and an illegitimate child of whom the person concerned is the mother or in whose case the person has admitted paternity or has been adjudged the putative father; and "parent" shall be construed accordingly.

### **Revocations**

3. The Education Authority Bursaries (Scotland) Regulations 1986(13) and the Education Authority Bursaries (Scotland) Amendment Regulations 1987(14) are hereby revoked.

### **Grant of a bursary**

4. A relevant power shall be exercised by an education authority in accordance with the provisions of these Regulations and shall not be exercised in relation to a person who does not fulfil the requirements specified in regulation 5.

### **Persons eligible for a bursary**

5. A bursary may be paid only to or in respect of a person who satisfies one of the following requirements:—

- (a) (i) he is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he seeks a bursary, provided that his residence there on that day is not in any sense attributable to or connected with any period of residence within 3 years immediately preceding the relevant date as respects any part of which the education authority are of the opinion that its purpose was wholly or mainly that of receiving full-time education; and
- (ii) he has been ordinarily resident throughout the period of 3 years preceding the relevant date in the British Islands, provided that the education authority are satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; or
- (b) (i) he is the child of a national of a member state of the European Community, provided that the national—
  - (1) where employed on the qualifying day, is then in employment in the United Kingdom; or
  - (2) where not employed on the qualifying day (by reason of retirement or otherwise), was last employed in such employment; or
  - (3) whether or not employed on the qualifying day, has been, during the 3 year period preceding that date, in such employment for an aggregate period of not less than a year; and
- (ii) he is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he seeks a bursary, provided that his residence there on that

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(12) Section 22 was substituted by the Social Security Act 1986, Schedule 4, paragraph 13; section 36 was substituted by section 11 of the Health and Social Security Act 1984 (c. 48)

(13) S.I. 1986/1227

(14) S.I. 1987/1366

day is not in any sense attributable to or connected with any period of residence within 3 years immediately preceding the relevant date as respects any part of which the education authority are of the opinion that its purpose was wholly or mainly that of receiving full-time education; and

- (iii) he has been ordinarily resident throughout the period of 3 years preceding the relevant date in the European Community, provided that the education authority are satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; or
- (c) he is a national of a member state of the European Community who has been ordinarily resident throughout the period of 3 years preceding the relevant date in the European Community, provided that the education authority are satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education, and who—
  - (i) is ordinarily resident in the area of the education authority on the qualifying day;
  - (ii) has entered the United Kingdom wholly or mainly for the purpose of taking up or of seeking employment;
  - (iii) during the year preceding the relevant date has been in employment in the United Kingdom for an aggregate period of not less than 9 months; and
  - (iv) seeks a bursary in respect of a course provided by a vocational training establishment, being a course leading to a qualification which is needed by, or is designed to fit, a person for engagement in a specific profession or trade; or
- (d) he is a refugee or the spouse or child of a refugee, provided that the refugee has been ordinarily resident in the British Islands, and has not ceased to be so ordinarily resident, since he was first recognised as a refugee or was awarded asylum; or
- (e) he is a national, or the child of a national, of a member state of the European Community (the Kingdom of Spain and the Portuguese Republic being deemed for the purposes of this paragraph to have been member states of the European Community from 1st September 1983) and he—
  - (i) seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority; and
  - (ii) has been ordinarily resident in the European Community, other than in the British Islands, throughout the 3 years immediately preceding the relevant date, provided that the education authority are satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education;in which case the bursary payable may be only that described in regulation 6(1)(a) (tuition and other fees); or
- (f) he is a person to whom, or in respect of whom, a bursary has been paid in accordance with these Regulations or those revoked by them within the year immediately preceding the relevant date.

### **Bursaries**

**6.—(1)** The amount of a bursary shall be determined by the education authority and may include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the bursary;
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in attending the course of study in respect of which the bursary is awarded;

- (c) the maintenance of the holder and of any persons dependent on him during periods of full-time study and during vacations;
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) In determining the amount of a bursary, the education authority may take account of the sums, if any, which, in their opinion, the holder of the bursary, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(3) The amount of a bursary may be revised at any time if the education authority think fit having regard to—

- (a) the failure of the holder to comply with the conditions of the bursary, or
- (b) all the circumstances of the holder or his parents or both as the case may be, or
- (c) any error made in the computation of the amount of the bursary.

### **Conditions of bursary**

7.—(1) Every bursary shall be held subject to the following conditions:—

- (a) the holder shall attend regularly the course of study in respect of which the bursary is awarded;
- (b) the education authority shall be satisfied as to the conduct and progress of the holder; and
- (c) the holder shall provide the education authority with such information and such documents as they may from time to time require to enable them to exercise their functions under these Regulations.

If these conditions are not complied with or if the holder receives from any other source any sum which in the opinion of the education authority makes it unnecessary for him to be assisted by means of a bursary, the education authority may suspend payment of the bursary or terminate the bursary.

(2) It shall be a condition of payment of a bursary that the applicant gives a written undertaking to pay to the education authority any amount of which they may request repayment in the circumstances specified in paragraph (3) below: Provided that, if the applicant is a minor and has any parent or guardian, the parent or guardian shall consent to the undertaking.

(3) Where the education authority are satisfied that there has been an overpayment of bursary for any reason and request repayment of the overpayment or so much thereof as they think fit, and the holder of the bursary has given an undertaking under paragraph (2) above, the holder of the bursary shall be obliged to pay to the education authority the amount requested.

St Andrew's House,  
Edinburgh  
9th June 1988

*Michael B Forsyth*  
Parliamentary Under Secretary of State, Scottish  
Office

## EXPLANATORY NOTE

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

These Regulations are made in replacement of the Education Authority Bursaries (Scotland) Regulations 1986, as amended. They prescribe the conditions subject to which bursaries may be made and make provision with regard to requirements to be fulfilled by persons in relation to whom the powers of an education authority under section 49 of the Education (Scotland) Act 1980 may be exercised.

The most important difference between these Regulations and those which they replace is that the amount of bursaries is no longer regulated and is left to the discretion of education authorities.