

2007 No. 149

EDUCATION

The Education Authority Bursaries (Scotland) Regulations 2007

Made - - - - *1st March 2007*

Laid before the Scottish Parliament *5th March 2007*

Coming into force - - *1st August 2007*

The Scottish Ministers, in exercise of the powers conferred by section 49(3) of the Education (Scotland) Act 1980(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Education Authority Bursaries (Scotland) Regulations 2007 and shall come into force on 1st August 2007.

Interpretation

2.—(1) In these Regulations—

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

“British Islands” means the United Kingdom, the Channel Islands and the Isle of Man;

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

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

“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 Scotland; 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 frontier worker” means an EEA national who—

- (a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; 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;

(a) 1980 c.44; section 49(2A) was inserted by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), Schedule 10. 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) O.J. No. L 158, 30.04.04, p.77.

“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 references to employment include references to the holding of any office and to any occupation for gain;

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland Henderson, 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;

“EU overseas territories national” means a national of any of the EU overseas territories;

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

“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–
 - (i) their spouse or civil partner;
 - (ii) their child or the child of their spouse or civil partner;
 - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
- (b) in relation to 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;
 - (ii) their child or the child of their spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38 or an EU overseas territories national–
 - (i) their spouse or civil partner;
 - (ii) their direct descendants or those of their spouse or civil partner who are–
 - (aa) under the age of 21;
 - (bb) their dependants or those of their spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38 or an EU overseas territories national–
 - (i) their spouse or civil partner;
 - (ii) their direct descendants or those of their spouse or civil partner who are–
 - (aa) under the age of 21;
 - (bb) their dependants or those of their spouse or civil partner;
 - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1–
 - (i) their spouse or civil partner;
 - (ii) their direct descendants or those of their spouse or civil partner who are–
 - (aa) under the age of 21;

- (bb) their dependants or those of their spouse or civil partner;
- (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;

“non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community 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;

“qualifying day” in relation to a course of study for which a bursary is sought 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;

“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(a) as extended by the Protocol thereto which entered into force on 4th October 1967(b);

“relevant date” in relation to a course of study for which a bursary is sought means–

- (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;

“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 employed person;

“Swiss frontier employed person” means a Swiss national who–

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; 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 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 Scotland ; 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 European Community 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(c) and which came into force on 1st June 2002; and

(a) Cm. 9171.

(b) Cm. 3906. (Out of print: photocopies are available free from the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, Edinburgh EH12 9HH).

(c) Cm. 5639.

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules(a).

(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.

Exercise of power to grant a bursary

3.—(1) The power of an education authority to grant a bursary in accordance with section 49(1) or (2) of the Act—

- (a) shall be exercised in accordance with the following provisions of these Regulations; and
- (b) shall not be exercised except in relation to 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 bursaries

4.—(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 undertaking the course of study in respect of which the bursary is awarded;
- (c) the maintenance of the holder and of any person dependent on the holder during periods of full-time study and during vacations; and
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) A bursary payable to or in respect of a person who is eligible for a bursary only by virtue of paragraph 9 of Schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

(3) 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 or civil partner can reasonably be expected to contribute towards the holder’s expenses.

(4) 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;
- (b) all the circumstances of the holder, their parents, their spouse or civil partner or any as the case may be; or
- (c) any error made in the computation of the amount of the bursary.

Conditions of bursary

5.—(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

(a) HC 395; relevant amending instrument is HC 164.

(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.

(2) If the conditions specified in paragraph (1) 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 the holder to be assisted by means of a bursary, the education authority may suspend payment of the bursary or terminate the bursary.

(3) 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 (4) and that, if the applicant is below the age of legal capacity and has any parent or guardian, the parent or guardian shall consent to the undertaking.

(4) 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 (3), the holder of the bursary shall be obliged to pay to the education authority the amount requested.

HUGH HENRY

A member of the Scottish Executive

St Andrew's House,
Edinburgh
1st March 2007

PERSONS ELIGIBLE FOR BURSARIES

1. A person who—

- (a) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which that person seeks a bursary;
- (b) has been ordinarily resident in the British Islands throughout the period of 3 years 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(a) on the relevant date.

2. A person who—

- (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;
- (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) is—
 - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which that person seeks a bursary; or
 - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.

3. A person who—

- (a) is—
 - (i) the family member of a person mentioned in paragraph 2(a); or
 - (ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers(b), as extended by the EEA 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) is—
 - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which that person seeks a bursary; or
 - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.

(b) O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

4.—(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
- (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense 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;
- (c) is—
 - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which that person seeks a bursary; or
 - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority;
- (d) 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
- (e) in the case where their ordinary residence referred to in sub-sub-paragraph (d) 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-sub-paragraph (d).

(2) For the purposes of this paragraph, a person has utilised a right of residence if that person—

- (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(a) (or corresponding provisions under the EEA agreement or the Switzerland Agreement(b)); or
 - (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 person 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 person is a national or of which the person in relation to whom that person is a family member is a national.

5. A person who—

- (a) at the date that the education authority received their application for a bursary is—
 - (i) a refugee who has been ordinarily resident in the British 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) (i) is ordinarily resident in the area of the education authority on the qualifying day; or
- (ii) seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.

(a) O.J. No. L 158, 30.04.04, p.77.

(b) Cm. 5639.

6. A person who—

- (a) (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 British Islands at all times since that person was first granted such leave to enter or remain; and
 - (iii) is ordinarily resident in the area of the education authority on the qualifying day, or seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority; or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who meets a residence requirement specified in sub-paragraph (a)(iii).

7. A person who—

- (a) at the date that the education authority received that person's application for a bursary has been granted temporary protection and who has been ordinarily resident in the British Islands at all times since that person was first granted temporary protection;
- (b) has not attained the age of 18 years on the relevant date; and
- (c) is ordinarily resident in the area of the education authority on the qualifying day, provided that a bursary paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.

8. A person who—

- (a) is a non UK EC national or the child of such a national;
- (b) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which that person seeks a bursary;
- (c) has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the relevant date; and
- (d) in the case where their ordinary residence referred to in sub-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 sub-paragraph (c).

9. A person who—

- (a) is a non UK EC national or an EU overseas territories national or the family member of either;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and
- (c) seeks a bursary in respect of a course of study at an establishment in the area of the education authority.

10. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom 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;
- (c) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which that person seeks a bursary; and
- (d) in the case where their ordinary residence referred to in 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 paragraph (b).

11. A person to whom, or in respect of whom, a bursary has been paid in accordance with these Regulations within the year immediately preceding the relevant date, provided that this paragraph will not apply where it would result in the payment of a bursary to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 7.

ORDINARY RESIDENCE

1.—(1) For the purposes of paragraph 1(a) and paragraph 8(b) of Schedule 1 a person shall be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that that person was not so resident only because—

- (a) that person, 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 person was dependent or that child's spouse or civil partner,

was for the time being—

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

(2) For the purposes of paragraph 1(a) of Schedule 1 and subject to sub-paragraph (3), a person shall not be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that their residence there on that day is in any sense attributable to, or connected with, any period of residence within 3 years immediately preceding the relevant date any part of which was wholly or mainly for the purpose of receiving full-time education.

(3) Sub-paragraph (2) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971(a) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38(b).

2.—(1) Sub-paragraphs (2) to (5) shall apply in determining, for the purposes of paragraphs 1(b), 2(b), 3(b), 4(1)(d), 8(c), 9(b) and 10(b) of Schedule 1, whether a person 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 British Islands, the European Economic Area or Switzerland or the EU overseas territories (in this paragraph “the relevant area”).

(2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 1(b) of Schedule 1, if the education authority are satisfied that that person was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless—

- (a) the person is treated as ordinarily resident in accordance with sub-paragraph (5); or
- (b) the person 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 person 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 person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 9(b) of Schedule 1 if the education authority are satisfied that that person was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless that person is treated as ordinarily resident by virtue of sub-paragraph (5).

(4) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the education authority are satisfied that the person was born and spent the greater part of their life in the relevant area and that—

(a) 1971 c.77.

(b) O.J. No. L 158, 30.04.04, p.77.

- (a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that person is not an independent person; or
- (b) that person has been ordinarily resident in the relevant area for at least 1 year of the specified period and, in the case of those qualifying by virtue of paragraph 1 or 9 of Schedule 1, no part of that period or residence was wholly or mainly for the purpose of receiving full-time education.

(5) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the education authority are satisfied that the person was not actually so resident in the relevant area for the specified period only because—

- (a) that person, 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 person was dependent or that child's spouse or civil partner,

was for the time being—

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

3.—(1) In paragraph 2(4)(a) an “independent person” means a person who prior to the relevant date—

- (a) has attained the age of 25 years;
- (b) is married or in a civil partnership;
- (c) has been self-supporting out of their earnings for periods aggregating not less than 3 years; or
- (d) has no parent living.

(2) A person shall be regarded as having been self-supporting out of their earnings for any period during which that person—

- (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; or
- (d) received any pension, allowance or other benefit paid by reason of a disability to which they are 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;
- (e) held a Scottish Studentship or comparable award; or
- (f) could not reasonably be expected to support themselves out of their earnings because that person had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate with only minor and drafting amendments the Education Authority Bursaries (Scotland) Regulations 1995 (S.I. 1995/1739 (S.119)) and subsequent amending instruments, which are revoked with transitional provisions by the Education (Graduate Endowment, Student Fees and Support) (Scotland) Revocation Regulations 2007 (S.S.I. 2007/148).

They regulate the exercise by education authorities of their powers under section 49 of the Education (Scotland) Act 1980 to pay bursaries to persons undertaking courses of study. They prescribe that bursaries may only be paid to persons who fulfil certain criteria as to eligibility and they prescribe the conditions and requirements subject to which allowances may be paid.

The definitions of “employment” (including “employed”) and “parent” (including “child”) have been clarified.

Support in relation to fees only has been extended to include nationals of EU overseas territories.

Tables of Derivations and Destinations have been prepared identifying individual regulations in these Regulations with the equivalent provisions in the superseded Regulations and vice versa. Copies of the Tables may be obtained from the Scottish Executive, Higher Education and Learner Support Division, Europa Building, 450 Argyle Street Glasgow, G2 8LG. The Tables have been prepared to assist readers of the Regulations and do not have any legal effect.

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