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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 72**

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

**Amendment of the Education (Student Loans) (Scotland) Regulations 2007**

- 35.**—(1) Schedule 1 (eligible students) is amended as follows.
- (2) In paragraph 2(1)(a)(iv) for “worker” substitute “employed person”.
- (3) In paragraph 4—
- (a) in sub-paragraph (1)—
- (i) in sub-paragraph (a) after “1971” insert “on the first day of the first academic year of the course”; 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 who—
- (a) is, on the first day of the first academic year of the course, a non UKEU national or the family member of such a national;
- (b) is ordinarily resident in Scotland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the first day of the first academic year of the course; 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 first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EU national on the first day of the first academic year of the course is treated as being satisfied.”.
- (5) After paragraph 8 insert—
- “**8A.**—(1) A person who—
- (a) is, on the first day of the first academic year of the course, an EU 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 first day of the first academic year of the course; and
- (c) seeks a loan in respect of a vocational course leading to a Postgraduate Diploma or to a Postgraduate masters degree at an establishment in Scotland.

(2) Sub-paragraph (1)(b) does not apply to a family member of an EU national where that EU 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 first day of the first academic year of the course.

(3) For the purposes of this paragraph—

- (a) an EU 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 first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.”.

(6) After paragraph 10 insert—

“**11.**—(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, a loan has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking a loan, provided the person is continuing to undertake the same course.

(2) Where sub-paragraph (1) applies to a person to whom, or in respect of whom, a loan has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking a loan where that person qualified only by virtue of paragraph 8A, a loan payable to, or in respect of, the person may include sums only in respect of tuition fees payable in respect of that person.”.