
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

23. After Schedule 1 insert—

“SCHEDULE 1A

Regulation 7A

ORDINARY RESIDENCE

1.—(1) For the purposes of regulation 5(d), a person is to be treated as being ordinarily resident in the United Kingdom on the date referred to in regulation 5(a) if that person was not actually so resident 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 temporarily—
 - (i) employed outside the United Kingdom; or
 - (ii) attending a course of study or undertaking postgraduate research outside the United Kingdom.

(2) For the purposes of paragraph 8(1)(b) of Schedule 1, a person is to be treated as being ordinarily resident in Scotland on the date referred to in regulation 5(a) if that person was not actually so resident 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 temporarily—
 - (i) employed outside Scotland; or
 - (ii) attending a course of study or undertaking postgraduate research outside Scotland.

2.—(1) Sub-paragraphs (2) to (4) apply in determining, for the purposes of regulation 5(a) and paragraphs 2(b), 3(c), 4(1)(c), 8(1)(c), 9(1)(b), 10(b) and 14A(c) 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 United Kingdom and Islands, the European Economic Area, Switzerland, the EU overseas territories or Turkey (in this paragraph, “the relevant area”).

(2) A person is not to be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 9(1)(b) of Schedule 1 if that person was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person is to be treated as having been ordinarily resident in the relevant area for the specified period if that person was born and has spent the greater part of their life in the relevant area and—

- (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 student; or
- (b) that person has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of regulation 5 or paragraph 9 of Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(4) A person is to be treated as having been ordinarily resident in the relevant area for the specified period if that person was not actually ordinarily 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 dependent direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner,

was temporarily—

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

3.—(1) In paragraph 2(3)(a), “an independent student” 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 no parent living;
- (d) had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them; or
- (e) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A person is to 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;
- (d) received any pension, allowance or other benefit paid by reason of a disability to which that person is 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; or
- (e) held an advance postgraduate or other comparable award.”.