
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 72

**The Education (Fees, Awards and Student Support)
(Miscellaneous Amendments) (Scotland) Regulations 2012**

Amendment of the Education (Fees and Awards) (Scotland) Regulations 2007

22.—(1) Schedule 1 (fees – excepted students) is amended as follows.

(2) In paragraph 2(a)(iv) for “worker” substitute “employed person”.

(3) In paragraph 4—

(a) in sub-paragraph (1)—

(i) in paragraph (a) after “1971” insert “on the date referred to in regulation 5(a)”; and

(ii) in paragraph (b) after “settled in the United Kingdom” insert “within the meaning given by section 33(2A) of the Immigration Act 1971”; and

(b) in sub-paragraph (3) for “does” substitute “and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do”.

(4) For paragraph 8 substitute—

“**8.**—(1) A person shall be an excepted student if that person—

(a) is, on the date referred to in regulation 5(a), a non UKEC national or the family member of such a national;

(b) is ordinarily resident in Scotland on the date referred to in regulation 5(a);

(c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the date referred to in regulation 5(a); and

(d) in the case where their ordinary residence referred to in 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 paragraph (c).

(2) Where a state accedes to the EU after the date referred to in regulation 5(a) and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EC national on the date referred to in regulation 5(a) is treated as being satisfied.”.

(5) For paragraph 9 substitute—

“**9.**—(1) A person shall be an excepted student if that person—

(a) is, on the date referred to in regulation 5(a), an EC national or a family member of such national;

(b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the date referred to in regulation 5(a).

(2) Sub-paragraph (1)(b) does not apply to a family member of an EC national where that EC national has been ordinarily resident in the territory comprising the European

Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the date referred to in regulation 5(a).

(3) For the purposes of this paragraph—

- (a) an EC national does not include a United Kingdom national who has not utilised a right of residence; and
- (b) a United Kingdom national has utilised a right of residence if that person 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.

(4) Where a state accedes to the EU after the date referred to in regulation 5(a) and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EC national on the date referred to in regulation 5(a) is treated as being satisfied.”.

(6) Omit paragraphs 11 and 12.

(7) In paragraph 14A(b) and (c) for “first day of the first academic year of the course” substitute “date referred to in regulation 5(a)”.

(8) After paragraph 14A insert—

“**14B.** A person shall be an excepted student if that person was an excepted student for the charging of relevant fees within the meaning of these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is to be charged relevant fees, provided that the person is continuing to undertake the same course.”.