
STATUTORY INSTRUMENTS

1999 No. 1131 (S. 91)

EDUCATION, SCOTLAND

The Students' Allowances (Scotland) Regulations 1999

<i>Made</i>	- - - -	<i>12th April 1999</i>
<i>Laid before Parliament</i>		<i>13th April 1999</i>
<i>Coming into force</i>	- -	<i>4th May 1999</i>

The Secretary of State, in exercise of the powers conferred on him by sections 73(f) and 74(1) 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 Students' Allowances (Scotland) Regulations 1999 and shall come into force on 4th May 1999.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“allowance” means an allowance paid or to be paid under these Regulations;

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

“EEA migrant worker” means a person who is a national of an EEA State who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No.1612/68(4) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area 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 EEA State in relation to matters which are the subject of the above mentioned Regulation;

(1) 1980 c. 44; section 74(1) was amended by paragraph 8(17) of Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39).
(2) Cmnd 2073.
(3) Cmnd 2183.
(4) O.J. No. L257, 19.10.68, p.2 (OJ/SE 1968 (II), p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L245, 26.8.92, p.1).

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“employed” includes holding any office or any occupation for gain;

“European Economic Area” means the area of the EEA States and includes those States at any time before the EEA Agreement comes into force in relation to them;

“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 Community (including the United Kingdom) as constituted from time to time;

"parent" includes a step-parent, 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;

"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⁽⁵⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽⁶⁾ ;

"relevant day" in relation to a course of education for which an allowance is sought means the first day of the first academic year of the course.

- (2) In these Regulations, except where the context otherwise requires, any reference—
- (a) to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations; and
 - (b) in a regulation or Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule, as the case may be.

Persons eligible for allowances

3.—(1) The Secretary of State may pay an allowance, in accordance with the provisions of section 73(f) of the Education (Scotland) Act 1980 and these Regulations, to or in respect of any person attending a course of education who is a person described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect as regards determining whether a person is to be treated, for the purposes of Schedule 1, as being, or having been, ordinarily resident in a place at, or for, a particular time.

Amount of allowances

4.—(1) The amount of an allowance shall be determined by the Secretary of State and, subject to paragraph (2), may include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the allowance;
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in attending the course of education in respect of which the allowance 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) An allowance payable to, or in respect of, a person who is eligible for an allowance only by virtue of paragraph 7 of Schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

⁽⁵⁾ Cmnd 9171.

⁽⁶⁾ Cmnd 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).

(3) In determining the amount of an allowance, the Secretary of State shall take account of the sums, if any, which, in accordance with principles determined by him from time to time, the holder, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(4) The amount of the determination of an allowance may be revised at any time if the Secretary of State thinks fit having regard to—

- (a) the failure of the holder to comply with the requirements of the allowance;
- (b) all the circumstances of the holder or his parents or both as the case may be; or
- (c) any error made in determining the amount of, or entitlement to, the allowance.

Conditions and requirements of allowances

5.—(1) The following shall be conditions of payment of every allowance for each academic year—

- (a) an application in writing shall be received by the Secretary of State by such date as he may determine in respect of that year, and different dates may be determined by him in respect of different courses; and
- (b) that application shall include an undertaking by the applicant to repay to the Secretary of State any amount of which the Secretary of State requests repayment following a revisal in terms of regulation 4(4).

(2) The Secretary of State may treat an application received after any date determined for the purposes of paragraph (1)(a) as having been received by that date where he considers that, having regard to the circumstances of the particular case, it should be so treated.

(3) Every allowance shall be held subject to the following requirements—

- (a) the holder shall attend regularly the course of education in respect of which the allowance is awarded;
- (b) the Secretary of State shall be satisfied as to the conduct and progress of the holder;
- (c) the holder shall provide the Secretary of State with such information and such documents as he may from time to time require to enable him to exercise his functions under these Regulations; and
- (d) the holder shall repay to the Secretary of State any sum in respect of which he has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 4(4).

Method of payment

6.—(1) The allowance may be paid to the holder or to another person for his behoof, or in part to the holder and in part to the said other person, and any sum in respect of fees payable to an educational institution which is included in the amount of the allowance may be paid on behalf of the holder to the institution.

(2) The allowance may be paid in a single payment or by instalments as the Secretary of State thinks fit, but no payment shall be made before the holder has been accepted for admission to the course of education in respect of which the allowance is awarded.

Revocations and savings

7.—(1) Subject to paragraphs (2) and (3), the Students' Allowances (Scotland) Regulations 1996(7) are hereby revoked.

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(2) The Regulations revoked by paragraph (1) shall continue to apply in all respects as regards allowances awarded under those Regulations.

(3) The provisions of paragraph (2) are without prejudice to the general operation of sections 16 and 17 of the Interpretation Act 1978⁽⁸⁾.

St Andrew's House,
Edinburgh
12th April 1999

Helen Liddell
Minister of State, Scottish Office

⁽⁸⁾ 1978 c. 30.

SCHEDULE 1

Regulation 3(1)

PERSONS ELIGIBLE FOR ALLOWANCES

1. A person who—
 - (a) is ordinarily resident in Scotland on the relevant day;
 - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant day; and
 - (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971⁽⁹⁾ on the relevant day.
2. A person who is an EEA migrant worker who—
 - (a) is entitled to the payment of an allowance by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement)⁽¹⁰⁾ 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);
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and
 - (c) is ordinarily resident in Scotland on the relevant day.
3. A person who is the spouse of an EEA migrant worker and who—
 - (a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day;
 - (b) is installed in the United Kingdom with his spouse; and
 - (c) is ordinarily resident in Scotland on the relevant day.
4. A person who is the child of an EEA migrant worker and who—
 - (a) is entitled to the payment of an allowance 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;
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and
 - (c) is ordinarily resident in Scotland on the relevant day.
5. A person who—
 - (a) at the date of the Secretary of State receiving his application for an allowance, is—
 - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he was first recognised as a refugee; or
 - (ii) the spouse, child or step-child of such a refugee; and
 - (b) is ordinarily resident in Scotland on the relevant day.
6. A person who—
 - (a)

⁽⁹⁾ 1971 c. 77.

⁽¹⁰⁾ OJ No.L257, 19.10.68, p.2 (OJ/SE 1968 (II) p.475).

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- (i) has been informed in writing 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 and he has been granted leave to enter or remain accordingly;
 - (ii) is ordinarily resident in Scotland on the relevant day; and
 - (iii) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant day; or
- (b) is the spouse, child or step-child of a person of the kind described in sub-paragraph (a) and who meets the residence requirements specified in sub-paragraphs (a)(ii) and (a)(iii).
7. A person who—
- (a) is a national, or the child or step-child of a national, of a member state of the European Community;
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day;
 - (c) has not been ordinarily resident in the United Kingdom and Islands throughout that 3 year period; and
 - (d) seeks an allowance in respect of a course of education at an establishment in Scotland.
8. A person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations, or with the Students' Allowances (Scotland) Regulations 1996, within the year immediately preceding the relevant day.

SCHEDULE 2

Regulation 3(2)

ORDINARY RESIDENCE

1. For the purposes of paragraph 1(a) of Schedule 1—
- (a) a person shall be treated as being ordinarily resident in Scotland on the relevant day if the Secretary of State is satisfied that he was not actually 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 shall not be treated as being ordinarily resident in Scotland on the relevant day if the Secretary of State is satisfied that his residence there on that day is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant day as respects any part of which its purpose was wholly or mainly that of receiving full-time education.
- 2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 1(b), 2(b), 3(a), 4(b), 6(a)(iii) and 7(b) and (c) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the specified period in either the United Kingdom or the European Economic Area (hereinafter referred to in this paragraph as “the relevant area”).
- (2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period if the Secretary of State is satisfied that he was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Secretary of State is satisfied that—

- (a) the person was born and has spent the greater part of his life in the relevant area and that—
 - (i) his parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he himself is not an independent student; or
 - (ii) he has been ordinarily resident in the relevant area for at least 1 year of the specified period and no part of that period of residence was wholly or mainly for the purpose of receiving full-time education; or
- (b) the person was not actually ordinarily resident in the relevant area for the specified period only because he, his spouse or his parent was for the time being—
 - (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(3)(a)(i), “an independent student” means a person who prior to the relevant day has—

- (a) attained the age of 25 years;
- (b) been married for at least 2 years;
- (c) no parent living; or
- (d) supported himself out of his earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having supported himself out of his earnings for any period or periods during which he—

- (a) was in receipt of training in pursuance of programmes and schemes operated from time to time by the Manpower Services Commission, the Training Commission, the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise;
- (b) before 1st July 1992 was in receipt of unemployment benefit under section 14(1)(a) of the Social Security Act 1975⁽¹¹⁾;
- (c) on or after 1st July 1992 was in receipt of unemployment benefit under section 25(1) of, and Part I of Schedule 4 to, the Social Security Contributions and Benefits Act 1992⁽¹²⁾;
- (d) before 24th November 1980⁽¹³⁾, was for the purposes of section 5 of the Supplementary Benefits Act 1976⁽¹⁴⁾ registered for employment;
- (e) on or after 24th November 1980 but before 18th October 1982⁽¹⁵⁾, was for the purposes of section 5 of the said Act of 1976 available for employment and, where applicable, registered for employment;
- (f) on or after 18th October 1982 but before 11th April 1988⁽¹⁶⁾, was for the purposes of section 5(1) of the said Act of 1976 available for employment and, where applicable, registered for employment;

(11) 1975 c. 14. On that date the Social Security Contributions and Benefits Act 1992 (c. 4), section 25(1) and Schedule 4, Part I amended and consolidated the said section 14(1)(a).

(12) 1992 c. 4.

(13) 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.

(14) 1976 c. 71.

(15) On that date section 38 of the Social Security and Housing Benefits Act 1982 (c. 24), which made relevant amendments to section 5 of the Supplementary Benefits Act 1976, came into force by virtue of S.I. 1982/893.

(16) 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.

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- (g) on or after 1st April 1988 but before 9th October 1989⁽¹⁷⁾ was for the purposes of section 20(3)(d)(i) and (4) of the Social Security Act 1986⁽¹⁸⁾ available for employment and, where applicable, also registered for employment;
- (h) on or after 9th October 1989 but before 1st July 1992⁽¹⁹⁾, was for the purposes of section 20(3)(d)(i) and (4) of the Social Security Act 1986 available for employment and, where applicable, also registered for employment;
- (i) on or after 1st July 1992 was, for the purposes of section 124(1)(d)(i) and (3) of the Social Security Contributions and Benefits Act 1992, available for, and actively seeking, employment and, where applicable, also registered for employment;
- (j) before 1st July 1992⁽²⁰⁾ 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⁽²¹⁾ or statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982⁽²²⁾ or statutory maternity pay under Part V of the Social Security Act 1986;
- (k) on or after 1st July 1992 received maternity allowance or severe disability allowance under section 35(1) or 68(1) of the Social Security Contributions and Benefits Act 1992 or statutory sickness benefit under Part XI of, or statutory maternity allowance under Part XII of, the said Act of 1992;
- (l) on or after 1st July 1992 but before 13th April 1995⁽²³⁾ received sickness benefit or invalidity pension under section 31(1) or 33(1) of the said Act of 1992;
- (m) on or after 13th April 1995 received incapacity benefit under section 30A(1) of the said Act of 1992⁽²⁴⁾;
- (n) held a Scottish Studentship or comparable award; or
- (o) had the care of a person under the age of 18 years who was dependent on him;

and any reference in this sub-paragraph to a provision contained in the Social Security Contributions and Benefits Act 1992 is a reference to that provision as from time to time in force.

(17) On that date section 13(1) of the Social Security Act 1989 (c. 24), which amended section 20(3)(d)(i) of the Social Security Act 1986 (c. 50) to insert after the words “available for” the words “and actively seeking”, came into force by virtue of S.I. 1989/1238.

(18) 1986 c. 50.

(19) On that date section 20(3)(d)(i) and (4) of the Social Security Act 1986 was consolidated as section 124(1)(d)(i) and (3) of the Social Security Contributions and Benefits Act 1992.

(20) On that date the said sections of the Social Security Act 1975 were consolidated as sections 31(1), 33(1), 35(1) and 68(1) of the Social Security Contributions and Benefits Act 1992 and Part I of the Social Security and Housing Benefits Act 1982 and Part V of the Social Security Act 1986 were consolidated respectively as Parts XI and XII of that Act.

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

(22) 1982 c. 24.

(23) On that date sections 31(1) and 33(1) of the Social Security Contributions and Benefits Act 1992 were repealed by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 11 and Schedule 2, by virtue of S.I. 1994/2926.

(24) Section 30A was inserted by the Social Security (Incapacity for Work) Act 1994, section 1 and came into force on 13th April 1995 by virtue of S.I. 1994/2926.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with minor amendments, the Students' Allowances (Scotland) Regulations 1996 (“the 1996 Regulations”) and the subsequent amending instrument. They enable the Secretary of State to pay allowances to persons attending courses of education who fulfil certain criteria as to eligibility and they prescribe the conditions and requirements subject to which allowances may be paid.

The eligibility criteria are detailed in Schedule 1, whilst Schedule 2 makes provision as to when a person is to be treated as ordinarily resident in a place for or at a particular time.

These Regulations differ from the 1996 Regulations in three respects. Firstly, the day at which a person must be ordinarily resident in Scotland, or before which he must have been ordinarily resident for a period in the United Kingdom and Islands or the European Economic Area, in order to qualify for allowances is the first day of the first academic year of the course. Secondly, EEA migrant workers, their spouses and children and refugees must establish ordinary residence in Scotland on the first day of the first academic year of the course. It will no longer be sufficient that they will be attending an establishment in Scotland. Thirdly, spouses and children of individuals who are not recognised as refugees, but are nevertheless granted leave to enter or remain in the United Kingdom, must establish ordinary residence in Scotland on the first day of the first academic year of the course and ordinary residence in the United Kingdom for the period of three years immediately preceding that date.

Regulation 7 revokes the 1996 Regulations but provides for these to continue to apply as regards allowances awarded before their revocation.