
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for loans for maintenance for eligible students attending designated courses of higher education. They apply to loans payable for an academic year starting on or after 1st August 2000 (regulation 3(2)). They revoke the Education (Student Loans) (Scotland) Regulations 1999 on 1st August 2000 (regulation 3(1), subject to a savings provision that the 1999 Regulations will continue to apply to students attending a course for which the academic year begins before 1st August 2000 (regulation 3(2) and (3)).

Students are eligible students for the purposes of these Regulations if on the first day of the first academic year of the course they are settled in the United Kingdom for the purposes of the Immigration Act 1971, on that day they are ordinarily resident in Scotland, and for the three years immediately preceding that day they have been ordinarily resident in the United Kingdom and Islands for purposes other than receiving full-time education (regulation 4(2) and Schedule 1, paragraphs 1 and 7). Students may also be eligible if they are refugees, if they have been granted exceptional leave to remain in the United Kingdom, or if they are European Economic Area migrant workers, or the spouses or children of such workers (Schedule 1, paragraphs 2 to 6). Such students must also be ordinarily resident in Scotland on the first day of the course, and in some cases meet other residence conditions (Schedule 1, paragraph 7).

To be eligible students must also attend a designated course, be under the age of 50 on the first day of the course or if aged 50 or over and under 55 they must be intending to enter employment on completion of the course, not be eligible for a loan under the Education (Student Loans) Act 1990 or the Education (Student Loans) (Northern Ireland) Order 1990 (which provides for the existing mortgage style student loans for students who began their course before 1st August 1998, and certain other students) or under the Teaching and Higher Education Act 1998 or the Education (Student Support) (Northern Ireland) Order 1998. In addition they must not be eligible for certain National Health Service bursaries or awards, not be in breach of any obligation to repay any other student loan and have ratified, where appropriate, any other student loan they received when they were under the age of 18. In the case of a part-time student he must also meet certain criteria that identify him as an independent student, must not have received more than 7 loans in connection with attendance on one or more part-time courses and must not hold a first degree. (regulation 4(2) and 4(3)).

Courses which are designated courses for the purposes of these Regulations include full-time and part-time courses for a first degree, for the Diploma of Higher Education, for the Higher National Diploma or Higher National Certificate, for the further training of teachers or youth and community workers, for certain professional examinations, and for courses of initial training for teachers (regulation 5(1) and Schedule 2). Full-time courses must be of at least one academic year's duration and part-time courses must not exceed twice the period normally required to complete a full-time course leading to the same qualification. In either case courses must be provided at least in part by an institution or institutions in the United Kingdom which are maintained or assisted by recurrent grants out of public funds (regulation 5(1)). The Scottish Ministers may designate other courses by administrative act from time to time (regulation 5(8)).

Students are required to apply for a student loan by such date as the Scottish Ministers may determine unless they are satisfied that an extension of time should be granted (regulation 6(4)). Students must agree to repay any amount paid in excess of the amount to which they are entitled and any monies lent to them with interest and applicable charges and penalties (regulation 6(3)). They may apply to borrow such amount not exceeding the relevant maximum amount as they wish. Where the amount

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of loan to which a student is entitled is increased, for any reason, that student may apply for a further loan up to that maximum amount (regulation 6(8)). If a student has not applied for the maximum amount first time he may apply once more for a further amount, but not so that the relevant maximum amount is exceeded (regulation 6(10)). If a student makes such a further application or makes an application following notification of increased entitlement he must do so by such date as Scottish Ministers may determine (regulation 6(9) and 6(11)).

Students may be entitled to transfer their entitlement to a loan if in certain circumstances they transfer course and they may also convert their eligibility for a full-time course to a part-time course and vice versa (regulation 7). A loan is normally granted for the period ordinarily required to complete the course (regulation 8(1)), although an extension may be granted (regulation 8(2)).

Students are required to provide the Scottish Ministers with such information as they require (regulation 9(1)). Students must also notify them if specified events occur (regulation 9(2)).

Scottish Ministers may determine different maximum loan amounts for different categories of students (regulation 10). Scottish Ministers have the power to take account of the student's income and that of his parents and spouse in determining the maximum loan that he will be entitled to (regulation 11).

A student who has applied to borrow the maximum amount in relation to an academic year of a full-time course and received at least one instalment, may apply for a hardship loan of not less than £100 and not more than £500 on not more than two occasions (regulation 12(1) and (2)). He must first satisfy the Scottish Ministers that due to exceptional financial hardship he may not be able to continue to attend for the balance of the academic year (regulation 12(3) and (4)).

Loans payable to eligible full-time and part-time students shall be paid at such time and in number of instalments as Scottish Ministers may determine (regulation 13(1)). For the purposes of the Regulations the academic year is divided into four periods regardless of whether the year has terms or semesters, the periods beginning on 1st August, 1st January, 1st April and 1st July (regulation 2(1)).

Payments of instalments, as appropriate, will not be made once a student has withdrawn from, abandoned or been expelled from his course (regulation 13(4)). In the case of absence from the course for more than 60 days as a result of illness, or for any period for any other reason, the Scottish Ministers may decide to suspend payments or to continue to make them if suspension of them would cause exceptional hardship (regulation 13(5) to (7)). When payments are suspended and the student returns to his course the Scottish Ministers may pay further instalments, but the overall amount lent for the year must not exceed the amount the Scottish Ministers consider appropriate, in light of the length and circumstances of the absence (regulation 13(8)).

Provision is made for recovery of overpayments (regulation 14). If the Scottish Ministers are satisfied that the overpayment occurred as a result of information supplied by the student they may deduct the overpayment from loan payments in another academic year, or by taking other action (regulation 14(1) and (3)). In any other case the overpayment will be treated as a loan properly made but the overpayment may be deducted from loans otherwise payable in any other academic year (regulation 14(2)).

Provision is made for the interest which the loans will bear, which is calculated daily and compounded monthly (regulation 15). In accordance with section 73B(6) and (7) of the 1980 Act the prescribed rate is no higher than that which the Scottish Ministers are satisfied is required to maintain the value in real terms of the outstanding amount of loans, and does not exceed the rate specified for the purposes of exemption of certain consumer credit agreements by the Consumer Credit (Exempt Agreements) Order 1998.

Instalments of student loans paid or payable after the commencement of the sequestration of a student's estate shall not form part of his estate, and accordingly cannot be claimed by his trustee. The student will not be discharged from liability to repay loan repayments received after sequestration when he is discharged under or by virtue of section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (regulation 16).

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These Regulations also amend regulation 14(3) of the Repayment of Students Loans (Scotland) Regulations 2000 to correct an error (regulation 17).