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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 389**

**The Education (Fees) (Scotland) Regulations 2011**

**Interpretation**

2.—(1) In these Regulations—

“child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 of the Nationality, Immigration and Asylum Act 2002<sup>(1)</sup>;

“Directive 2004/38” means Directive 2004/38 of the European Parliament and of the Council<sup>(2)</sup> on the rights of the citizens of the Union and their family members to move and reside freely in the territory of the member States;

“education” includes post-graduate research otherwise than in the course of employment;

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

“EU national”, unless the context otherwise requires, means a person who is a national of any member State for the purposes of the EU Treaties;

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland, Mayotte, Netherlands Antilles (Bonaire, Curacao, Saba,

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(1) 2002 c.41.

(2) OJ No L 158, 30.4.2004, p.77.

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

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

“excluded medical student” means a student who—

- (a) has been accepted on to a Bachelor of Medicine and Bachelor of Surgery degree course or a Bachelor of Science degree course in medicine which is a preparatory course for the study of a Bachelor of Medicine and Bachelor of Surgery degree course at a fundable body and has agreed in writing with that fundable body, during the period beginning on 1st August 2005 and ending on 31st July 2011, to defer entry to that course; and
- (b) has a relevant connection with Scotland, or is an excepted student, within the meaning of these Regulations;

“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, 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; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;
- (b) in relation to an EU national who is not self-sufficient within the meaning of Article 7(1) (b) of Directive 2004/38—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; and
- (c) in relation to an EU national who is self-sufficient within the meaning of Article 7(1) (c) of Directive 2004/38 or, for the purposes of paragraph 3 of Schedule 1, a United Kingdom national—
  - (i) their spouse or civil partner; or
  - (ii) their direct descendants or those of their spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) their dependants or those of their spouse or civil partner; or
  - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;

“fees” includes charges however described;

“fundable body” means a fundable body providing fundable higher education in terms of section 5(3) of the Further and Higher Education (Scotland) Act 2005(3);

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

“new deferred student” means a student, who is not an excluded medical student, who has been accepted on to a course of education at a fundable body and has agreed in writing with that fundable body before 1st August 2011, to defer entry to that course;

“non UK EU national” means a person who is a national of any member State 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;

“post 2011/12 student” means a student, who is not a new deferred student, who commences a course of education at a fundable body on or after 1st August 2012;

“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<sup>(4)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(5)</sup>;

“relevant date” in relation to a course of education commenced by a post 2011/12 student means—

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

“relevant fees” means the aggregate of—

- (a) any fees for admission, registration or matriculation (including matriculation exemption);
- (b) any sessional or tuition fees;
- (c) any composition fee; and
- (d) any graduation fee,

in each case excluding any element thereof representing or attributable to—

- (i) any fees charged by an external body in respect of an examination or validation of a course of education or otherwise charged by such a body whose requirements must (for the purposes of a course) be met; and
- (ii) charges for board and lodging;

“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 worker;

“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;

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<sup>(4)</sup> Cm. 9171.

<sup>(5)</sup> 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).

“Swiss frontier worker” 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 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 EU 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<sup>(6)</sup> and which came into force on 1st June 2002;

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules<sup>(7)</sup>;

“Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in Scotland; and
- (b) is, or has been, lawfully employed in the United Kingdom; and

“young asylum seeker” means an unaccompanied asylum-seeking child.

(2) Notwithstanding section 11 of the Interpretation Act 1978<sup>(8)</sup>, section 3(2) of the Education (Fees and Awards) Act 1983<sup>(9)</sup> (references to the United Kingdom to include references to the Islands) does not apply for the purpose of the interpretation of these Regulations.

(3) For the purposes of regulation 3(a) a post 2011/12 student who is ordinarily resident in Scotland as a result of having moved from the Islands for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the Islands.

(4) For the purposes of regulation 3(a) a post 2011/12 student who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the part of the United Kingdom from where they moved.

(5) For the purposes of these Regulations, and subject to paragraph (6), in assessing whether a post 2011/12 student has a relevant connection with Scotland or is an excepted student for the charging of relevant fees, a course of education is deemed to have started on the date that the first constituent part of any programme of education which contributes to the final award for that course of education commenced.

(6) In assessing whether a post 2011/12 student has a relevant connection with Scotland or is an excepted student for the charging of relevant fees—

- (a) a programme of education leading to—
  - (i) a Degree;
  - (ii) a Higher National Diploma; or
  - (iii) a Higher National Certificate; and
- (b) such other programmes of education as the Scottish Ministers may determine,

are to be treated as separate and distinct courses of education.

<sup>(6)</sup> Cm. 5639.

<sup>(7)</sup> HC 395; relevant amending instrument is HC 164.

<sup>(8)</sup> 1978 c.30.

<sup>(9)</sup> 1983 c.40.

