
STATUTORY INSTRUMENTS

1997 No. 1049 (S.94)

EDUCATION, SCOTLAND

**The Education Authority Bursaries and Students'
Allowances (Scotland) Amendment Regulations 1997**

<i>Made</i>	- - - -	<i>19th March 1997</i>
<i>Laid before Parliament</i>		<i>25th March 1997</i>
<i>Coming into force</i>	- -	<i>1st August 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 49(3), 73(f) and 74(1) of the Education (Scotland) Act 1980(1) 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 Education Authority Bursaries and Students' Allowances (Scotland) Amendment Regulations 1997 and shall come into force on 1st August 1997.

Education Authority Bursaries

2. The Education Authority Bursaries (Scotland) Regulations 1995(2) shall be amended as follows:—

(a) in paragraph (1) of regulation 2 (interpretation) after the definition of “EEA Agreement” there shall be inserted the following definition:—

““EEA migrant worker” means a person who is a national of an EEA State who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No.1612/68(3) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement); or
- (b) in circumstances where as a national of the United Kingdom he has an enforceable Community right to be treated no less favourably than a national

(1) 1980 c. 44; section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(17).
(2) S.I.1995/1739.
(3) O.J. No.L257, 19.10.68, p.2 (OJ/SE 1968 (II), p.475), amended by Council Regulation (EEC) No.2434/92 (O.J. No.L245, 26.8.92, p.1).

of another EEA State in relation to matters which are the subject of the above mentioned Regulation.”;

(b) in paragraph 1 of Schedule 1 (persons eligible for bursaries) there shall be added at the end—

“; and

(c) is settled in the United Kingdom within the meaning of the Immigration Act 1971(4) on the relevant date.”;

(c) for paragraph 2 of Schedule 1 there shall be substituted the following paragraphs:—

“2. A person who is an EEA migrant worker who—

(a) is entitled to the payment of a bursary by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement) or, where he is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);

(b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date; and

(c) (i) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he seeks a bursary; or

(ii) is not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.

2A. A person who is the spouse of an EEA migrant worker and who—

(a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date;

(b) is installed in the United Kingdom with his spouse; and

(c) (i) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he seeks a bursary, or

(ii) is not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.

2B. A person who is the child of an EEA migrant worker and who—

(a) is entitled to the payment of a bursary by virtue of Article 12 of the above mentioned Council Regulation or, where his migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12;

(b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date; and

(4) 1971 c. 77; amended by the British Nationality Act 1981 (c. 61), section 39 and Schedule 4, the Immigration Act 1988 (c. 14), sections 1, 3, 4, 6 and 10 and the Schedule and the Asylum and Immigration Appeals Act 1993 (c. 23), sections 10 to 12.

- (c) (i) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he seeks a bursary, or
- (ii) is not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.”;
- (d) in paragraph 3(b)(i) of Schedule 1 for the word “date” there shall be substituted the word “day”;
- (e) after paragraph 3 of Schedule 1 there shall be inserted the following paragraph:–
 - “**3A.** A person who–
 - (a) (i) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom and he has been granted leave to enter or remain accordingly;
 - (ii) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which he seeks a bursary; and
 - (iii) has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the relevant date; or
 - (b) is the spouse or child of a person of the kind described in sub-paragraph (a).”;
 - and
- (f) in paragraph 2 of Schedule 2 (ordinary residence) after “2(b)” there shall be inserted “, 2A(a), 2B(b), 3A(a)(iii)”.

Students' Allowances

- 3. The Students' Allowances (Scotland) Regulations 1996(5) shall be amended as follows:–
 - (a) in paragraph (1) of regulation 2 (interpretation) after the definition of “EEA Agreement” there shall be inserted the following definition:–
 - ““EEA migrant worker” means a person who is a national of an EEA State who has taken up an activity as an employed person in the United Kingdom–
 - (a) under Council Regulation (EEC) No.1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement); or
 - (b) in circumstances where as a national of the United Kingdom he has an enforceable Community right to be treated no less favourable than a national of another EEA State in relation to matters which are the subject of the above mentioned Regulation;”;
 - (b) in paragraph 1 of Schedule 1 (persons eligible for allowances) there shall be added at the end–
 - “; and
 - (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971 on the relevant date.”;
 - (c) for paragraph 2 of Schedule 1 there shall be substituted the following paragraphs:–

- “2. A person who is an EEA migrant worker who–
- (a) is entitled to the payment of an allowance by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement) or, where he is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date; and
 - (c) (i) is ordinarily resident in Scotland on the qualifying day, or
(ii) seeks an allowance in respect of a course of education at an establishment in Scotland.
- 2A.** A person who is the spouse of an EEA migrant worker and who–
- (a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date;
 - (b) is installed in the United Kingdom with his spouse; and
 - (c) (i) is ordinarily resident in Scotland on the qualifying day, or
(ii) seeks an allowance in respect of a course of education at an establishment in Scotland.
- 2B.** A person who is the child of an EEA migrant worker and who–
- (a) is entitled to the payment of an allowance by virtue of Article 12 of the above mentioned Council Regulation or, where his migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12;
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant date; and
 - (c) (i) is ordinarily resident in Scotland on the qualifying day; and
(ii) seeks an allowance in respect of a course of education at an establishment in Scotland.”;
- (d) in paragraph 3(b)(i) of Schedule 1 for the word “date” there shall be substituted the word “day”;
- (e) after paragraph 3 of Schedule 1 there shall be inserted the following paragraph:–
- “**3A.** A person who–
- (a) (i) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom and he has been granted leave to enter or remain accordingly;
(ii) is ordinarily resident in Scotland on the qualifying day; and
(iii) has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the relevant date; or
 - (b) is the spouse or child of a person of the kind described in sub-paragraph (a).”;
- and

- (f) in paragraph 2 of Schedule 2 (ordinary residence) after “2(b)” there shall be inserted“, 2A(a), 2B(b), 3A(a)(iii)”.

St Andrew’s House,
Edinburgh
19th March 1997

Raymond S Robertson
Parliamentary Under Secretary of State, Scottish
Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education Authority Bursaries (Scotland) Regulations 1995 and the Students' Allowances (Scotland) Regulations 1996 in relation to the criteria of eligibility for payment of awards.

The eligibility of European Economic Area (EEA) migrant workers is dealt with in a substituted paragraph 2 of Schedule 1 to both sets of Regulations (regulation 2(a) and (c) and 3(a) and (c)). The new provision ensures that UK nationals who have been employed in the EEA as migrant workers have precisely the same entitlement to awards when they return to the UK as migrant workers who are nationals of other member states of the EEA. Specific provision is also made in new paragraphs 2A and 2B of that Schedule for the eligibility of the spouse and child of an EEA migrant worker.

A further criterion of eligibility has been added to paragraph 1 of Schedule 1 to both sets of Regulations to the effect that a person eligible for an award in terms of that paragraph must also be settled in the UK within the meaning of the Immigration Act 1971 on the relevant date (regulations 2(b) and 3(b)). Settlement is defined in the 1971 Act as being ordinary residence in the UK without being subject under the immigration laws to any restriction on the period for which the person in question may stay. As a consequence of this amendment, separate provision is now made for persons granted leave by the Home Office to enter or remain in the UK (regulations 2(e) and 3(e)).

The Regulations also make a few minor and consequential amendments.