
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 156

**The Education Maintenance Allowances
(Scotland) Regulations 2007**

Citation and commencement

1. These Regulations may be cited as the Education Maintenance Allowances (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;

“course of education” means a full time—

- (a) course of school education;
- (b) course of non-advanced education undertaken at a home within an area of an education authority and approved by that education authority; or
- (c) course of non-advanced education undertaken elsewhere within an area of an education authority under the supervision of that education authority;

“course of non-advanced education” means any course which prepares a person to a standard not higher than that required for—

- (a) a qualification awarded by the Scottish Qualifications Authority; or
- (b) a General Certificate of Education qualification of England and Wales or Northern Ireland;

“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;

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

“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 the United Kingdom; 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 the United Kingdom; and

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

- (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;

“employed” means working in full-time or part-time employment which, in a normal week, involves a significant number of hours of work and references to employed include references to the holding of any office and to any occupation for gain;

“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;
- (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–
 - (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) dependants of that person or 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–
 - (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; 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;

“Free Movement Regulation” means Council Regulation (EEC) No. 1612/68(2) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area);

“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;

“qualifying date” means the first day of the term of the course of education for which an education maintenance allowance is sought;

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

“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 the United Kingdom; 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 the United Kingdom ; 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(5) 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(6).

(2) 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).

(3) Cm. 9171.

(4) Cm. 3906 (Out of Print: photocopies are available, free of charge, from the Students Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

(5) Cm. 5639.

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

Exercise of power to grant an education maintenance allowance

3.—(1) Subject to paragraph (3), the Scottish Ministers may pay an education maintenance allowance in accordance with section 73(f) of the Act and these Regulations to any person undertaking a course of education in Scotland who—

- (a) is deemed to have attained the age of 16 years under section 33 of the Act (School leaving dates);
- (b) has not, on the qualifying date, attained the age of 20 years; and
- (c) is 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.

(3) The Scottish Ministers shall not pay an education maintenance allowance to any person who attained the age of 16 years prior to 1st March 2004.

Amount of education maintenance allowances

4.—(1) The amount of an education maintenance allowance shall be determined by the Scottish Ministers and may include sums in respect of the maintenance of the holder during periods of full time study excluding vacations.

(2) In determining the amount of an education maintenance allowance, the Scottish Ministers may take account of the sums, if any, which in their opinion the holder of the education maintenance allowance, the holder's parents and the holder's spouse or the holder's civil partner can reasonably be expected to contribute towards the holder's expenses.

(3) The amount of an education maintenance allowance may be revised at any time if the Scottish Ministers think fit having regard to—

- (a) the failure of the holder of the education maintenance allowance to comply with the conditions of the education maintenance allowance;
 - (b) all the circumstances of that holder, their parents and their spouse or civil partner; or
 - (c) any error made in the computation of the amount of the education maintenance allowance.
- (4) In paragraphs (2) and (3)—

- (a) “holder's spouse” shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not married to each other but who are living together as husband and wife; and
- (b) “holder's civil partner” shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not civil partners of each other but who are living together as civil partners to each other.

Conditions of education maintenance allowance

5.—(1) Every education maintenance allowance shall be held subject to the following conditions—

- (a) the holder of the educational maintenance allowance shall attend in accordance with any requirements specified by the educational establishment for the course of education in respect of which the education maintenance allowance is awarded;
- (b) the Scottish Ministers shall be satisfied as to the conduct and progress of that holder; and
- (c) that 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.

(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 Scottish Ministers, makes it unnecessary for the holder to be assisted by means of an education maintenance allowance, the Scottish Ministers may suspend payment of the education maintenance allowance or terminate the education maintenance allowance.

(3) It shall be a condition of payment of an education maintenance allowance that the applicant gives a written undertaking to pay to the Scottish Ministers any amount of which they may request repayment in the circumstances specified in paragraph (4).

(4) Where the Scottish Ministers are satisfied that there has been an overpayment of education maintenance allowance for any reason and request repayment of the overpayment or so much thereof as they think fit, the holder of the education maintenance allowance shall be obliged to pay to the Scottish Ministers the amount requested.

St Andrew's House,
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