
STATUTORY INSTRUMENTS

1998 No. 2026 (S. 107)

EDUCATION, SCOTLAND

The Education (Student Loans) (Scotland) Regulations 1998

Made - - - - *12th August 1998*

Coming into force - - *13th August 1998*

The Secretary of State, in exercise of the powers conferred on him by section 73(f) of the Education (Scotland) Act 1980(1) hereby makes the following Regulations, a draft of which has been laid before, and approved by a resolution of both Houses of Parliament:

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Education (Student Loans) (Scotland) Regulations 1998 and shall come into force on 1st August 1998.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

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

“accelerated course” means a course which persons undertaking it are normally required by the institution providing it to attend (whether at premises of the institution or elsewhere) for a period of at least 40 weeks in the final year, being a course of two academic years' duration;

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

“the 1990 Act” means the Education (Student Loans) Act 1990(2);

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- (1) 1980 c. 44. Section 73(f) was amended to permit the Secretary of State to pay loans by section 29(1) of the Teaching and Higher Education Act 1998 (c. 30). Section 133 was amended by section 44(1) of, and paragraph 4 of Schedule 3 to, that Act to require the first Regulations made under section 73(f) with respect to loans to be laid before Parliament in draft and approved by a resolution of each House of Parliament.
- (2) 1990 c. 6; amended by the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 67; by the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraphs 12(2) and (3); by the Education Act 1994 (c. 30), Schedule 2, paragraph 9; by the Education (Student Loans) Act 1996 (c. 9), section 1(1) and the Schedule; by the Education Act 1996 (c. 56), Schedule 37, paragraph 98 and Schedule 38, and by the Education (Student Loans) Act 1998 (c. 1), sections 1 to 3.

- “borrower” means a person to whom money has been lent under the 1980 Act;
- “certificate of eligibility” means a certificate issued to a student under regulation 5(7);
- “designated course” means a course designated by regulation 4(1) or by the Secretary of State under regulation 4(4);
- “disability related benefit” means long term incapacity benefit or short term incapacity benefit at the higher rate, severe disablement allowance, disability living allowance, industrial injuries benefit and disability working allowance, all payable under the Social Security Contributions and Benefits Act 1992(3), or the amount of any disability premium and severe disability premium included in the applicable amount in calculating the income support payable under the Income Support (General) Regulations 1987(4);
- “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(5) as adjusted by the Protocol signed at Brussels on 17th March 1993(6);
- “EEA migrant worker” has the meaning assigned to it in paragraph (5);
- “eligible” means eligible for the purposes of these Regulations as provided for in regulation 3;
- “European Community” means the territory comprised by the Member States of the European Community as constituted from time to time;
- “European Economic Area” means the European Community and, subject to the conditions laid down in the EEA Agreement, the area comprised by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;
- “the Islands” means the Channel Islands and the Isle of Man;
- “loan” means a loan towards a student’s maintenance under the 1980 Act, including the interest accrued on the loan and any penalties and charges made in connection with it;
- “period”, in relation to an academic year, means one of the periods in that year from 1st January to 31st March, 1st April to 30th June, 1st July to 31st July, or 1st August to 31st December;
- “periods of work experience” means periods of industrial, professional or commercial experience associated with full time study at an institution but at a place outside the institution;
- “refugee” means 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(7) as extended by the Protocol thereto which entered into force on 4th October 1967(8) and any reference to the child of a refugee includes a reference to a step-child;
- “relevant date”, in relation to a course, means—
- as respects a course starting in the period 1st August to 31st December, 1st August;
 - as respects a course starting in the period 1st January to 31st March, 1st January;
 - as respects a course starting in the period 1st April to 30th June, 1st April;
 - as respects a course starting in the period 1st July to 31st July, 1st July,
- in each case the relevant date being in the year of commencement of the appropriate academic year of the course;

(3) 1992 c. 4; amended by the Social Security (Incapacity for Work) Act 1994 (c. 18), sections 1 to 3, 5 to 6, 8 to 11 and Schedules 1 and 2.

(4) S.I.1987/1967 (see Parts III and IV of Schedule 2); the relevant amending regulations are S.I. 1988/663, 1988/2022, 1989/1678, 1991/1559, 1991/2742, 1993/1150, 1993/2119, 1994/2139, 1994/3061, 1995/482, 1995/516 and 1997/543.

(5) Cmnd 2073.

(6) Cmnd 2183.

(7) Cmnd 9171.

(8) Cmnd 3906 (Out of print: photocopies are available, free of charge, from the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH or the Student Support Division, Department for Education and Employment, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

“responsible person” means a consular officer, minister of religion, medical or legal practitioner, established civil servant, teacher or police officer;

“sandwich course” means a course 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 19 weeks in each year; and for the purposes of calculating his attendance the course shall be treated as beginning with the first period of full-time study and ending with the last such period; and

“student loan account number” means the account number assigned by the lender to a loan made under the 1980 Act, the 1990 Act, the Teaching and Higher Education Act 1998⁽⁹⁾, the Education (Student Loans) (Northern Ireland) Order 1990⁽¹⁰⁾ or the Education (Student Support) (Northern Ireland) Order 1998⁽¹¹⁾.

(2) For the purposes of these Regulations a person who is ordinarily resident in Scotland as a result of having moved from England, Northern Ireland, Wales, the Channel Islands or the Isle of Man for the purpose of attending his present course or a previous designated course which (disregarding any intervening vacation) he was attending immediately before commencing his present course shall be considered to be ordinarily resident in the place from which he moved.

(3) For the purposes of these Regulations a person shall be treated as ordinarily resident in the United Kingdom and Islands or in the European Economic Area if he would have been so resident but for the fact that he, his spouse or his parent, guardian or any other person having parental responsibility for him, or any person having care of him when he is a child is, or was, temporarily employed outside the United Kingdom and Islands, or as the case may be, outside the European Economic Area and, paragraph 7(c) of Schedule 1 shall not apply in the case of such a person.

(4) For the purposes of these Regulations an area which—

- (a) was previously not part of the European Community or the European Economic Area, but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of those areas,

shall be considered to have always been part of the European Economic Area.

(5) In these Regulations a reference to an EEA migrant worker is a reference to a person who is a national of a Member State of the European Economic Area 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 of workers within the Community⁽¹²⁾, as extended 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 of another Member State in relation to matters which are the subject of the above mentioned Council Regulation.

PART II

ELIGIBILITY

Eligible student

3.—(1) A student shall be an eligible student in relation to an academic year of a course for the purposes of these Regulations if—

⁽⁹⁾ 1998 c. 30.

⁽¹⁰⁾ S.I. 1990/1506 (N.I. 11).

⁽¹¹⁾ S.I. 1998/1760 (N.I. 14).

⁽¹²⁾ OJNo. L257, 19.10.68, p.2 (OJ/SE 1968 (II), p.475).

- (a) he is a person mentioned in Schedule 1;
- (b) he is attending a designated course;
- (c) he is under the age of 50 years on the first day of the course;
- (d) he is not eligible to receive a loan in relation to the academic year of the course under the 1990 Act or the Education (Student Loans) (Northern Ireland) Order 1990;
- (e) he has not received a loan in relation to the academic year of another course which year ended after the first day of the academic year in question;
- (f) he is not eligible to receive in relation to the academic year—
 - (i) any payment under a bursary or award of similar description bestowed on him under section 63 of the Health Services and Public Health Act 1968(13) the amount of which is not calculated by reference to his income; or
 - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992(14);
- (g) he is not in breach of any obligation to repay any loan;
- (h) subject to paragraph (4), he has ratified any agreement for a loan made with him when he was under the age of 18; and
- (i) he has a bank or building society account into which any amount lent to him may be paid by electronic transfer.

(2) For the purposes of paragraph (1)(c) and Schedule 1 if, with the agreement of the institution or institutions in question, a student withdraws from a designated course without completing it and, disregarding any intervening vacation, immediately commences attending another designated course provided by the same or by a different institution, the first day of the first course shall be regarded as the first day of the second course, or as the first day of a third or further course which the student has commenced attending in the same fashion.

(3) For the purposes of paragraph (1)(e), (g) and (h) “loan” includes a loan made under the 1980 Act, the 1990 Act, the Education (Student Loans) (Northern Ireland) Order 1990, the Teaching and Higher Education Act 1998, or the Education (Student Support) (Northern Ireland) Order 1998.

(4) Paragraph (1)(h) shall only apply, in a case where the agreement for a loan is subject to the law of Scotland, if it was made—

- (a) before 25 September 1991, and
- (b) with the concurrence of the borrower’s curator, or at a time when he had no curator.

Designated courses

- 4.—(1) A course shall be designated for the purposes of regulation 3(1)(b) if it is—
- (a) mentioned in Schedule 2;
 - (b) a full-time course within the meaning of paragraph (2);
 - (c) of at least one academic year’s duration; and

(13) 1968 c. 46; section 63 was amended by the National Health Services Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 124 and Schedule 5, the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 45 and Schedule 16, the National Health Services (Scotland) Act 1978 (c. 29), Schedule 16, paragraph 26(2) and Schedule 17, the Health Services Act 1980 (c. 53), sections 1, 2 and Schedule 1, Part I, paragraph 19(3), the Local Government Act 1985 (c. 51), Schedule 17, the Family Practitioner Committees (Consequential Modifications) Order 1985 (S.I. 1985/39), article 6(1), the Health and Medicines Act 1988 (c. 49), section 20, section 25(2) and Schedule 3, the Local Government (Scotland) Act 1994 (c. 39), section 180(1) and Schedule 13, paragraph 74(1) and (2), the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 95(1) and (2), the Local Government Reorganisation (Wales) (Consequential Amendments) (No.2) Order 1996 (S.I. 1996/1008), the Schedule, paragraph 1 and the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 1(4).

(14) S.I. 1992/580.

- (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.
- (2) A full-time course is a sandwich course or a course—
 - (a) which persons undertaking it are normally required by the institution providing it to attend (whether at premises of the institution or elsewhere)—
 - (i) in the case of a course of one academic year’s duration, for a period of at least 24 weeks; and
 - (ii) in the case of a course of two or more academic years' duration, for a period of at least 24 weeks in each academic year except the final year and of at least eight weeks in the final year; and
 - (b) the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each academic year to an average of at least 21 hours a week as respect the periods of attendance mentioned in sub-paragraph (a) above for the year.
- (3) For the purposes of these Regulations, a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not it has entered an agreement with the student to provide the course.
- (4) For the purposes of regulation 3(1) the Secretary of State may designate courses of higher education which do not meet the qualifications set out in paragraph (1).

Certificate of eligibility

- 5.—(1) A student shall demonstrate his eligibility by completing an eligibility questionnaire and by providing such supporting evidence of eligibility as the Secretary of State may require.
- (2) Without restricting the generality of paragraph (1) a student shall produce—
 - (a) if he was born in the United Kingdom, a certificate issued by the appropriate authority showing the date of his birth;
 - (b) if he was born outside the United Kingdom, a valid passport, unless he is a refugee or does not hold one, and in any event a letter or other document issued by a responsible person which contains particulars of his date, place and country of birth and his full name at birth;
 - (c) a United Kingdom national insurance card, or some other document issued or sent to the student by a government department or agency or by an employer which refers to his national insurance number, unless he does not have such a number;
 - (d) evidence of the student’s bank or building society sort code and account number; and
 - (e) evidence from his institution that he has commenced attending a designated course and of the duration of that course.
- (3) The Secretary of State may take such steps and make such inquiries as he considers necessary to determine whether the student is an eligible student.
- (4) If the Secretary of State considers that a student is an eligible student he shall issue to the student an eligibility form for the student to complete.
- (5) An eligibility form shall include the following particulars:—
 - (a) the full name of the student, and his or her sex;
 - (b) the student’s United Kingdom national insurance number, unless he does not have one;
 - (c) the student’s most recent student loan account number, if any;

- (d) if the student's full name at birth was different from the above name, his full name at birth;
 - (e) the country in which the student was born;
 - (f) if the student was born in the United Kingdom, the district or subdistrict where his birth certificate was issued;
 - (g) the student's date of birth;
 - (h) the student's home and term-time address and telephone number, and an indication to which address correspondence should be sent;
 - (i) whether the student was on the first day of the course ordinarily resident for the purpose of these Regulations in England and Wales, Scotland or Northern Ireland;
 - (j) the student's bank or building society sort code and account number;
 - (k) the student's age on the first day of the course;
 - (l) the date on which the student started, and the date on which he expects to complete, his course;
 - (m) whether the course is—
 - (i) for a Postgraduate Certificate of Education or Art Teacher's Certificate;
 - (ii) an accelerated course; or
 - (iii) another designated course;
 - (n) the name of the institution which provides the designated course, and if any part of the course is provided by an institution other than that institution an indication to that effect;
 - (o) the number of academic years of the course and whether the student is in the first, second, third or other of those years on the date the certificate is signed.
- (6) The student shall sign a declaration on the eligibility form that—
- (a) the particulars given in the eligibility form are correct to the best of his knowledge and belief; and
 - (b) he will notify the Secretary of State of any change in them.
- (7) If the Secretary of State is satisfied that the particulars in the eligibility form are correct and that the student is an eligible student he shall certify those matters to the best of his knowledge and belief and also certify the amount of loan for maintenance to which he considers the student is entitled (a "certificate of eligibility").
- (8) The Secretary of State shall issue to each student whose eligibility he has certified an application form which identifies the particular certificate of eligibility.

PART III

LOANS FOR MAINTENANCE

Application for a loan

6.—(1) An eligible student shall apply for a loan for maintenance in relation to an academic year by completing and submitting to the Secretary of State the form issued to him under regulation 5(8) not later than one month before the end of that academic year.

- (2) The application form shall include—
- (a) the full name of the student, and his or her sex;
 - (b) the student's United Kingdom national insurance number, unless he does not have one;

- (c) the student's most recent student loan account number, if any;
 - (d) the student's bank or building society sort code and account number;
 - (e) the names, addresses and telephone numbers of two persons who know the student;
 - (f) a statement whether the student has ever been declared bankrupt or whether his estate has ever been sequestrated; and
 - (g) the amount the student wishes to borrow in relation to the academic year in respect of which the application is made, not exceeding the relevant maximum sum specified in regulation 7.
- (3) The applicant shall sign a declaration on the application form that—
- (a) the particulars given in the application form are correct to the best of his knowledge and belief;
 - (b) he will notify the Secretary of State of any change in them; and
 - (c) he will repay any amount lent to him, together with interest and applicable charges and penalties, in accordance with the 1980 Act and Regulations made thereunder from time to time.
- (4) If the application form is received by the Secretary of State more than 30 days after the date on which the certificate of eligibility is signed he shall inquire of the institution which provides the student's course whether the student is still attending that course, and shall not proceed with the application until the institution has satisfied him that the student is still attending the course.
- (5) The Secretary of State on being satisfied that the student is an eligible student in relation to an academic year shall lend him for his maintenance the amount requested for that year in accordance with regulation 8.
- (6) Where a borrower has not applied for the maximum amount of loan to which he is entitled in relation to the academic year he may apply to borrow an additional amount once only, which when added to the amount already applied for shall not exceed the relevant maximum amount specified in regulation 7.
- (7) An application under paragraph (6) shall be made not less than one month before the end of the academic year by completing and submitting a form issued to him by the Secretary of State which includes—
- (a) the full name of the student;
 - (b) the student's most recent student loan account number; and
 - (c) the student's bank or building society sort code and account number.
- (8) If the student's bank or building society sort code or account number has changed from the code or number given in an application under paragraph (1) the student shall provide evidence of the code or number.
- (9) The student shall sign a declaration on the application form in the terms set out in paragraph (3).
- (10) The Secretary of State, on receiving the application form, shall inquire of the institution which provides the student's course whether the student is still attending that course and shall not proceed with the application until the institution has satisfied him that the student is still attending the course.
- (11) The Secretary of State on being satisfied that the student remains an eligible student and is entitled to borrow an additional amount for the academic year shall lend him for his maintenance the additional amount requested in accordance with regulation 8.

Amounts of loans

7.—(1) Subject to paragraphs (2) to (5) the maximum amount which may be lent in relation to any one academic year of a course shall be—

- (a) for a student who resides at his parent's home £2,325;
- (b) for a student who does not reside at his parent's home, if he attends a course provided by the University of London or by an institution within the area comprising the City of London and the metropolitan police district, £3,145, otherwise £2,735.

(2) Subject to paragraphs (3) to (5) the maximum amount which may be lent in relation to an academic year which is the final year of a course other than an accelerated course shall be—

- (a) for a student who resides at his parent's home £1,970;
- (b) for a student who does not reside at his parent's home, if he attends a course provided by the University of London or by an institution within the area comprising the City of London and the metropolitan police district, £2,565, otherwise £2,265.

(3) Subject to paragraph (4), where a student's course includes a period of residence in a country other than the United Kingdom throughout the academic year, the maximum amount of the loan in relation to that academic year shall be £2,735 or if the year is the final year of the course £2,265.

(4) For the purposes of paragraphs (1) to (3) where a postgraduate course of initial training for teachers is of only one academic year's duration that year shall not be treated as a final year, and for the purposes of paragraphs (1) and (2) a student's place of residence shall be his place of residence on the date of the certificate of eligibility given under regulation 5(7).

(5) Where in relation to an academic year a student is eligible to receive any payment pursuant to any bursary or award bestowed under section 63 of the Health Services and Public Health Act 1968, or made under the Students' Allowances (Scotland) Regulations 1996(15) the amount of which is calculated by reference to the student's income, unless the course leads to qualification as a medical doctor or as a dentist paragraphs (1) to (3) shall have effect as if £1000 had been deducted from all the amounts referred to.

Payments

8.—(1) The Secretary of State shall pay the amount to be lent for maintenance under regulation 6(5) in the following instalments—

- (a) if the first instalment is paid during the first period of the academic year it shall be paid in three equal instalments;
- (b) if the first instalment is paid during the second period of the academic year it shall be paid in two instalments, the first amounting to two thirds of the amount to be lent, and the second one third of that amount; and
- (c) if the first instalment is paid during the third or fourth period of the academic year it shall be paid in one instalment.

(2) The Secretary of State shall pay the additional amount to be lent for maintenance under regulation 6(6) in the following instalments—

- (a) if the first instalment is paid during the first period of the academic year it shall be paid in three equal instalments, the second and third of which shall be paid with the second and third instalments to be paid under paragraph (1)(a);
- (b) if the first instalment is paid during the second period of the academic year it shall be paid in two instalments, the first amounting to two thirds of the amount to be lent and the

second amounting to one third of that amount the second to be paid with the remaining instalment to be paid under paragraph (1); and

- (c) if the first instalment is paid during the third or fourth period of the academic year it shall be paid in one instalment.

(3) Each instalment shall be paid in relation to the period of the academic year during which it is paid, and no instalment shall be paid in respect of the period during which, in the opinion of the Secretary of State, the longest of any vacations is taken.

(4) The first instalment shall be paid not later than 30 days after the Secretary of State has received a satisfactory application under regulation 6(1), and any subsequent instalment shall be paid during the period in respect of which it is paid.

(5) Payments shall be made by electronic transfer to the student's bank or building society account.

(6) Subject to regulation 9 no instalment shall be paid after a student has withdrawn from, abandoned or been expelled from his course.

(7) No instalment shall be paid when a student is absent from his course, unless in the opinion of the Secretary of State in all the circumstances it would cause exceptional hardship to suspend the payment of instalments.

(8) A student shall not be considered to be absent from his course if he is unable to attend due to illness and his absence has not exceeded 60 days.

(9) If the payment of instalments has been suspended and before the end of the academic year the student commences attending his course again the Secretary of State may pay further instalments but so that the amount lent in relation to that year does not exceed such amount as the Secretary of State in all the circumstances considers appropriate.

Transfers

9.—(1) If with the agreement of the institution in question a borrower in relation to an academic year withdraws from his course without completing it during that year and disregarding any intervening vacation immediately commences attending another designated course provided by the same institution his loan shall be treated for all purposes as if it were a loan in relation to the academic year of the second course.

(2) A borrower who has commenced attending another designated course as described in paragraph (1) shall notify the Secretary of State of any change in the particulars set out in his certificate of eligibility in accordance with regulation 5, and in particular shall provide particulars of the matters referred to in regulation 5(5)(l) to (o).

(3) If with the agreement of the institutions in question a borrower in relation to an academic year withdraws from his course without completing it during that year and disregarding any intervening vacation immediately commences attending another designated course provided by a different institution, subject to paragraphs (4) and (5) he shall be treated as having withdrawn from his course and no further payment of instalments shall be made.

(4) A borrower described in paragraph (3) may notwithstanding regulation 3(1)(e) be eligible for a new loan in relation to the academic year of the second course.

(5) An application for a new loan in reliance on paragraph (4) shall be made in accordance with regulations 5 and 6; but there shall be subtracted from the relevant maximum amount specified to in regulation 7 the amount of any instalments already paid to the borrower in relation to the academic year of the first course.

Hardship loan

10.—(1) A borrower who has applied for the maximum amount of loan in relation to an academic year may apply once only for an additional loan on grounds of hardship, which shall be known as a “hardship loan”.

(2) A hardship loan shall not be less than £100 and not more than £250, and shall be a multiple of £25.

(3) A borrower shall demonstrate hardship by providing such evidence of his requirements and resources as the Secretary of State may require.

(4) On being satisfied that due to exceptional financial hardship a borrower may not be able to continue to attend his course for the remaining part of the academic year the Secretary of State shall advise the borrower of the amount of the hardship loan which he considers that the borrower requires, and issue to him an application form.

(5) The borrower shall apply for a hardship loan not greater than the amount referred to in paragraph (4) by completing the form issued to him under that paragraph not later than one month before the end of the academic year.

(6) The application form shall include—

- (a) the full name of the borrower;
- (b) the borrower’s home and term-time address and telephone number, and an indication to which address correspondence should be sent;
- (c) the borrower’s most recent student loan account number; and
- (d) the borrower’s bank or building society sort code and account number.

(7) If the borrower’s bank or building society sort code or account number has changed from the code or number given in the most recent application under regulation 6, the borrower shall provide evidence of the code or number.

(8) The borrower shall sign a declaration on the application form in the terms set out in regulation 6(3).

(9) The Secretary of State shall certify on the form that—

- (a) to the best of his knowledge and belief the particulars in the application form are correct and the borrower continues to attend his course; and
- (b) he is satisfied that due to exceptional financial hardship the borrower might not be able to continue to attend his course for the remaining part of the academic year, and that he ought to be lent the amount applied for.

(10) The borrower shall submit the completed and certified application form to the Secretary of State not more than 30 days after the date of the certificate referred to in paragraph (9) and not later than one month before the end of the academic year, and the Secretary of State shall pay the amount to be lent within 14 days of receipt of a satisfactory application.

Interest

11.—(1) Subject to paragraph (2), loans shall bear interest at the rate which results in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980(16) of 3.5 per cent.

(2) If the rate referred to in paragraph (1) exceeds the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974⁽¹⁷⁾ loans shall bear interest at the rate so specified.

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

(4) The index of prices which the Secretary of State is required by section 73B(7) of the 1980 Act to have regard to in prescribing the rate of interest which loans shall bear shall be the retail prices all items index published by the Office for National Statistics.

Repayments

12.—(1) A borrower may pay any part of, or all of, any moneys he owes to the Secretary of State under the 1980 Act in respect of loans and these Regulations at any time without charge or penalty.

(2) A borrower shall not be required to pay any moneys he owes before 6th April 2000.

(3) Any liability of a borrower under the 1980 Act and these Regulations shall be cancelled if he—

- (a) dies;
- (b) is not in breach of any obligation to repay any loan and he has attained the age of 65; or
- (c) receives a disability related benefit and the Secretary of State is satisfied that because of his disability he is permanently unfit for work.

(4) For the purposes of paragraph (3) “loan” has the meaning given to it in regulation 3(3).

Insolvency

13.—(1) In England and Wales there shall not be treated as part of a bankrupt’s estate or claimed for his estate under section 307 or 310 of the Insolvency Act 1986⁽¹⁸⁾ any sum payable to a borrower by way of a loan and which he receives or is entitled to receive after the commencement of the bankruptcy, whether his entitlement arises before or after the commencement of his bankruptcy.

(2) In Scotland, where after the date of sequestration of a borrower’s estate, he receives, or is entitled to receive, sums by way of loan—

- (a) the sheriff shall not, in fixing an amount under subsection (2) of section 32 of the Bankruptcy (Scotland) Act 1985⁽¹⁹⁾, treat the sums as income of the borrower;
- (b) for the purposes of subsection (6) of that section the sums shall not be treated as estate vesting in, or requiring to be conveyed or delivered to, the borrower’s permanent trustee; and
- (c) any debt or liability to which the borrower is, or may become, subject in respect of the sums shall not be treated as a debt or liability—
 - (i) for the purposes of the sequestration (or of any offer of composition to the permanent trustee); or
 - (ii) from which the borrower is discharged, on the expiry of a period after the date of sequestration, under or by virtue of section 54 or 75(4) of that Act (or on an order being made under paragraph 11 of Schedule 4 to that Act as respects him and the permanent trustee).

⁽¹⁷⁾ 1974 c. 39.

⁽¹⁸⁾ 1986 c. 45; section 310 was amended by the Pensions Act 1995 (c. 26), Schedule 3, paragraph 15.

⁽¹⁹⁾ 1985 c. 66; section 32 was amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 6, and the Pensions Act 1995 (c. 26), Schedule 3, paragraph 15.

(3) In Northern Ireland there shall not be treated as part of a bankrupt's estate or claimed for his estate under Article 280 or 283 of the Insolvency (Northern Ireland) Order 1989⁽²⁰⁾ any sum payable to a borrower by way of a loan and which he receives or is entitled to receive after the commencement of the bankruptcy whether the entitlement arises before or after the commencement of his bankruptcy.

Information

- 14.—(1) Every applicant for a loan and every borrower shall inform the Secretary of State if—
- (a) he withdraws, abandons or is expelled from his course;
 - (b) he ceases to attend it and does not intend to, or is not permitted to, return for the remainder of the academic year;
 - (c) he transfers to another course, at the same or a different institution, whether or not the new course is a designated course; or
 - (d) he is absent from his course for more than 60 days for any reason, including illness.

(2) Every applicant for a loan and every borrower shall as soon as reasonably practicable provide the Secretary of State with details of any change of home or term time address or telephone number and of any new bank or building society account into which any amount lent to him may be paid by electronic transfer.

St Andrew's House,
Edinburgh
12th August 1998

Calum MacDonald
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Regulation 3(1)(a)

ELIGIBLE STUDENTS

1. A person who on the first day of the course—
 - (a) is settled in the United Kingdom within the meaning of the Immigration Act 1971⁽²¹⁾; and
 - (b) meets the residence conditions referred to in paragraph 7.
2. A person who is a refugee, ordinarily resident in the United Kingdom and Islands, who has not ceased to be so resident since he was recognised as a refugee, or who is the spouse, child or stepchild of such a refugee and in each case meets the residence condition in paragraph 7(a).
3. A person who—
 - (a) has been informed 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;
 - (b) has been granted leave to enter or to remain accordingly; and
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain,or who is the spouse, child or stepchild of such a person, where the person, or as the case may be the spouse, child or stepchild, meets the residence conditions referred to in paragraph 7.
4. A person who is an EEA migrant worker who—
 - (a) is entitled to a loan by virtue of Article 7(2) or (3) of Council Regulation (EEC) No 1612/68 on freedom of movement of workers within the Community⁽²²⁾, as extended 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); and
 - (b) meets the residence conditions referred to in paragraph 7.
5. A person who is the spouse of an EEA migrant worker who—
 - (a) is installed in the United Kingdom with his spouse; and
 - (b) meets the residence conditions referred to in paragraph 7.
- 6.—(1) A person who is the child of an EEA migrant worker who
 - (a) is entitled to a loan 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; and
 - (b) meets the residence conditions referred to in paragraph 7.(2) For the purposes of this paragraph “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child, and “child” shall be construed accordingly.
7. The residence conditions referred to above are that—
 - (a) the person is ordinarily resident in Scotland on the first day of the course;

⁽²¹⁾ 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.

⁽²²⁾ OJ No. L257, 19.10.68, p.2 (OJ/SE 1968 (II) p.475).

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- (b) the person has been ordinarily resident throughout the three years period preceding the first day of the course, in the case of a person mentioned in paragraphs 1 or 3, in the United Kingdom and Islands, or, in the case of a person mentioned in paragraphs 4, 5 or 6, in the European Economic Area; and
- (c) his residence in the United Kingdom and Islands, or in the European Economic Area, as the case may be, has not during any part of the period referred to in sub-paragraph (b) been wholly or mainly for the purpose of receiving full-time education.

SCHEDULE 2

Regulation 4(1)(a)

DESIGNATED COURSES

1. A first degree course.
2. A course for the Diploma of Higher Education.
3. A course for the Higher National Diploma or Higher National Certificate of—
 - (a) the Business and Technician Education Council; or
 - (b) the Scottish Qualifications Authority.
4. A course of initial training for teachers.
5. A course for the further training of teachers or youth and community workers.
6. 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 or the examination at higher level for the Scottish Certificate of Education; or
 - (b) the examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3,not being a course for entry to which a first degree (or equivalent qualification) is normally required;
7. 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 (6)(a) or (b) 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first Regulations made under section 73(f) of the Education (Scotland) Act 1980 (“the 1980 Act”) with respect to loans. They provide for loans for maintenance for eligible students attending designated courses of higher education.

Students are eligible students for the purposes of these Regulations if on the first day of the course they are settled in the United Kingdom for the purposes of the Immigration Act 1971, on that day they are ordinarily resident in Scotland, and for the three years immediately preceding that day they have been ordinarily resident in the United Kingdom and Islands for purposes other than receiving full-time education (regulation 3(1) and Schedule 1, paragraphs 1 and 7). Students may also be eligible if they are refugees, if they have been granted exceptional leave to remain in the United Kingdom, or if they are European Economic Area migrant workers, or the spouses or children of such workers (Schedule 1, paragraphs 2 to 6). Such students must also be ordinarily resident in Scotland on the first day of the course, and in some cases meet other residence conditions (Schedule 1, paragraph 7).

To be eligible students must also attend a designated course, be under the age of 50 on the first day of the course, not be eligible for a loan under the Education (Student Loans) Act 1990 or the Education (Student Loans) (Northern Ireland) Order 1990 (which provides for the existing mortgage style student loans for students who began their course before 1st August 1998, and certain other students), not have received any student loan in relation to an academic year of another course which ended after the first day of the academic year of their present course, not be eligible for certain National Health Service bursaries or awards, not be in breach of any obligation to repay any other student loan, have ratified, where appropriate, any other student loan they received when they were under the age of 18 and have a bank or building society account into which the loan can be paid (regulation 3(1)).

Courses which are designated courses for the purposes of these Regulations include full-time courses for a first degree, for the Diploma of Higher Education, for the Higher National Diploma or Higher National Certificate, for the further training of teachers or youth and community workers, for certain professional examinations, and full-time courses of initial training for teachers (regulation 4(1) and Schedule 2). Such courses must be of at least one academic year's duration, and be provided at least in part by an institution or institutions in the United Kingdom which are maintained or assisted by recurrent grants out of public funds (regulation 4(1)). The Secretary of State may designate other courses by administrative act from time to time (regulation 4(4)).

Students are required to demonstrate their eligibility by completing a questionnaire and supplying supporting evidence to the Secretary of State (regulation 5(1) to (2)). If the Secretary of State is satisfied that the student is eligible he shall issue an eligibility form to the student, who shall complete and sign it (regulation 5(4) to (6)). The Secretary of State then signs a certificate of eligibility on this form, and issues a numbered application form to the student (regulation 5(7) and (8)). In practice for the first year of the operation of these Regulations these functions will be transferred under section 73A(1) of the 1980 Act to higher education institutions, who presently perform similar functions in relation to loans under the Education (Student Loans) Act 1990.

Students whose eligibility has been certified may apply for a loan for maintenance not later than one month before the end of the academic year in question, and must agree to repay any moneys lent to them with interest and applicable charges and penalties (regulation 6(1) to (3)). They may apply to borrow such amount not exceeding the relevant maximum amount referred to in regulation 7 as they wish (regulation 6(2)(g)), and if they have not applied for the maximum amount first time may apply once more for a further amount, but not so that the relevant maximum amount is exceeded (regulation 6(6)). If the Secretary of State is satisfied that the student is entitled to a loan he must pay it to the student in accordance with regulation 8 (regulation 6(5) and (11)).

The amounts to be lent shall be paid in three, two or one instalment, depending on whether the first instalment is paid during the first, second or third or fourth period of the academic year respectively (regulation 8(1) and (2)). For the purposes of the Regulations the academic year is divided into four periods regardless of whether the year has terms or semesters, the periods beginning on 1st August, 1st January, 1st April and 1st July (regulation 2(1)). Payment of the first instalment must be made within 30 days of the receipt of a satisfactory application and of subsequent instalments during the period in respect of which it is paid (regulation 8(4)). In the case of a traditional academic year beginning in the autumn the first instalment will be paid within 30 days of receiving an application

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in the autumn, the second instalment during the second period, and the third instalment during the third period. In practice the function of making payment under regulation 8 will be delegated to the Student Loans Company Limited in Glasgow under section 73A(3) of the 1980 Act.

Payments of instalments will not be made once a student has withdrawn from, abandoned or been expelled from his course (regulation 8(6)). In the case of absence from the course for more than 60 days as a result of illness, or for any period for any other reason, the Secretary of State may decide to suspend payments or to continue to make them if suspension of them would cause exceptional hardship (regulation 8(7) and (8)). When payments are suspended and the student returns to his course the Secretary of State may pay further instalments, but the overall amount lent for the year must not exceed the amount the Secretary of State considers appropriate, in light of the length and circumstances of the absence (regulation 8(9)). The Secretary of State's discretion to suspend payments and to decide the amount payable for a year in which the student has been absent from his course will in practice be transferred to higher education institutions.

Provisions is made in regulation 9 for a student who transfers from one course to another during the course of the academic year to continue to receive instalments of his loan. In the case of a student who transfers to another designated course at the same institution he is only required to provide details of the transfer (regulation 9(2)), but in the case of a student who transfers to another designated course at a different institution he must apply again, and if eligible will be entitled to the balance of any instalments payable (regulation 9(3) to (5)).

A student who has applied to borrow the maximum amount in relation to an academic year may apply for a hardship loan of not less than £100 and not more than £250 (regulation 10(1) and (2)). He may apply for this loan whether or not he has received all the instalments payable in respect of the academic year at any time until one month before the end of that year. He must first satisfy the Secretary of State that due to exceptional financial hardship he may not be able to continue to attend for the balance of the academic year (regulation 10(3) to (6)). In practice the function of determining whether a student should receive a hardship loan and the amount of the loan will be transferred to higher education institutions under section 73A(1) of the 1980 Act. If it is certified that the student ought to receive a hardship loan the student may submit the application, and the amount to be lent will be paid within fourteen days of receipt of a satisfactory application (regulation 10(10)). The function of paying the loan will in practice be delegated to the Student Loans Company Limited under section 73A(3) of the 1980 Act.

Provision is made for the interest which the loans will bear, which is calculated daily and compounded monthly (regulation 11). In accordance with section 73B(6) and (7) of the 1980 Act the prescribed rate is no higher than that which the Secretary of State is satisfied is required to maintain the value in real terms of the outstanding amount of loans, and does not exceed the rate specified for the purposes of exemption of certain consumer credit agreements by the Consumer Credit (Exempt Agreements) Order 1998.

Borrowers may repay their loans at any time without penalty (regulation 12(1)), but shall not be required to repay any moneys they owe before 6th April 2000 (regulation 12(2)). Before then it is intended that regulations providing for the repayment of loans through the tax system will be made, and provision for repayment by persons not subject to that system will also be made. The liability of a borrower will be cancelled if he dies, if he is not in breach of any obligation to repay any student loan and he reaches the age of 65, or if he receives a disability related benefit and the Secretary of State is satisfied that because of his disability he is permanently unfit for work (regulation 12(3)).

Instalments of student loans paid or payable after the commencement of a student's bankruptcy, or in Scotland the sequestration of his estate, shall not form part of his estate, and accordingly cannot be claimed by his trustee. The student will not be discharged from liability to repay loan payments received after sequestration when he is discharged under or by virtue of section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (regulation 13).

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Applicants and borrowers are required to inform the Secretary of State when they withdraw, abandon or are expelled from their courses, when they cease to attend them for the balance of the academic year for any reason, when they transfer to another course at the same or another institution, or are absent from their course for any reason for more than 60 days (regulation 14(1)). They are also required to provide the Secretary of State with up to date information about their residence and bank account (regulation 14(2)).