

2022 No. 157

EDUCATION

The Student Support (Scotland) Regulations 2022

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The Scottish Ministers, make the following Regulations in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(a), and all other powers enabling them to do so.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Student Support (Scotland) Regulations 2022 and come into force on 1 August 2022.

Interpretation

2.—(1) In these Regulations—

“academic year” in relation to a course, means the period of twelve months beginning on the relevant date,

“the Act” means the Education (Scotland) Act 1980,

“allowance” means an allowance paid or to be paid under these Regulations,

“bursary” means a bursary, scholarship or other allowance granted under section 49 (1) or (2) (power of education authorities to assist persons to take advantage of educational facilities) of the Act,

“child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 (asylum-seeker: definition) of the Nationality, Immigration and Asylum Act 2002(b),

“Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(c),

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely in the territory of the Member States(d), and reference to a provision of the Directive—

(a) is reference to the Directive as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“education maintenance allowance” means an education maintenance allowance paid or to be paid under Part 6,

“eligible student” means a person whom the Scottish Ministers have determined is eligible for a loan in connection with their undertaking a course in accordance with Part 4 (student loans),

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992(e), together with the protocol signed at Brussels on 17 March 1993(f), as

(a) 1980 c. 44. Section 73(f) was amended by section 29(1) of the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”). Section 73B was inserted by section 29(2) of the 1998 Act and was amended by section 3(3) of the 2001 Act, paragraph 149(a) and (b) of schedule 6 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 34(1) of the Bankruptcy (Scotland) Act 2007 (asp 3) and paragraph 8 of schedule 8 of the Bankruptcy (Scotland) Act 2016 (asp 21). Section 74(1) was amended by paragraph 8(17) of schedule 10 of the Self Governing Schools etc. (Scotland) Act 1989 (c. 39). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act (c. 46).

(b) 2002 c. 41.

(c) S.I. 2020/1209.

(d) OJ L 158, 30.4.2004, p. 77.

(e) CP 2073 and OJ L 1, 3.1.1994, p.3.

(f) CP 2183 and OJ L 1, 3.1.1994, p.572.

modified or supplemented from time to time, but does not include any retained direct EU legislation,

“EEA EFTA separation agreement” means (as modified from time to time in accordance with any provision of it) the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA agreement and other agreements applicable between the United Kingdom and the EEA EFTA states by virtue of the United Kingdom’s membership of the European Union(a),

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar 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 in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar 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 but who is not an EEA frontier worker,

“EEA national” means any person who is a national of any EEA State,

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person but who is not an EEA frontier self-employed person,

“EEA state” means—

- (a) any Member State of the European Union, or
- (b) any other state that is party to the EEA agreement,

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

“EU national” means any person who is a national of any Member State of the European Union,

“EU overseas territories” means Aruba, Faroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland, Mayotte, Netherlands Antilles (Bonaire, Curacao, Saba, 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 European Union and, subject to the conditions laid down in the EEA agreement, Iceland, Norway and Liechtenstein,

“family member” means, in relation to any person—

- (a) their spouse or civil partner, or
- (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21, or
 - (ii) their dependants or those of their spouse or civil partner, or
- (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner,

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

(a) CP 217.

“loan” means in relation to—

- (a) a student undertaking a course at an RUK institution, a loan towards that student’s tuition fees under the Act,
- (b) a student undertaking a full-time or part-time taught course leading to a postgraduate diploma or to a postgraduate masters degree, or undertaking a full-time or part-time research course leading to a postgraduate masters degree, a loan towards that student’s tuition fees under the Act,
- (c) a student undertaking a full-time (but not a part-time) taught course leading to a postgraduate diploma or to a postgraduate masters degree, or undertaking a full-time (but not a part-time) research course leading to a postgraduate masters degree, a loan towards that student’s maintenance under the Act,
- (d) a student who is a person mentioned in paragraph 2(3) (EU nationals etc. with protected rights who have been living in the UK and Islands for three years) of schedule 1 or in schedule 2, a loan towards that student’s tuition fees under the Act and any regulations made under the Act,
- (e) any other student, a loan towards that student’s maintenance under the Act and any regulations made under the Act, including the interest accrued on the loan and any penalties or charges made in connection with it,

“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” is construed accordingly,

“person with protected rights” means—

- (a) a person within the scope of Article 10 (personal scope) of the EU withdrawal agreement, Article 9 (personal scope) of the EEA EFTA separation agreement, or Article 10 (personal scope) of the Swiss citizens’ rights agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended,
 - (iii) otherwise has rights deemed to apply by virtue of Article 18(1)(d), (2) and (3) (issuance of residence documents) of the EU withdrawal agreement, Article 17(1)(d), (2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement, or Article 16(1)(d), (2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement, or
 - (iv) is an Irish national who, pursuant to section 3ZA (Irish citizens) of the Immigration Act 1971(a), does not require leave to enter or remain in the UK, or
- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,

“refugee” means a person within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951(b), as extended by article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967(c), and any reference to the child of a refugee includes a reference to a step-child,

“relevant date” in relation to a course, means, for a course starting in the period—

- (a) 1 August to 31 December, 1 August,
- (b) 1 January to 31 March, 1 January,
- (c) 1 April to 30 June, 1 April,

(a) 1971 c. 77.
(b) Cmnd 9171.
(c) Cmnd 3906.

(d) 1 July to 31 July, 1 July,

in each case the relevant date being in the year of commencement of the appropriate academic year of the course,

“relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,

“residence scheme immigration rules” has the meaning given by section 17(1) (Interpretation: Part 3) of the European Union (Withdrawal Agreement) Act 2020(a),

“RUK institution” means an institution located in the United Kingdom but outside Scotland,

“self-employed person” means—

- (a) in relation to an EEA national in the United Kingdom, a person who is self-employed within the meaning of either Article 7 (right of residence for more than three months) of Directive 2004/38 or Article 28 of the EEA agreement, as the case may be, or
- (b) in relation to a Swiss national in the United Kingdom, a person 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,

“student support” means—

- (a) an allowance payable under Parts 2 (allowances), 3 (paramedic science, nursing and midwifery student allowances) or 6 (education maintenance allowances),
- (b) a loan payable under Part 4 (student loans),
- (c) a bursary payable under Part 5 (bursaries),

“Swiss citizens’ rights agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens’ rights following the withdrawal of the United Kingdom from the European Union and the free movement of persons agreement(b),

“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 Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar 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 Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“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 21 June 1999(c) and which came into force on 1 June 2002, and reference to a provision of the agreement—

- (a) is reference to the agreement as it had effect immediately before IP completion day,

(a) The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

(b) CP 64.

(c) OJ L 114, 30.4.2002, p. 6.

(b) is to be read, where appropriate, as if references to a “Member State ” include the United Kingdom,

“worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA agreement as the case may be,

(2) Where a student (“A”)—

(a) is a person eligible for student support within the meaning of schedule 1 for the purposes of an application for student support for—

- (i) the first year of A’s current course, or
- (ii) an earlier year of A’s current course, and

(b) as at the day before the relevant date for the academic year in respect of which A is applying for student support—

- (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
- (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
- (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations, the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise a person eligible for student support within the meaning of schedule 1,

A ceases to be a student eligible for student support immediately before the first day of the academic year in respect of which the student is applying for student support.

(3) A person receiving student support in accordance with these Regulations continues to remain eligible for student support in the next academic year provided the person—

- (a) is continuing to undertake the same course of education,
- (b) is not ineligible by virtue of paragraph (2), and
- (c) in relation to student support received under Part 6 (education maintenance allowances), any application will not result in that person being awarded an education maintenance allowance for more than 3 years.

(4) Paragraph (3)(c) does not preclude the payment of the monetary value of 3 years of education maintenance allowance over a period of 4 years.

(5) Where paragraph (3) applies to a person who qualified for student support only by virtue of Part 2 of schedule 1, or any of the paragraphs of schedule 2, student support payable to, or in respect of, the person may include sums only for tuition and other fees payable in respect of that person.

PART 2

Allowances

Persons eligible for allowances

3.—(1) The Scottish Ministers may pay an allowance, in accordance with the provisions of section 73(f) (power of Secretary of State to make grants to education authorities and others) of the Act and this Part, to or in respect of any person undertaking a course of education who is a person described in one or more paragraphs of schedule 1 but a person will not be eligible for an allowance if the Scottish Ministers have determined that the person has shown themselves by their conduct to be unfit to receive an allowance.

(2) In paying an allowance under paragraph (1), the Scottish Ministers may determine to—

- (a) pay different allowances for different purposes, and
- (b) impose different terms and conditions in relation to different allowances.

(3) Schedule 3 is to have effect for 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.

(4) For the purposes of this Part, and subject to paragraph (5), in assessing a person's eligibility under schedule 1 for an allowance for a course of education, that course of education will be deemed to have started on the date that the first constituent part of any programme which contributes to the final award for that course of education commenced.

(5) In assessing a person's eligibility under schedule 1 for an allowance for a course of education—

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

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

Amount of allowances

4.—(1) The amount of an allowance will be determined by the Scottish Ministers and, subject to paragraph (2), may include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the allowance,
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in undertaking the course of education in respect of which the allowance is awarded,
- (c) the maintenance of the holder and of any persons dependent on them during periods of full time study and during vacations, and
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) An allowance payable to, or in respect of, a person who is eligible for an allowance only by virtue of Part 2 of schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

(3) In determining the amount of an allowance, the Scottish Ministers may take account of the sums, if any, which, in accordance with principles determined by them from time to time, the holder, the holder's partner, the holder's parents and the holder's parents' partners can reasonably be expected to contribute towards the holder's expenses.

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

- (a) the failure of the holder to comply with the requirements of the allowance,
- (b) all the circumstances of the holder, the holder's partner, the holder's parents and the holder's parents' partners, or
- (c) any error made in determining the amount of, or entitlement to, the allowance.

Conditions and requirements of allowances

5.—(1) Payment of an allowance for each academic year is conditional on the following—

- (a) receipt of an application in such form as the Scottish Ministers may require by such date as they may determine in respect of that year, and different dates may be determined by them in respect of different courses,
- (b) that application must include an undertaking by the applicant to repay to the Scottish Ministers any amount of which they request repayment following a revisal in terms of regulation 4(4) (amount of allowances), and
- (c) that application must include acceptance by the applicant that any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 4(4) may be recovered by the Scottish Ministers in one or more of the ways specified in paragraph (2).

(2) The Scottish Ministers may recover any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 4(4) in one or more of the following ways as the Scottish Ministers consider appropriate in all the circumstances—

- (a) by subtracting the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 4(4) from the amount of any other allowance payable under these Regulations for which the student is eligible in respect of any other academic year,
- (b) by taking such other action for the recovery of the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 4(4) as is available to them.

(3) The Scottish Ministers may treat an application received after any date determined for the purposes of paragraph (1)(a) as having been received by that date where they consider that, having regard to the circumstances of the particular case, it should be so treated.

(4) Every allowance is to be held subject to the following requirements—

- (a) the holder must comply with the requirements of the course of education in respect of which the allowance is awarded,
- (b) the Scottish Ministers must be satisfied as to the conduct and progress of the holder,
- (c) the holder must 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 this Part, and
- (d) the holder must repay to the Scottish Ministers any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 4(4).

Method of payment

6.—(1) The allowance may be paid to the holder or to another person for their benefit, or in part to the holder and in part to that other person, and any sum in respect of fees payable to an educational institution which is included in the amount of the allowance may be paid on behalf of the holder to the institution.

(2) The allowance may be paid in a single payment or by instalments as the Scottish Ministers think fit, but no payment is to be made before the holder has been accepted for admission to the course of education for which the allowance is awarded.

(3) Payments may be made in such manner as the Scottish Ministers consider appropriate, and they may make it a condition of entitlement to payment that the person eligible for support must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

PART 3

Paramedic science, nursing and midwifery student allowances

Persons eligible for allowance

7.—(1) The Scottish Ministers may pay an allowance in accordance with this Part to, or in respect of any person undertaking—

- (a) a course of pre-registration nursing and midwifery education leading to registration with the Nursing and Midwifery Council^(a), or
- (b) an undergraduate degree programme in pre-registration paramedic science education leading to eligibility to apply for registration as a paramedic with the Health and Care Professions Council^(b),

who is a person described in one or more paragraphs of schedule 1.

(2) In paying an allowance, the Scottish Ministers may determine to—

- (a) pay different allowances for different purposes, and
- (b) impose different terms and conditions in relation to different allowances.

(3) Schedule 3 is to have effect for the purposes of 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.

Amount of allowances

8.—(1) The amount of an allowance will be determined by the Scottish Ministers and may include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the allowance,
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in undertaking the course of education in respect of which the allowance is awarded,
- (c) the maintenance of the holder and of any persons dependent on them during periods of full time study and during vacations, and
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) An allowance payable to, or in respect of, a person who is eligible for an allowance only by virtue of Part 2 of schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

(3) In determining the amount of an allowance, the Scottish Ministers may take account of the sums, if any, which in accordance with principles determined by them from time to time—

- (a) persons dependent on the holder can reasonably be expected to contribute towards their own maintenance, and
- (b) the holder's partner can reasonably be expected to contribute to the holder's expenses.

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

- (a) the failure of the holder to comply with the requirements of the allowance,
- (b) all the circumstances of the holder, the holder's partner and persons dependent on the holder, or
- (c) any error made in determining the amount of, or entitlement to, the allowance.

(a) The Nursing and Midwifery Council, a body corporate, was established by Article 3 of the Nursing and Midwifery Order (2001) (S.I. 2002/253).

(b) The Health and Care Professionals Council, a regulatory body, was established by Article 3 of the Health Professions Order 2001 (S.I. 2002/254).

Conditions and requirements of allowances

- 9.—(1) Payment of every allowance for each academic year is conditional on the following—
- (a) receipt of an application in such form as the Scottish Ministers may require by such date as they may determine in respect of that year, and different dates may be determined by them in respect of different courses,
 - (b) that application must include an undertaking by the applicant to repay to the Scottish Ministers any amount of which the Scottish Ministers requests repayment following a revisal in terms of regulation 8(4) (amount of allowances), and
 - (c) that application must include acceptance by of the applicant that any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 8(4) may be recovered by the Scottish Ministers in one or more of the ways specified in paragraph (2).
- (2) The Scottish Ministers may recover any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 8(4) in one or more of the following ways as the Scottish Ministers consider appropriate in all the circumstances—
- (a) by subtracting the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 8(4) from the amount of any other allowance payable under these Regulations for which the student is eligible in respect of any other academic year,
 - (b) by taking such other action for the recovery of the amount of which the Scottish Ministers request repayment following revisal in terms of regulation 8(4) as is available to them.
- (3) The Scottish Ministers may treat an application received after any date determined for the purposes of paragraph (1)(a) as having been received by that date where they consider that, having regard to the circumstances of the particular case, it should be so treated.
- (4) Every allowance is to be held subject to the following requirements—
- (a) the holder must comply with the requirements of the course of education in respect of which the allowance is awarded,
 - (b) the Scottish Ministers must be satisfied as to the conduct and progress of the holder,
 - (c) the holder must 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 this Part, and
 - (d) the holder must repay to the Scottish Ministers any sum in respect of which the holder has given an undertaking in terms of paragraph (1)(b) and which falls to be repaid following a revisal in terms of regulation 8(4).

Method of payment

- 10.—(1) The allowance may be paid to the holder or to another person for their benefit, or in part to the holder and in part to such other person, and any sum in respect of fees payable to an educational institution which is included in the amount of the allowance may be paid on behalf of the holder to the institution.
- (2) The allowance may be paid in a single payment or by instalments as the Scottish Ministers think fit, but no payment is to be made before the holder has been accepted for admission to the course of education for which the allowance is awarded.
- (3) Payments may be made in such manner as the Scottish Ministers consider appropriate, and they may make it a condition of entitlement to payment that the person eligible for support must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

PART 4

Student loans

Students eligible for student loans

11.—(1) The Scottish Ministers may pay a loan, in accordance with the provisions of section 73(f) (power of Secretary of State to make grants to education authorities and others) of the Act and this Part, to or in respect of an eligible student.

(2) Subject to and in accordance with this Part a person is eligible for a loan in connection with their undertaking a designated course if that person—

- (a) is a person mentioned in Part 1 of schedule 1 or in schedule 2,
- (b) is under the age of 61 on the relevant date,
- (c) is not eligible for a loan in relation to an academic year of the course under the Teaching and Higher Education Act 1998(a), the Education (Student Loans) (Northern Ireland) Order 1990(b), the Education (Student Support) (Northern Ireland) Order 1998(c) or any regulations made under any of those instruments,
- (d) is not eligible to receive in relation to the academic year—
 - (i) a bursary or award of similar description under section 63 (provision of instruction for officers of hospital authorities and other persons employed, or contemplating employment, in certain activities connected with health or welfare) of the Health Services and Public Health Act 1968(d), the amount of which is not calculated by reference to their income,
 - (ii) any allowance under Part 3 (paramedic science, nursing and midwifery student allowances),
 - (iii) such other allowances awarded under Part 2 (allowances) as the Scottish Ministers may determine,
 - (iv) any grant made by the Scottish Ministers under section 42 (grants in respect of activities relating to school education) of the Standards in Scotland's Schools etc. Act 2000(e) under the Educational Psychologist Training Grant, Scotland, or
 - (v) any allowance, bursary or award of a similar description paid by United Kingdom Research and Innovation(f), where that person is undertaking a research course leading to a postgraduate masters degree,
- (e) is not in breach of any obligation to repay any loan, and
- (f) has not, in the opinion of the Scottish Ministers, shown themselves by their conduct to be unfit to receive a loan.

(3) Paragraph (2)(b) does not apply when assessing a person's eligibility for a loan falling within paragraph (b) of the definition of loan in regulation 2(1) (interpretation).

(4) For the purposes of paragraph (2)(e) "loan" means a loan made under the Act, the Education (Student Loans) (Northern Ireland) Order 1990, the Education (Student Support) (Northern Ireland) Order 1998 or under any regulations made under any of the foregoing.

(5) A person cannot, at any one time, be eligible for support for more than one designated course.

(6) For the purposes of this Part, and subject to paragraph (7), in assessing a person's eligibility under schedule 1 or schedule 2 for a loan in respect of a course, that course will be deemed to have

(a) 1998 c. 30.

(b) S.I. 1990/1506 (N.I. 11).

(c) S.I. 1998/1760 (N.I. 14).

(d) 1968 c. 46.

(e) 2000 asp 6.

(f) United Kingdom Research and Innovation, a body corporate, was established by section 91 of Part 3 of the Higher Education and Research Act 2017 (c. 29).

started on the date that the first constituent part of any programme which contributes to the final award for that course commenced.

(7) In assessing a person's eligibility under Part 1 of schedule 1 or schedule 2 for a loan in respect of a course—

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

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

(8) Schedule 3 is to have effect as regards determining whether a person is to be treated, for the purposes of schedule 1 or schedule 2, as being, or having been, ordinarily resident in a place at, or for, a particular time.

Students eligible for student loans for tuition fees for RUK institutions

12.—(1) The Scottish Ministers may pay a loan, in accordance with the provisions of section 73(f) (power of Secretary of State to make grants to education authorities and others) of the Act and this Part, to or in respect of an eligible student.

(2) A person is eligible for a loan for tuition fees in connection with their undertaking a designated course if the person—

- (a) is a person mentioned in Part 1 of schedule 1,
- (b) is not in breach of any obligation to repay any loan, and
- (c) has not, in the opinion of the Scottish Ministers, shown themselves by their conduct to be unfit to receive a loan.

(3) For the purposes of paragraph (2)(b) “loan” means a loan made under the Act, the Teaching and Higher Education Act 1998, the Education (Student Loans) (Northern Ireland) Order 1990, the Education (Student Support) (Northern Ireland) Order 1998 or under any regulations made under any of the foregoing.

(4) For the purposes of this Part, in assessing a person's eligibility under Part 1 of schedule 1 for a loan in respect of a course, that course will be deemed to have started on the date that the first constituent part of any programme which contributes to the final award for that course commenced.

(5) In assessing a person's eligibility under Part 1 of schedule 1 for a loan in respect of a course—

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

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

(6) Schedule 3 is to have effect as regards determining whether a person is to be treated, for the purposes of Part 1 of schedule 1, as being, or having been, ordinarily resident in a place at, or for, a particular time.

Designated courses for student loans

13.—(1) A course is designated for the purposes of regulation 11(2) (students eligible for student loans) if it is—

- (a) contained in schedule 4,

- (b) either—
 - (i) in relation to a taught course leading to a postgraduate diploma or to a postgraduate masters degree, or in relation to a research course leading to a postgraduate masters degree, a full-time course, or a part-time course wholly provided by an educational institution or institutions in Scotland, or
 - (ii) in relation to any other course, a full-time course or a sandwich course,
 - (c) of at least one academic year's duration, and
 - (d) wholly provided by an educational institution or institutions in the United Kingdom maintained or assisted by recurrent grants out of public funds or is provided by such an institution or institutions in conjunction with an institution or institutions outside the United Kingdom, but in relation to a taught course leading to a postgraduate diploma or to a postgraduate masters degree, or to a research course leading to postgraduate masters degree, excluding—
 - (i) part-time courses wholly provided by an educational institution or institutions outside Scotland, and
 - (ii) full-time courses wholly provided by an educational institution or institutions outside Scotland, unless there is no equivalent course provided by any Scottish institution or institutions.
- (2) In this Part—
- (a) a “sandwich course” is a course, other than a course for the initial training of teachers referred to in paragraph 3 of schedule 4, consisting of alternate periods of full-time study in an institution and periods of work experience so organised that, taking the course as a whole, the student attends the periods of full-time study for an average of not less than 18 weeks in each year, and for the purposes of calculating their attendance the course is to be treated as beginning with the first period of full-time study and ending with the last such period,
 - (b) where periods of both full-time study and work experience occur within any week of the course, the days of full-time study are to be aggregated with any weeks of full-time study in determining the number of weeks full-time study in each year,
 - (c) “periods of work experience” means—
 - (i) periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outwith the institution, and
 - (ii) in the case of a course which includes the study of one or more modern languages for not less than one half of the time spent studying on the course, and which includes periods of residence in a country whose language is a language of the course, such periods of residence during which the student is employed,
 - (d) “taught course”—
 - (i) means a course which requires a minimum amount of teaching or contact time between the student and teaching staff at the institution, in the form of lectures, tutorials or seminars, and
 - (ii) includes a course which is delivered by distance learning, where the sole or principal method of teaching by the institution does not require the student to attend on campus, but instead where lessons or classes are conducted remotely via digital or electronic means and where course work is submitted by correspondence,
 - (e) “research course” means a course where the primary manner of study and assessment is based on independent research conducted by the student,
 - (f) “part-time course” means a course where the normal period for completion of the total number of credits required for the course when studied at a full-time pace is extended over a longer period of time, but where—
 - (i) the duration of the course does not exceed twice the usual duration of the full-time equivalent course leading to the same qualification, or

- (ii) in the absence of any full-time equivalent for the course in question, it is ordinarily possible to complete the course on a part-time basis in up to three academic years,
- (g) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not it has entered into an agreement with the student to provide the course,
- (h) a university and any constituent college or institution in the nature of a college or a university is regarded as maintained or assisted by recurrent grants out of public funds if either the university or the constituent college or institution is so maintained or assisted,
- (i) an institution is not regarded as maintained or assisted by recurrent grants out of public funds by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) (administration of funds by the HEFCW) of the Further and Higher Education Act 1992(a), and
- (j) a course, the standard of which is not higher than a first degree course, which leads to a qualification as a medical doctor, a dentist, a veterinary surgeon, an architect, a landscape architect, a landscape designer, a landscape manager, a town planner or a town and country planner, is considered to be a single course for a first degree or for an equivalent qualification even though the course may lead to another degree or qualification being conferred before the degree or equivalent qualification, and even though that part of the course may be optional.

(3) In this Part—

“partner” means in relation to the eligible student or the eligible student’s parent—

- (a) the spouse of that person,
- (b) the civil partner of that person, or
- (c) a person ordinarily living with that person as if he or she were the spouse or civil partner of that person,

(4) Where a course of education is not designated under paragraph (1), the Scottish Ministers may determine that the course is designated for the purposes of regulation 11(2) by reference to that particular course of education or to a particular category of courses of education.

Designated courses for student loans for tuition fees for RUK institutions

14.—(1) A course is designated for the purposes of regulation 12(2) (students eligible for student loans for tuition fees for RUK institutions) if it is—

- (a) contained in Part 1 of schedule 4,
- (b) a full-time course or sandwich course,
- (c) of at least one academic year’s duration, and
- (d) wholly provided by an educational institution or institutions in the United Kingdom but outside Scotland, maintained or assisted by recurrent grants out of public funds or is provided by such an institution or institutions in conjunction with an institution or institutions outside the United Kingdom.

(2) Where a course of education is not designated under paragraph (1), the Scottish Ministers may determine that the course is designated for the purposes of regulation 12(2) by reference to that particular course of education or to a particular category of courses of education.

Applications for loans

15.—(1) A loan application for an amount, not exceeding the maximum amount applicable in that student’s case in connection with undertaking a designated course, is to be made by the

(a) 1992 c. 13.

student completing and submitting to the Scottish Ministers an application in such form as the Scottish Ministers may require.

(2) In relation to a loan issued under regulation 12 (students eligible for student loans for tuition fees for RUK institutions), the maximum amount applicable in the student's case is the maximum amount of tuition fee charged to the student for the current academic year of the designated course which the student is undertaking.

(3) The completed application is to include such information as the Scottish Ministers require, including the following particulars—

- (a) the student's United Kingdom national insurance number, where applicable,
- (b) the student's most recent student loan account number, if any, and
- (c) the names, addresses and telephone numbers of two persons who know the student.

(4) The completed application will also include a declaration, either in writing or electronically, by the student that—

- (a) the particulars given in the form are correct to the best of their knowledge and belief,
- (b) the student will notify the Scottish Ministers of any change in those particulars which might affect their eligibility for a loan, and
- (c) the student will, if required to do so, repay to the Scottish Ministers—
 - (i) any amount paid to them or to any other person on their behalf which exceeds for any reason the amount of loan to which that student is entitled under this Part, and
 - (ii) any amount lent to them, together with interest and applicable charges and penalties, in accordance with the Act and any regulations made under the Act.

(5) The application form must reach the Scottish Ministers by the date they determine (and different dates may be determined by them in respect of loans for different courses) unless the Scottish Ministers consider that, having regard to the circumstances of the particular case, the time limit should be relaxed, in which case the application must reach the Scottish Ministers no later than the date they specify.

(6) A student demonstrates eligibility for a loan by providing such evidence as the Scottish Ministers may require.

(7) The Scottish Ministers may take steps and make inquiries as they consider necessary to determine whether the student is eligible for a loan.

(8) If the Scottish Ministers determine that a student is eligible for a loan they will notify that student of that fact and of the maximum amount of loan applicable in their case, and that the student will then be an "eligible student" for the purposes of this Part.

(9) In relation to loans issued under regulation 11 (students eligible for student loans), in any case where the Scottish Ministers—

- (a) determine that the maximum amount of loan which has been notified to an eligible student in relation to an academic year should be increased (including an increase from nil), as a result of a reassessment of the student's contribution or otherwise, and
- (b) consider that the increase in the maximum amount of loan does not result from the eligible student—
 - (i) failing to provide information promptly which might affect eligibility for a loan or the amount of loan for which they are eligible, or
 - (ii) providing information which is inaccurate,

they will notify the increased amount to the eligible student who may apply to borrow an additional amount which when added to the amount already applied for must not exceed the increased maximum.

(10) Where an eligible student who has submitted an application for a loan in accordance with paragraph (1) has not applied for the maximum amount of loan to which they are entitled in relation to an academic year under the preceding paragraphs that student may apply to borrow an

additional amount, which when added to the amount already applied for must not exceed the maximum applicable in their case.

(11) An application under paragraphs (9) or (10) is made by completing and submitting to the Scottish Ministers an application in such form as they may require no later than the date the Scottish Ministers determine and will contain a declaration, either in writing or electronically, in the terms set out in paragraph (4).

(12) In this regulation “student loan account number” means the account number assigned by the lender to a loan made under the Act, the Teaching and Higher Education Act 1998, the Education (Student Loans) (Northern Ireland) Order 1990, the Education (Student Support) (Northern Ireland) Order 1998 or any regulations made under any of those instruments.

Transfers of eligibility

16.—(1) An eligible student may request that the Scottish Ministers transfer their eligibility in any case where—

- (a) on the recommendation of the academic authority of the institution concerned the eligible student starts to undertake another course at the institution,
- (b) with the written consent of the academic authorities of both institutions concerned, given on educational grounds, the eligible student starts to undertake a course at another institution,
- (c) after commencing a course for the Certificate in Education, the eligible student is, on or before the completion of that course, admitted to a course for the degree of Bachelor of Education,
- (d) after commencing a course for the degree (other than an honours degree) of Bachelor of Education the eligible student is, on or before the completion of that course, admitted to a course for the honours degree of Bachelor of Education, or
- (e) after commencing a course for a first degree (other than an honours degree) the eligible student is, before the completion of that course, admitted to a course for an honours degree in the same subject or subjects at the institution.

(2) Subject to paragraph (3) the Scottish Ministers, on being satisfied of the matters in paragraph (1) and that the second course is a designated course, are to transfer the eligible student's eligibility, and the eligible student will then for all purposes be an eligible student in connection with undertaking the second course, whether or not they might have been eligible for a loan if they had applied under regulation 15 (applications for loans).

(3) In relation to loans issued under regulation 11 (students eligible for student loans), the Scottish Ministers may, after consulting the academic authority concerned, refuse to transfer eligibility where paragraph (1)(a) or (b) applies if they are satisfied that when the student applied for a loan they did not intend to complete the course to which their application related.

(4) For the purposes of the duty of the Scottish Ministers to transfer eligibility where paragraph (1)(c) or (d) applies it is immaterial whether or not the two courses are provided by the same institution.

(5) In relation to loans issued under regulation 11, the Scottish Ministers will notify the eligible student of any change in the maximum amount of loan applicable in their case as a result of the transfer of their eligibility.

(6) An eligible student's eligibility for a loan may not be transferred after it has expired or been terminated under regulation 17 (termination of eligibility).

(7) In relation to loans issued under regulation 12 (loans for tuition fees for RUK institutions), an eligible student who transfers their eligibility after the Scottish Ministers have assessed that person's loan in connection with the academic year of the course from which they are transferring but before they complete that year may not, in connection with the academic year of the course to which they transfer, apply for another loan of a kind that they have already applied for under this Part in connection with the academic year of the course from which they are transferring.

Termination of eligibility

17.—(1) Subject to paragraph (2) an eligible student ceases to be eligible for a loan on—

- (a) the expiry of the period ordinarily required for the completion of the course, or
- (b) in relation to a loan issued under regulation 11 (students eligible for student loans), transferring from a full-time course to a part-time course,

and accordingly that person then ceases to be an eligible student.

(2) The Scottish Ministers may before or after an eligible student ceases to be an eligible student under paragraph (1) determine that that person continues to be eligible for a loan for such further period after the expiry of the period referred to in that paragraph as they specify, and that person is to be, or be considered to have been, an eligible student throughout that further period until its expiry.

(3) Where an eligible student has withdrawn from a course in circumstances where the Scottish Ministers have not transferred or will not transfer that person's eligibility to another course under regulation 16 (transfers of eligibility, or has abandoned or been expelled from their course, the Scottish Ministers will determine that that person is no longer eligible for a loan, and on such determination that person ceases to be an eligible student.

(4) Where the conduct of an eligible student has shown the eligible student to be unfit to receive a loan the Scottish Ministers may determine that that person is no longer eligible for a loan, and on such determination that person ceases to be an eligible student.

Provision of United Kingdom national insurance number

18.—(1) The Scottish Ministers may make it a condition of eligibility for a loan that the applicant must provide them with their United Kingdom national insurance number.

(2) Where the Scottish Ministers have imposed a condition under paragraph (1), they must not make any payment of the loan to the applicant before they are satisfied that the applicant has complied with that condition.

(3) Despite paragraph (2), the Scottish Ministers may make a payment of loan to an applicant if they are satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the applicant or eligible student having complied with the condition imposed under paragraph (1).

Information

19.—(1) Every applicant and every eligible student must as soon as reasonably practicable after being requested to do so provide the Scottish Ministers with such information as they consider necessary for the exercise of their functions under this Part.

(2) Every applicant and every eligible student must inform the Scottish Ministers and provide them with any further information that the Scottish Ministers consider necessary if any of the following occurs—

- (a) they withdraw from, abandon or are expelled from their course,
- (b) they transfer to another course, at the same or a different institution, whether or not the new course is a designated course,
- (c) they cease to undertake their course and do not intend to, or are not permitted to, return for the remainder of the academic year,
- (d) they are absent from their course for more than 60 days due to illness, or are absent from their course for any period for any other reason,
- (e) the month for the start or completion of the course changes, or
- (f) their home or term time address, email address, contact details for persons described in regulation 15(3)(c) (applications for loans), bank account or telephone number changes.

(3) If the Scottish Ministers are satisfied that an eligible student has wilfully failed to comply with any requirement to provide information, or has provided information that the student knows to be false, or has recklessly provided information which is false, they may determine that the student will—

- (a) no longer be eligible for any loan, or
- (b) not be eligible for such a particular loan or particular amount of loan as they consider appropriate in the circumstances.

(4) The Scottish Ministers may at any time require an applicant or eligible student to enter into an agreement to repay a loan by a particular method.

(5) The Scottish Ministers may at any time request from an applicant or eligible student sight of their valid national identity card, their valid passport issued by the state of which they are a national or their birth certificate.

(6) The Scottish Ministers may at any time verify with the Department for Work and Pensions the United Kingdom national insurance number that an applicant or eligible student has provided or may check with the Department for Work and Pensions whether that applicant or eligible student has such a number with a view to obtaining it if that applicant or eligible student does.

(7) Where the Scottish Ministers have requested information or documents under this regulation, they may withhold any payment of a loan until the applicant or eligible student provides what has been requested or provides a satisfactory explanation for not complying with the request.

(8) Where the Scottish Ministers have required the applicant or eligible student to enter into an agreement to repay a loan by a particular method, they may withhold any payment of a loan until the applicant or eligible student has entered into that agreement.

Maximum amounts of loans

20.—(1) In relation to a loan issued under regulation 11 (students eligible for student loans), the maximum amount of loan in respect of each academic year must—

- (a) not exceed any amount determined by the Scottish Ministers, or
- (b) different maximum amounts may be determined for different categories of student.

(2) In relation to a loan issued under regulation 12 (students eligible for student loans for tuition fees for RUK institutions), the maximum amount of loan in respect of each academic year must not exceed an amount determined by the Scottish Ministers, or the maximum amount of tuition fee charged to the student for the current academic year of the designated course which the student is undertaking.

Means Test

21.—(1) This regulation applies to loans issued under regulation 11 (students eligible for student loans).

(2) In determining the amount of a loan payable, the Scottish Ministers may take account of the sums, if any, which—

- (a) in accordance with the principles determined by them, and
- (b) after having regard to any sums taken into account under regulation 4(3) (amount of allowances), in determining the amount of an allowance payable to the eligible student under that Part,

the eligible student, the eligible student's parents, the eligible student's parents' partners and the eligible student's partner can reasonably be expected to contribute towards the eligible student's expenses.

(3) For the purpose of the exercise of their functions under this regulation, the Scottish Ministers may require an eligible student to provide such information as the Scottish Ministers consider necessary as to the income of any person whose means are relevant to the assessment of a contribution under this regulation.

Payment of loans

22.—(1) The Scottish Ministers may pay loans for which an eligible student has applied under this Part at such times and in such number of instalments (which need not be of equal amounts) as they consider appropriate.

(2) Paragraphs (3) to (12) apply to loans issued under regulation 11 (students eligible for student loans).

(3) The Scottish Ministers may make provisional payments pending the final calculation of the amount of loan for which the student is eligible.

(4) No instalment of a loan is to be paid in respect of the period of the academic year during which, in the opinion of the Scottish Ministers, the longest of any vacations is taken.

(5) Payments may be made in such a manner as the Scottish Ministers consider appropriate, and they may make it a condition of entitlement to payment that the eligible student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(6) Subject to regulation 16 (transfers of eligibility), no instalment is to be paid after an eligible student has withdrawn from, abandoned or been expelled from their course.

(7) No instalment is to be paid in respect of a period during any part of which an eligible student is absent from their course if attendance at the course is a requirement of it, unless in the opinion of the Scottish Ministers in all the circumstances it would be appropriate to pay all or part of the loan.

(8) In deciding whether it would be appropriate to pay all or part of the loan when an eligible student is absent from their course, the circumstances which the Scottish Ministers will have regard to include the reasons for the student's absence, the length of the absence and the financial hardship which not paying all or part of the instalment of loan would cause.

(9) An eligible student is not considered to be absent from their course if that student is unable to attend due to illness and their absence has not exceeded 60 days.

(10) If the payment of instalments has been suspended and before the end of the academic year the eligible student commences undertaking their course again the Scottish Ministers may pay further instalments but so that the amount lent in relation to that year does not exceed such amount as the Scottish Ministers in all the circumstances consider appropriate.

(11) Where the Scottish Ministers have paid any instalment of loan and the eligible student applies for an additional loan in respect of an academic year, the Scottish Ministers will pay the first instalment as soon as is reasonably practicable after a satisfactory application has been received and any subsequent instalments with instalments already payable.

(12) Where the Scottish Ministers have paid an instalment of loan for which a student is eligible in respect of an academic year and they make a determination that the amount of loan for which the student is eligible is less than the amount previously determined, either by way of revision of a provisional determination or otherwise—

- (a) they are to subtract such amount as is necessary to ensure that the student does not borrow an amount greater than the amount which that student is eligible to borrow from any instalments of loan which remain to be paid,
- (b) if the amount to be subtracted is greater than the amount of loan remaining to be paid that amount is reduced to nil,
- (c) any remaining overpayment is to be recovered in accordance with regulation 23 (overpayments).

Overpayments

23.—(1) This regulation applies to a loan issued under regulation 11 (students eligible for student loans).

(2) Any overpayment of a loan in respect of any academic year may be recovered by the Scottish Ministers if, in their opinion—

- (a) the overpayment is a result of a failure of the student to provide promptly information which might affect their eligibility for a loan or the amount of loan for which that student is eligible, or
- (b) any information which that student has provided is inaccurate,

but otherwise it is treated as a loan properly made under this Part which is repayable in accordance with the Act and any regulations made under it.

(3) Where an overpayment of loan is treated, by virtue of paragraph (2), as a loan properly made, the Scottish Ministers may subtract the overpayment from the amount of loan for which the student is eligible in respect of any other academic year.

(4) Where an overpayment of loan is recoverable in accordance with paragraph (2) it is to be recovered in one or more of the following ways as the Scottish Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from the amount of loan for which the student is eligible in respect of any other academic year,
- (b) where a student upon completion of their course immediately commences another course (disregarding any intervening vacation) by subtracting the overpayment from the amount of any loan for which that person is eligible in respect of any academic year in connection with the second course,
- (c) by taking such other action for the recovery of a payment made without statutory authority as is available to them.

Interest

24.—(1) Subject to paragraph (2), if the Scottish Ministers determine that loans are to bear interest, loans made in each 12 month period commencing on 1st September will bear interest at a rate which will result in an annual percentage rate of charge determined in accordance with rules made by the Financial Conduct Authority under article 60M (total charge for credit) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(a) (“the Order”) for the purposes of Chapter 14A (regulated credit agreements) of Part 2 of the Order equal to the percentage by which the retail prices all items index published by the Office for National Statistics for the month of March immediately preceding the commencement of that period has increased compared with that for the previous March.

(2) If the rate in paragraph (1) exceeds the rate for the time being specified by article 60G(3)(d) (exempt agreements: exemptions relating to the total charge for credit) of the Order, loans will bear interest at the rate so specified.

(3) Interest is calculated on the principal outstanding daily, and is added to the principal monthly.

Insolvency

25. Where, before, on or after the date of sequestration of an eligible student’s estate, that student receives, or is entitled to receive, sums by way of loan—

- (a) the Accountant in Bankruptcy must not, in fixing an amount under section 90 (debtor contribution order) of the Bankruptcy (Scotland) Act 2016^(b) (“the 2016 Act”) treat the sums as income of the eligible student,
- (b) for the purpose of section 86(5) (further provision as regards vesting of estate) of the 2016 Act the sums are not to be treated as estate vesting in, or requiring to be conveyed or delivered to, the eligible student’s permanent trustee, and
- (c) any debt or liability to which the eligible student is, or may become, subject in respect of the sums is not to be treated as a debt or liability—

(a) S.I. 2001/544.

(b) 2016 asp 21.

- (i) for the purposes of the sequestration (or of any offer of composition to the permanent trustee), or
- (ii) from which the eligible student is discharged on the expiry of a period after the date of sequestration, under or by virtue of section 137 (discharge of debtor where Accountant in Bankruptcy not trustee), 138 (discharge of debtor where Accountant in Bankruptcy trustee) or 140 (discharge of debtor to whom section 2(2) applies) of the 2016 Act.

PART 5

Bursaries

Exercise of power to grant a bursary

26.—(1) The power of an education authority to grant a bursary in accordance with section 49(1) or (2) (power of education authorities to assist persons to take advantage of educational facilities) of the Act—

- (a) is to be exercised in accordance with the following provisions of this Part, and
- (b) is not to be exercised except in relation to a person described in one or more paragraphs of schedule 1.

(2) Schedule 3 is to 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.

Amount of bursaries

27.—(1) The amount of a bursary is to be determined by the education authority and may include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the bursary,
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in undertaking the course of study for which the bursary is awarded,
- (c) the maintenance of the holder and of any person dependent on the holder during periods of full-time study and during vacations, and
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) A bursary payable to or in respect of a person who is eligible for a bursary only by virtue of Part 2 of schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.

(3) In determining the amount of a bursary, the education authority may take account of the sums, if any, which in their opinion the holder of the bursary, the holder's parents and the holder's spouse or civil partner can reasonably be expected to contribute towards the holder's expenses.

(4) The amount of a bursary may be revised at any time if the education authority think fit having regard to—

- (a) the failure of the holder to comply with the conditions of the bursary,
- (b) all the circumstances of the holder, their parents, their spouse or civil partner or any as the case may be, or
- (c) any error made in the computation of the amount of the bursary.

Conditions of bursary

28.—(1) Every bursary is held subject to the following conditions—

- (a) the holder must regularly attend the course of study for which the bursary is awarded,
- (b) the education authority must be satisfied as to the conduct and progress of the holder, and
- (c) the holder must provide the education authority with such information and such documents as they may require to enable them to exercise their functions under this Part.

(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 education authority, makes it unnecessary for the holder to be assisted by means of a bursary, the education authority may suspend payment of the bursary or terminate the bursary.

(3) It is to be a condition of payment of a bursary that the applicant gives a written undertaking to pay to the education authority any amount of which they may request repayment in the circumstances specified in paragraph (4) and that, if the applicant is below the age of legal capacity and has any parent or guardian, the parent or guardian must consent to the undertaking.

(4) Where the education authority are satisfied that there has been an overpayment of bursary for any reason and request repayment of the overpayment or any part of that as they think fit, and the holder of the bursary has given an undertaking under paragraph (3), the holder of the bursary is obliged to pay to the education authority the amount requested.

PART 6

Education maintenance allowances

Exercise of power to grant an education maintenance allowance

29.—(1) The Scottish Ministers may pay an education maintenance allowance in accordance with section 73(f) (power of Secretary of State to make grants to education authorities and others) of the Act and this Part to any person undertaking a course of education in the United Kingdom and Islands who—

- (a) is deemed to have attained the age of 16 years under section 33 (school leaving dates), of the Act,
- (b) has not, on the relevant date, attained the age of 20 years, and
- (c) is described in one or more paragraphs of schedule 1.

(2) Schedule 3 is to 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) In this Part—

- (a) “course of education” means a full time—
 - (i) course of school education,
 - (ii) course of non-advanced education undertaken at a home within an area of an education authority and approved by that education authority, or
 - (iii) course of non-advanced education undertaken elsewhere within an area of an education authority under the supervision of that education authority,
- (b) “course of non-advanced education” means any course which prepares a person to a standard not higher than that required for—
 - (i) a qualification awarded by the Scottish Qualifications Authority, or
 - (ii) a General Certificate of Education qualification of England and Wales or Northern Ireland.

Amount of education maintenance allowances

30.—(1) The amount of an education maintenance allowance is 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 this regulation—

- (a) “holder's spouse”, where the Scottish Ministers consider it appropriate, includes 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”, where the Scottish Ministers consider it appropriate, includes 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

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

- (a) the holder of the educational maintenance allowance must 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 must be satisfied as to the conduct and progress of that holder, and
- (c) that holder must provide the Scottish Ministers with such information and such documents as they may require to enable them to exercise their functions under this Part.

(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 is to 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 any part of that as they think fit, the holder of the education maintenance allowance is obliged to pay to the Scottish Ministers the amount requested.

PART 7

Revocations

32. The regulations listed in schedule 5 are revoked.

St Andrew's House,
Edinburgh
4th May 2022

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

PERSONS ELIGIBLE FOR STUDENT SUPPORT

PART 1

PERSONS ELIGIBLE FOR TUITION FEE AND LIVING COST SUPPORT

Persons who are settled in the United Kingdom or have long residence

1. A person who on the relevant date—
- (a) is ordinarily resident in Scotland,
 - (b) has been ordinarily resident in the United Kingdom and Islands throughout the immediately preceding 3 year period, and
 - (c) is—
 - (i) settled in the United Kingdom within the meaning given by section 33(2A) (interpretation) of the Immigration Act 1971(a),
 - (ii) under the age of 18 and has lived in the United Kingdom and Islands throughout the seven-year period preceding the relevant date,
 - (iii) aged 18 or above and, preceding the relevant date, has lived in the United Kingdom and Islands throughout either half their life or a period of twenty years,
 - (iv) aged 18 or above and received support by virtue of head (ii) for the academic year immediately preceding the relevant date, or
 - (v) the spouse, civil partner or child of a person described in head (i).

EU nationals etc. with protected rights who have been living in the UK and Islands for three years

- 2.—(1) A person with protected rights who—
- (a) is an EU national or the family member of an EU national,
 - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date, and
 - (c) is ordinarily resident in Scotland on the relevant date.
- (2) For the purposes of this paragraph—
- (a) a person referred to in sub-paragraph (1)(a) does not include an EU national who is also 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—
 - (i) exercised a right under Article 7 (right of residence for more than three months) of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland agreement in a state other than the United Kingdom, or
 - (ii) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom, and
 - (bb) of which that person is a national,

(a) 1971 c. 77.

in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland agreement.

- (c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2(1) (interpretation).

(3) Where a person eligible under this paragraph is seeking a loan under regulation 11 (students eligible for student loans) in respect of a taught course leading to a postgraduate diploma or to a postgraduate masters degree, or a research course leading to a postgraduate masters degree, at an establishment in Scotland—

- (a) the requirement in sub-paragraph (1)(b) is to be read as a requirement to have been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area or Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (b) the requirement in sub-paragraph (1)(c) to be ordinarily resident in Scotland on the relevant date does not apply.

Irish nationals who are settled in the United Kingdom

3. A person who—

- (a) is an Irish national,
- (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
- (c) is ordinarily resident in Scotland on the relevant date, and
- (d) has been ordinarily resident in the United Kingdom, Islands or Ireland throughout the period of three years immediately preceding the relevant date.

Family members of a relevant person of Northern Ireland

4. A person who—

- (a) is a family member of a relevant person of Northern Ireland as defined in paragraph (b) of the definition of “person with protected rights”,
- (b) is ordinarily resident in Scotland on the relevant date, and
- (c) has been ordinarily resident in the United Kingdom, Islands or Ireland throughout the period of three years immediately preceding the relevant date.

Workers, employed persons, self-employed persons and their family members

5.—(1) A person with protected rights or a qualifying frontier worker who—

- (a) is—
- (i) an EEA migrant worker or an EEA self-employed person,
 - (ii) a Swiss employed person or a Swiss self-employed person,
 - (iii) a family member of a person mentioned in sub-head (i) or (ii),
 - (iv) an EEA frontier worker or an EEA frontier self-employed person,
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
 - (vi) a family member of a person mentioned in sub-head (iv) or (v),
- (b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (c) subject to sub-paragraph (3), is ordinarily resident in Scotland on the relevant date.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020^(a) who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.

Workers who benefitted from the Freedom of Movement for Workers Regulation—

6. A person with protected rights who—

- (a) is entitled to support by virtue of Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union^(b), as extended by the EEA agreement,
- (b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (c) is ordinarily resident in Scotland on the relevant date.

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

7.—(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
- (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
- (c) was ordinarily resident on IP completion day in—
 - (i) Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) the United Kingdom or Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,

and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the relevant date,

- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (e) is undertaking a course for which the relevant date is earlier than 31 July 2028.

(2) For the purposes of this paragraph, a person has utilised a right of residence if that person—

- (a) is—
 - (i) a United Kingdom national,

(a) 2020 No. 1213.

(b) OJ L 141, 27.5.2011, p.1.

- (ii) a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding provisions under the EEA agreement or the Switzerland Agreement)), or
 - (iii) a person who had a right of permanent residence arising under Directive 2004/38, and
- (b) either—
- (i) 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, or
 - (ii) in the case of a person who had a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.

(3) Sub-paragraph (1)(a) 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 not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii) and is accompanying or joining that United Kingdom national in the United Kingdom.

Refugees

8. A person who—

- (a) at the date that the Scottish Ministers received their application for student support is—
 - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first recognised as a refugee, or
 - (ii) is the spouse, civil partner or child of such a refugee, and
- (b) is ordinarily resident in Scotland on the relevant date.

Persons granted leave following on from refugee claim

9. A person who—

- (a) (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and that person has been granted leave to enter or remain accordingly,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Iraqi nationals

10. A person who—

- (a) (i) is an Iraqi national who has been granted indefinite leave to enter the United Kingdom under the Locally Engaged Staff Assistance Scheme (Direct Entry) operated by the Home Office,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such indefinite leave to enter the United Kingdom, and
- (iii) is ordinarily resident in Scotland on the relevant date, or

- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Syrian nationals

11. A person who—

- (a) (i) is a Syrian national who has been granted humanitarian protection to enter the United Kingdom under the Syrian Vulnerable Persons Relocation Scheme operated by the Home Department,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such humanitarian protection to enter the United Kingdom, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Afghan nationals

12. A person who—

- (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme(a) operated by the Home Department,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Relocated Afghan citizens

13. A person who—

- (a) (i) has been granted leave under the Afghan Citizens Resettlement Scheme(b) or granted leave under the Afghan Relocations and Assistance Policy Scheme,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Ukrainian nationals

14.—(1) A person who—

- (a) (i) has made a relevant application to the United Kingdom Home Office where that relevant application is still being considered, or
- (ii) has been granted leave to remain following a relevant application, and
- (b) is ordinarily resident in Scotland.

(a) A copy of the Locally Employed Staff Ex-Gratia Scheme can be viewed at <https://www.gov.uk/government/publications/afghanistan-locally-employed-staff-ex-gratia-scheme?msclkid=eb3bcf90c7b011ec9e31d7ef58015018>.

(b) A copy of the Afghan Relocations and Assistance Policy Scheme can be viewed at <https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy?msclkid=2a8bc686c7a511ec8a2b8132cb36424d>.

- (2) In this paragraph, a ‘relevant application’ is an application to—
- (a) the Ukraine Family Scheme(a),
 - (b) the Ukraine Sponsorship Scheme(b),
 - (c) the Ukraine Extension Scheme(c), or
 - (d) the United Kingdom Home Office for leave outside the immigration rules(d), as defined in section 33(1) of the Immigration Act 1971, where the person—
 - (i) was residing in Ukraine immediately before 1 January 2022, and
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022

by an individual who is eligible to apply for that scheme.

Persons granted stateless leave

15. A person who—

- (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Office,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted that leave, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Persons granted discretionary leave to remain as a victim of modern slavery

16.—(1) A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in Scotland on the relevant date.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.

-
- (a) A scheme operated by the Home Office enabling a Ukrainian national, or the immediate family member of a Ukrainian national resident in Ukraine prior to 1 January 2022, to join family members or to extend their stay in the United Kingdom. The current Home Office guidance in relation to the Ukraine Family Scheme is available here: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclkid=d2811a9ac7a511ec885bf3a88e71ccca>.
 - (b) A scheme operated by the Home Office enabling the sponsorship of Ukrainian nationals, or the immediate family member of a Ukrainian national resident in Ukraine prior to 1 January 2022 to come to the United Kingdom. The current Home Office guidance in relation to the Ukraine Sponsorship Scheme (Homes for Ukraine Scheme) is available here: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclkid=ecaf79fac7a511ecbf7adee0a78bac5b>.
 - (c) A scheme opening on 3 May 2022 and operated by the Home Office enabling a Ukrainian national who is in the United Kingdom and had permission to stay in the United Kingdom on or before 18 March 2022 to stay in the United Kingdom. The scheme enables the partner or children of the Ukrainian national to apply to stay in the United Kingdom provided they are already in the United Kingdom as the Ukrainian national’s ‘dependants’. The current Home Office guidance in relation to the Ukraine Extension Scheme is available here: <https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-and-ukrainian-nationals-in-ukraine-and-the-uk?msclkid=08bb96fec7a611ecb081f266e6480fd0>.
 - (d) The immigration rules can be viewed at <https://www.gov.uk/guidance/immigration-rules?msclkid=b1df136cc7ce11ecb8f75116c530e06c>.

Persons granted indefinite leave to remain as a victim of domestic violence or domestic abuse

17. A person who—

- (a) has been granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules, as defined in section 33(1) of the Immigration Act 1971—
 - (i) paragraph 289B (victims of domestic violence),
 - (ii) paragraph D-DVILR.1.1. of Appendix FM (victims of domestic abuse), or
 - (iii) paragraph 40 of Appendix Armed Forces (partners of members of HM Forces who are the victims of domestic violence),
- (b) has been ordinarily resident in the United Kingdom and Islands since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

Persons granted Calais leave

18. A person who—

- (a) has extant leave to remain in the United Kingdom under paragraph 352J, 352K, 352L or 352T (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave) of the immigration rules, as defined in section 33(1) of the Immigration Act 1971,
- (b) has been ordinarily resident in the United Kingdom and Islands since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

Children of Swiss nationals

19. A person with protected rights who—

- (a) is the child of a Swiss national,
- (b) is entitled to support in the United Kingdom by virtue of Article 18(2) (related rights) of the Swiss citizens’ rights agreement,
- (c) is ordinarily resident in Scotland on the relevant date,
- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.

Children of Turkish workers

20.—(1) A person who—

- (a) is the child of a Turkish worker (“T”), where T was ordinarily resident in the United Kingdom immediately before IP completion day,
- (b) was ordinarily resident in the United Kingdom immediately before IP completion day,
- (c) is ordinarily resident in Scotland on the relevant date, and
- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.

(2) In this paragraph “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.

PART 2

PERSONS ELIGIBLE FOR TUITION FEE SUPPORT ONLY

EU nationals etc with protected rights who have not been living in the UK and Islands for 3 years

21. A person with protected rights who—

- (a) is either an EU national or the family member of an EU national,
- (b) seeks support in respect of a course of education at an establishment in Scotland, and
- (c) is ordinarily resident in the United Kingdom and Islands on the relevant date.

Persons who are children of asylum seekers or young asylum seekers

22.—(1) A person who—

- (a) is the child of an asylum seeker or is a young asylum seeker,
- (b) is resident in Scotland on the relevant date,
- (c) has been resident in Scotland throughout the period of 3 years immediately preceding the relevant date,
- (d) was under 18 years old on the date when the application for asylum was made, which application must have been made before 1st December 2006, and
- (e) is under 25 years old on the relevant date, and
- (f) seeks an allowance in respect of a course of education at an establishment of Scotland.

(2) In this paragraph “young asylum seeker” means an unaccompanied asylum-seeker under the age of 18.

SCHEDULE 2

Regulations 11(2)(a),
11(6) and 11(7)

PERSONS ELIGIBLE FOR TUITION FEE LOAN ONLY

United Kingdom nationals formerly resident in the EEA and Switzerland

1.—(1) A person who—

- (a) is—
 - (i) a United Kingdom national, or
 - (ii) a family member of a UK national,
- (b) was ordinarily resident on IP completion day—
 - (i) in the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in the territory comprising the European Economic Area and Switzerland, and has remained ordinarily resident in the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland from IP completion day to the relevant date,
- (c) is ordinarily resident in Scotland on the relevant date,
- (d) has been ordinarily resident in the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (e) is undertaking a course for which the relevant date is earlier than 31 July 2028.

(2) Where a person (“P”) falls within sub-paragraph (1)(a)(ii), the person in relation to whom P is a family member must also meet the requirements of sub-paragraph (1)(b) and (d).

Residents of Ireland

2. A person who—

- (a) is an Irish national or a United Kingdom national,
- (b) is ordinarily resident in Ireland on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (d) is undertaking a course in Scotland.

Residents of Gibraltar

3. A person who—

- (a) is—
 - (i) a United Kingdom national, or
 - (ii) an EU national with a right of residence in Gibraltar arising under the EU withdrawal agreement,
- (b) is ordinarily resident in Gibraltar,
- (c) is undertaking a course in Scotland,
- (d) has been ordinarily resident in the territory comprising the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (e) is undertaking a course for which the relevant date is earlier than 31 July 2028.

SCHEDULE 3

Regulations 3(3), 7(3), 11(8),
12(6), 26(2) and 29(2)

ORDINARY RESIDENCE

Ordinary residence on relevant date

1.—(1) For the purposes of schedule 1 a person is to be treated as being ordinarily resident in Scotland on the relevant date if the Scottish Ministers or, for the purposes of a bursary granted under regulation 26(1) (exercise of power to grant a bursary), the education authority, are satisfied that 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 employed outside Scotland, or attending a course of study or undertaking postgraduate research outside Scotland.

(2) Subject to sub-paragraph (3), a person is not to be treated as being ordinarily resident in Scotland on the relevant date if the Scottish Ministers or applicable education authority are satisfied that their residence there on that date is attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date which was wholly or mainly for the purpose of receiving full-time education.

(3) Sub-paragraph (2) does not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

Ordinary residence for specified period: general and interpretation

2. Paragraphs 3 to 5 apply in determining, for the purposes of —

- (a) paragraph 1(b) (persons who are settled in the United Kingdom or have long residence),
- (b) paragraph 2(1)(b) (EU nationals etc. with protected rights who have been living in the UK and Islands for three years),
- (c) paragraph 3(d) (Irish nationals who are settled in the United Kingdom),
- (d) paragraph 5(1)(b) (workers, employed persons, self-employed persons and their family members),
- (e) paragraph 6(b) (workers who benefitted from the Freedom of Movement for Workers Regulation),
- (f) paragraph 7(1)(d) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere),
- (g) paragraph 19(d) (children of Swiss nationals), and
- (h) paragraph 20(1) (d) (children of Turkish workers)

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 schedule “specified period”) in the United Kingdom, the Islands, Gibraltar, Ireland, the European Economic Area or Switzerland or the EU overseas territories or Turkey (in this schedule “relevant area”).

Ordinary residence for specified period: exclusion for education purposes

3.—(1) A person is not to be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers or, for the purposes of a bursary granted under regulation 26(1) (exercise of power to grant a bursary), the education authority are satisfied that

that person was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(2) Sub-paragraph (1) does not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the person must have been ordinarily resident in the United Kingdom, Islands, Gibraltar or in the territory comprising the European Economic Area and Switzerland immediately before the start of that period of residence.

(3) A person 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) A person 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.

Ordinary residence for specified period: length of residence requirements for dependent and independent students born in the relevant area

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

- (a) one or more parent has 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 1 year of the specified period and no part of that period of residence was wholly or mainly for the purpose of receiving full-time education.
- (c) Sub-paragraph (1)(b) does not apply to those qualifying by virtue of paragraph 2 (“EU nationals etc with protected rights”) of schedule 1 in relation to student loans issued under regulation 11 (students eligible for student loans).

(2) Subject to sub-paragraph (4), “independent student” means a student who on the relevant date—

- (a) is aged 25,
- (b) is married or in a civil partnership,
- (c) has no parent living,
- (d) has the care of a person under the age of 18 who is wholly or mainly financially dependent on them, or
- (e) has supported themselves out of their earnings for periods aggregating not less than 3 years.

(3) In sub paragraph 2(e) a student is regarded as having supported themselves out of their earnings for any period during which that student—

- (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 such state authority or agency, 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 state authority or agency 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, by an employer or any former employer or by any other person, or

(e) held an advanced postgraduate award or comparable award.

(4) For the purposes of Part 6 (education maintenance allowances), “independent student” in sub-paragraph (1)(a) means a person who on the relevant date—

- (a) is married or in a civil partnership,
- (b) has no parent or guardian living,
- (c) does not reside with, has no regular contact with and receives no financial support from a parent or guardian,
- (d) is a parent to whom child benefit is being paid,
- (e) is in receipt of income support, universal credit or income-related employment and support allowance payable under Part 1 (employment and support allowance) of the Welfare Reform Act 2007(a),
- (f) is a person being looked after and provided with accommodation by a local authority or equivalent organisation, or
- (g) is a person, formerly looked after by a local authority or equivalent organisation, who does not reside with, has no regular contact with and receives no financial support from a parent or guardian.

Ordinary residence for specified period: temporary absence for employment or study

5. A student is treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that the person was not actually so resident in the relevant area for the specified period only because—

- (a) that student, or their spouse or civil partner, or either of their parents, either of their guardians or any other person having parental responsibility for that person, or
- (b) in the case of a dependant direct relative in the ascending line, the child upon whom that student was dependent or that child’s spouse or civil partner,

was temporarily employed outside the relevant area, or attending a course of study or undertaking postgraduate research outside the relevant area.

(a) 2007 c. 5.

SCHEDULE 4 Regulations 13(1)(a) and 14(1)(a)
DESIGNATED COURSES

PART 1

**COURSES DESIGNATED FOR STUDENT LOANS AND STUDENT LOANS
FOR TUITION FEES**

- 1.** A first degree course other than a course referred to in paragraph 3.
- 2.** A course for the Diploma of Higher Education.
- 3.** A course for the initial training for teachers, including such a course leading to a first degree.
- 4.** A course for the further training of teachers or youth and community workers.
- 5.** A course in preparation for a professional examination of a standard higher than that of—
 - (a) examinations at advanced level for the General Certificate of Education,
 - (b) the examination at higher level for the Scottish Certificate of Education, or
 - (c) the examination for the National Certificate or the National Diploma of the Scottish Qualifications Authority,not being a course for entry to which a first degree (or equivalent qualification) is normally required.
- 6.** A course providing education (whether or not in preparation for an examination) the standard of which is—
 - (a) higher than that of courses providing education in preparation for any of the examinations mentioned in paragraph 5(a), (b) or (c) above, but
 - (b) not higher than that of a first degree course,and for entry to which a first degree (or equivalent qualification) is not normally required.
- 7.** A course for the Certificate of Higher Education.

PART 2

COURSES DESIGNATED FOR STUDENT LOANS ONLY

- 8.** A course for the Higher National Diploma or Higher National Certificate of the Scottish Qualifications Authority.
- 9.** A taught course leading to a postgraduate diploma.
- 10.** A taught course leading to a postgraduate masters degree.
- 11.** A research course leading to a postgraduate masters degree.

SCHEDULE 5
REVOCATIONS

Regulation 32

<i>Regulations revoked</i>	<i>References</i>
The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006	S.S.I. 2006/333
The Education Authority Bursaries (Scotland) Regulations 2007	S.S.I. 2007/149
The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007	S.S.I. 2007/151
The Students' Allowances (Scotland) Regulations 2007	S.S.I. 2007/153
The Education (Student Loans) (Scotland) Regulations 2007	S.S.I. 2007/154
The Education Maintenance Allowances (Scotland) Regulations 2007	S.S.I. 2007/156

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Students' Allowances (Scotland) Regulations 2007 (S.S.I. 2007/153), ("the Allowances Regulations"), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (S.S.I. 2007/151), (the Nursing and Midwifery Allowances Regulations"), the Education (Student Loans) (Scotland) Regulations 2007 (S.S.I. 2007/154), ("the Student Loans Regulations"), the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (S.S.I. 2006/333), ("the SLTF Regulations"), the Education Authority Bursaries (Scotland) Regulations 2007 (S.S.I. 2007/149) ("the Bursaries Regulations") and the Education Maintenance Allowances (Scotland) Regulations 2007 (S.S.I. 2007/156) ("the EMA Regulations").

In addition to minor and drafting alterations, these Regulations revoke and replace those six sets of regulations and make amendments to extend eligibility of student support to new categories of students. These include Afghan nationals who have been granted leave under the Afghan Resettlement Scheme or under the Afghan Relocation and Assistance Policy Scheme (paragraph 13 of schedule 1) and those who have applied to the Ukraine Family Scheme, Ukraine Sponsorship Scheme, the Ukraine Extension Scheme or for leave outside the immigrations rules, and have either been granted leave or have an outstanding application to that scheme (paragraph 14 of schedule 1.)

Parts 2 to 6 regulate the exercise by the Scottish Ministers or education authorities of their powers under the Education Scotland Act 1980 to pay student support to or for persons who fulfil certain criteria as to eligibility and they prescribe the conditions and requirements subject to which student support may be paid.

Part 2 consolidates the Allowances Regulations and regulates the provision of allowances provided to or for eligible students attending courses of education.

Part 3 consolidates the Nursing and Midwifery Allowances Regulations and extends support to those persons undertaking a course of education in paramedic science. This Part regulates the provision of allowances to or for persons undertaking courses of education in nursing and midwifery

Part 4 consolidates and amalgamates the Student Loans Regulations and SLTF Regulations. It regulates the provision of loans for students studying in Scotland, and loans for tuition fees for eligible students attending designated courses provided by an institution located in the UK but outside Scotland ("an RUK institution").

Part 5 consolidates the Bursaries Regulations and regulates the provision by education authorities of bursaries for persons undertaking courses of study in their area.

Part 6 consolidates the EMA Regulations and regulates the provision of education maintenance allowances to persons undertaking courses of education.

Schedule 1 and 2 list the categories of students eligible for the various forms of student support.

Schedule 3 determines whether a person is to be treated as being, or having been, ordinarily resident in a place at, or for, a particular time.

Schedule 4 lists courses which are designated for the purposes of student loans or student loans for tuition fees at RUK institutions.

Schedule 5 lists the Regulations being revoked.

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