

1987 No. 864 (S.68)

EDUCATION, SCOTLAND

The Students' Allowances (Scotland) Regulations 1987

<i>Made</i> - - - -	<i>11th May 1987</i>
<i>Laid before Parliament</i>	<i>14th May 1987</i>
<i>Coming into force</i>	<i>4th June 1987</i>

The Secretary of State, in exercise of the powers conferred on him by sections 73(f) and 74(1) of the Education (Scotland) Act 1980(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Students' Allowances (Scotland) Regulations 1987 and shall come into force on 4th June 1987.

Interpretation

- 2.—(1) In these Regulations—

“allowance” means an allowance paid or to be paid under these Regulations or the Regulations revoked by these Regulations;

“British Islands” means the United Kingdom, the Channel Islands and the Isle of Man;

“employment” includes the holding of any office and any occupation for gain, and “employed” shall be construed accordingly;

“European Community” means the area consisting of the member states of the European Economic Community (including the United Kingdom) as constituted from time to time;

“National of a member state of the European Community” means a person who is a national for the purposes of the Community Treaties of any member state of the European Economic Community (including the United Kingdom) as constituted from time to time;

“qualification” includes authorisation, recognition, registration, enrolment, approval and certification;

“refugee” means—

- (a) a person who is recognised by Her Majesty's Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951(b) as extended by the Protocol thereto which entered into force on 4th October 1967(c), or

- (b) a person who enjoys asylum in the United Kingdom in pursuance of a decision of Her Majesty's Government though not so recognised;

“vocational training establishment” means a further education establishment being a vocational school within the meaning of Article 7 of Council Regulation (EEC) No. 1612/68(d) on freedom of movement of workers within the Community.

(a) 1980 c.44.

(b) Cmnd. 9171.

(c) Cmnd. 3906. (Out of print: photocopies are available free from Awards Branch, Scottish Education Department, Haymarket House, Clifton Terrace, Edinburgh EH12).

(d) O.J. No. L257, 19.10.68, p. 2. (O.J./S.E. 1968 (II), p. 475).

- (2) In these Regulations any reference to a “qualifying day” in relation to a course of study means—
- (a) as respects a course starting in the autumn term of any year, 30th June in that year;
 - (b) as respects a course starting in the spring term of any year, 31st October in the year preceding that year; and
 - (c) as respects a course starting in the summer term of any year, the last day of February in that year.
- (3) In these Regulations any reference to a “relevant date” in relation to a course of study is—
- (a) as respects a course starting in the autumn term of any year, a reference to the earlier of 31st August in that year or the first day of that term;
 - (b) as respects a course starting in the spring term of any year, a reference to the earlier of 31st December in the year preceding that year or the first day of that term; and
 - (c) as respects a course starting in the summer term of any year, a reference to the earlier of 31st March in that year or the first day of that term.
- (4) In these Regulations any reference to a person being “ordinarily resident” in Scotland on the qualifying day includes—
- (a) a person whom the Secretary of State is satisfied to have been not so resident only because he, his spouse, or his parent was for the time being—
 - (i) employed outside Scotland; or
 - (ii) attending a course of study or undertaking postgraduate research outside Scotland; and
 - (b) a person who, in accordance with paragraph 9(3)(c) of the Education (Mandatory Awards) Regulations 1986(a), is treated as ordinarily resident in the area in which the establishment providing his course is situated, if that establishment is in Scotland.
- (5) In these Regulations any reference to a person being “ordinarily resident” in the British Islands or in the European Community for a period includes—
- (a) a person whom the Secretary of State is satisfied to have been born and to have spent the greater part of his life in the British Islands or, as the case may be, the European Community; and either—
 - (i) his parents or either of them have been ordinarily resident in the British Islands or, as the case may be, the European Community throughout the period of 3 years immediately preceding the relevant date (as defined in paragraph (3) above) and he himself is not an independent student; or
 - (ii) whether or not he is an independent student, he has been ordinarily resident for at least one year of that period in the British Islands or, as the case may be, the European Community, provided that the Secretary of State is also satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; and
 - (b) a person whom the Secretary of State is satisfied to have been not so resident only because he, his spouse, or his parent was for the time being—
 - (i) employed outside the British Islands or, as the case may be, the European Community; or
 - (ii) attending a course of study or undertaking post graduate research outside the British Islands or, as the case may be, the European Community.
- (6) In these Regulations any reference to an “independent student” means a student who prior to the relevant date (as defined in paragraph (3) above) has—
- (i) attained the age of 25 years; or
 - (ii) been married for at least 3 years; or
 - (iii) supported himself out of his earnings for periods aggregating not less than 3 years; or
 - (iv) no parent living,
- and a student will be regarded as having supported himself out of his earnings for any period or periods, for which—

(a) S.I. 1986/1306.

- (a) the student was in receipt of training in pursuance of the Manpower Services Commission's Training Opportunities Programme, Youth Opportunities Programme, or Youth Training Scheme; or
- (b) the student was in receipt of unemployment benefit under section 14(1)(a) of the Social Security Act 1975(a); or
- (c) before 24th November 1980(b), the student was registered for employment; or
- (d) on and after that date but before 18 October 1982, the student was registered and available for employment; or
- (e) on and after 18th October 1982, the student was available for employment and, if under the age of 18 years, registered for employment; or
- (f) the student held a Scottish Studentship or comparable award; or
- (g) the student received sickness benefit, invalidity pension, maternity allowance or severe disablement allowance under section 14(1)(b), 15(1)(b), 22(1) or 36(1) of the Social Security Act 1975(c); or
- (h) the student had the care of a person under the age of 18 years who was dependent on him;

and for the purposes of this definition any reference to a person registered or available for employment is a reference to his being so registered or available for the purposes of section 5 of the Supplementary Benefits Act 1976(d), and any reference to a provision contained in the Supplementary Benefits Act 1976 or the Social Security Act 1975 is a reference to that provision as from time to time in force.

(7) In these Regulations any reference to a person's child includes a reference to a person adopted in pursuance of adoption proceedings, a stepchild and an illegitimate child of whom the person concerned is the mother or in whose case the person has admitted paternity or has been adjudged the putative father; and "parent" shall be construed accordingly.

Revocations

3. The Regulations listed in the Schedule hereto are hereby revoked.

Payment of allowances

4. The Secretary of State may pay an allowance, in accordance with the provisions of section 73(f) of the Education (Scotland) Act 1980 and these Regulations, to or in respect of any person attending a course of education who satisfies the requirements specified in regulation 5.

Persons eligible for an allowance

5. An allowance may be paid only to or in respect of a person who satisfies one of the following requirements:-

- (a) (i) he is ordinarily resident in Scotland on the qualifying day in relation to the course in respect of which he seeks an allowance, provided that his residence there on that day is not in any sense attributable to or connected with any period of residence within 3 years immediately preceding the relevant date as respects any part of which the Secretary of State is of the opinion that its purpose was wholly or mainly that of receiving full-time education; and
- (ii) he has been ordinarily resident throughout the period of 3 years preceding the relevant date in the British Islands, provided that the Secretary of State is satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; or
- (b) (i) he is the child of a national of a member state of the European Community, provided that the national-
 - (1) where employed on the qualifying day, is then in employment in the United Kingdom; or

(a) 1975 c.14.

(b) On that date Schedule 2 to the Social Security Act 1980 (c.30), which made relevant amendments to the Supplementary Benefits Act 1976 (c.71), came into force by virtue of S.I. 1980/729.

(c) Section 36 was substituted by section 11 of the Health and Social Security Act 1984 (c.48).

(d) 1976 c.71; section 5 was substituted by section 38(1) of the Social Security and Housing Benefits Act 1982 (c.24).

- (2) where not employed on the qualifying day (by reason of retirement or otherwise), was last employed in such employment; or
- (3) whether or not employed on the qualifying day, has been, during the 3 year period preceding that date, in such employment for an aggregate period of not less than a year; and
- (ii) he is ordinarily resident in Scotland on the qualifying day in relation to the course in respect of which he seeks an allowance, provided that his residence there on that day is not in any sense attributable to or connected with any period of residence within 3 years immediately preceding the relevant date as respects any part of which the Secretary of State is of the opinion that its purpose was wholly or mainly that of receiving full-time education; and
- (iii) he has been ordinarily resident throughout the period of 3 years preceding the relevant date in the European Community, provided that the Secretary of State is satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; or
- (c) he is a national of a member state of the European Community who has been ordinarily resident throughout the period of 3 years preceding the relevant date in the European Community, provided that the Secretary of State is satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education, and who—
 - (i) is ordinarily resident in Scotland on the qualifying day;
 - (ii) has entered the United Kingdom wholly or mainly for the purpose of taking up or of seeking employment;
 - (iii) during the year preceding the relevant date has been in employment in the United Kingdom for an aggregate period of not less than 9 months; and
 - (iv) seeks an allowance in respect of a course provided by a vocational training establishment being a course leading to a qualification which is needed for, or is designed to fit, a person for engagement in a specific profession or trade; or
- (d) he is a refugee or the spouse or child of a refugee, provided that the refugee has been ordinarily resident in the British Islands and has not ceased to be so ordinarily resident since he was first recognised as a refugee or was awarded asylum; or
- (e) he is a national, or the child of a national, of a member state of the European Community (the Kingdom of Spain and the Portuguese Republic being deemed for the purposes of this paragraph to have been member states of the European Community from 1st September 1983) and he—
 - (i) seeks an allowance in respect of a course of study at an educational establishment in Scotland, and
 - (ii) has been ordinarily resident in the European Community throughout the 3 years immediately preceding the relevant date, provided that the Secretary of State is satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education,
 in which case the allowance payable may be only that described in regulation 6(1)(a) (tuition and other fees); or
- (f) a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations or those revoked by them within the year immediately preceding the relevant date.

Allowances

6.—(1) The amount of an allowance shall be determined by the Secretary of State 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 attending the course of study in respect of which the allowance is awarded;
- (c) the maintenance of the holder and of any persons dependent on him during periods of full-time study and during vacations;
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) In determining the amount of an allowance, the Secretary of State shall take account of the sums, if any, which, in accordance with principles determined by him from time to time, the holder, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(3) The amount of an allowance may be revised at any time if the Secretary of State thinks fit having regard to—

- (a) the failure of the holder to comply with the conditions of allowance, or
- (b) all the circumstances of the holder or his parents or both as the case may be, or
- (c) any error made in the computation of the amount of the allowance.

Conditions of allowance

7.—(1) Every allowance shall be held subject to the following conditions:—

- (a) the holder shall attend regularly the course of study in respect of which the allowance is awarded;
- (b) the Secretary of State shall be satisfied as to the conduct and progress of the holder; and
- (c) the holder shall provide the Secretary of State with such information and such documents as he may from time to time require to enable him to exercise his functions under these Regulations.

If these conditions are not complied with or if the holder receives from any other source any sum which in the opinion of the Secretary of State makes it unnecessary for him to be assisted by means of an allowance, the Secretary of State may suspend payment of the allowance or terminate the allowance.

(2) It shall be a condition of payment of an allowance that the applicant gives a written undertaking to pay to the Secretary of State any amount of which the Secretary of State may request repayment in the circumstances specified in paragraph (3) below:

Provided that if the applicant is a minor and has any parent or guardian, the parent or guardian shall consent to the undertaking.

(3) Where the Secretary of State is satisfied that there has been an overpayment of allowance for any reason and requests repayment of the overpayment or so much thereof as he thinks fit, and the holder of the allowance has given an undertaking under paragraph (2) above, the holder of the allowance shall be obliged to pay to the Secretary of State the amount requested.

Method of payment

8.—(1) The allowance may be paid to the holder or to another person for his behoof, or in part to the holder and in part to the said 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 Secretary of State thinks fit, but no payment shall be made before the holder has been accepted for admission to the course of study in respect of which the allowance is awarded.

11th May 1987
New St. Andrew's House, Edinburgh

John J. MacKay
Parliamentary Under Secretary of State,
Scottish Office

SCHEDULE
REVOCATIONS

Regulation 3

<i>Regulations revoked</i>	<i>References</i>
The Students' Allowances (Scotland) Regulations 1971	S.I. 1971/124
The Students' Allowances (Scotland) Amendment Regulations 1974	S.I. 1974/1187
The Students' Allowances (Scotland) Amendment Regulations 1983	S.I. 1983/798
The Students' Allowances (Scotland) Amendment (No. 2) Regulations 1983	S.I. 1983/1536

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supersede and substantially re-enact the Students' Allowances (Scotland) Regulations 1971 (as amended) and enable the Secretary of State to pay allowances to persons attending courses of education who fulfil certain requirements as to eligibility. They also prescribe the conditions subject to which an allowance is paid. The principal differences in substance from the amended 1971 Regulations are described below.

Persons attending a course of study or undertaking postgraduate research outside Scotland may be deemed to be ordinarily resident in Scotland (regulation 2(4)(a)(ii)).

Certain persons who are denied awards by local educational authorities in England and Wales because they are classified as "no area students" may be eligible for allowances if their courses are in Scotland (regulation 2(4)(b)).

Persons who have been married for at least 3 years before the relevant date relating to the beginning of their courses are classified as independent students (regulation 2(6)(ii)).

Persons who have no parent living on the relevant date relating to the beginning of their courses are classified as independent students (regulation 2(6)(iv)).

Periods in the Youth Training Scheme count towards classification as independent students (regulation 2(6)(a)).

For persons who gain eligibility for an award by virtue of their parents' employment in the United Kingdom, that employment may be anywhere in the United Kingdom (regulation 5(b)).

Nationals of member states of the European Community who gain eligibility for an award by virtue of employment in the British Islands must have been ordinarily resident in Scotland on the qualifying day, but their employment may have been anywhere in the United Kingdom (regulation 5(c)).

Refugees and asylees do not have to be ordinarily resident in Scotland on the qualifying day before their courses begin in order to qualify for an allowance (regulation 5(d)).

Provision is made to permit the payment of tuition and other fees to nationals of the European Community who undertake courses of education in Scotland and who do not otherwise satisfy the residence requirements for an award (regulation 5(e)).

Persons who have been in receipt of an allowance for another course in the year before a new course begins do not have to satisfy further conditions as to residence (regulation 5(f)).

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