
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 153

The Students' Allowances (Scotland) Regulations 2007

Citation and commencement

1. These Regulations may be cited as the Students' Allowances (Scotland) Regulations 2007 and shall come into force on 1st August 2007.

Interpretation

2.—(1) In these Regulations—

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

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council⁽¹⁾ 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;

“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, Curcao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon and Wallis and Futuna Islands;

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

“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;

“Islands” means the Channel Islands and the Isle of Man;

“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;

“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⁽²⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽³⁾;

“relevant date” in relation to a course of education for which an allowance is sought means—

- (a) for a course starting in the period 1st August to 31st December, 1st August in that year;
- (b) for a course starting in the period 1st January to 31st March, 1st January in that year;
- (c) for a course starting in the period 1st April to 30th June, 1st April in that year; and
- (d) for a course starting in the period 1st July to 31st July, 1st July in that year;

“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⁽⁴⁾ and which came into force on 1st June 2002; and

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules⁽⁵⁾.

(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 Scottish Ministers 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

(2) Cm. 9171.

(3) Cm. 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).

(4) Cm. 5639.

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

person undertaking 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 Scottish Ministers 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 undertaking the course of education in respect of which the allowance is awarded;
- (c) the maintenance of the holder and of any persons dependent on them 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) An allowance payable to, or in respect of, a person who is eligible for an allowance 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 an allowance, the Scottish Ministers shall take account of the sums, if any, which, in accordance with principles determined by them from time to time, the holder, 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 the determination of an allowance may be revised at any time if the Scottish Ministers think 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, their parents and the holder's spouse or civil partner 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 such form as the Scottish Ministers may require shall be received by them by such date as they may determine in respect of that year, and different dates may be determined by them in respect of different courses; and
- (b) that application shall include an undertaking by the applicant to repay to the Scottish Ministers any amount of which they request repayment following a revisal in terms of regulation 4(4).

(2) The Scottish Ministers may treat an application received after any date determined for the purposes of paragraph (1)(a) as having been received by that date where they consider 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 comply with the requirements of the course of education in respect of which the allowance is awarded;
- (b) the Scottish Ministers shall be satisfied as to the conduct and progress of the holder;

- (c) the holder shall provide the Scottish Ministers with such information and such documents as they may from time to time require to enable them to exercise their functions under these Regulations; and
- (d) the holder shall repay to the Scottish Ministers any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revision in terms of regulation 4(4).

Method of payment

6.—(1) The allowance may be paid to the holder or to another person for their 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 Scottish Ministers think 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.

(3) Payments may be made in such manner as the Scottish Ministers consider appropriate, and they may make it a condition of entitlement to payment that the eligible student shall provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

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