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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 180**

**EDUCATION**

**The Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017**

<i>Made</i>	- - - -	<i>31st May 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>2nd June 2017</i>
<i>Coming into force</i>	- -	<i>1st August 2017</i>

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<sup>(1)</sup>, section 1 of the Education (Fees and Awards) Act 1983<sup>(2)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 and come into force on 1st August 2017.

**Amendment of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006**

2. The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006<sup>(3)</sup> are amended in accordance with regulations 3 to 6.

3. In regulation 2 (interpretation)—

- (a) in paragraph (1) omit the definition “child of such a national”;
- (b) for paragraph (4) substitute—

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(1) 1980 c.44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c.30) (“the 1998 Act”), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”), section 3(2). Section 73B was inserted by the 1998 Act, section 29(2) and was amended by the 2001 Act, section 3(3); by the Income Tax (Earnings and Pensions) Act 2003 (c.1), schedule 6, Part 2, paragraph 149; and by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 34(1). Section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 82(1) and schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) (“the Scotland Act”).

(2) 1983 c.40. Section 1 was relevantly amended by the Education Reform Act 1988 (c.40), section 237(1) and schedule 12, paragraph 91; by the Further and Higher Education Act 1992 (c.13), section 93(1) and schedule 8, paragraph 19; and by the Further and Higher Education (Scotland) Act 1992 (c.37), section 62(2) and schedule 9, paragraph 8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.

(3) S.S.I. 2006/333, amended by S.S.I. 2007/158 and 503, 2009/188, 189 and 309, 2010/300, 2012/72, 2013/80, 2016/82 and S.I. 2010/1010.

“(4) For the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(1)(c), 9(b) and 10(c) of schedule 1, a person shall be treated as having been ordinarily resident in the area specified and for the period specified in those paragraphs if the Scottish Ministers are satisfied that—

(a) the person was not actually ordinarily resident in the relevant area for the specified period only because—

- (i) that person, or his or her spouse or civil partner, or either of his or her parents, either of his or her guardians or any other person having parental responsibility for that person, or any person having care of that person when he or she is a child; or
- (ii) 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 for the time being temporarily employed or studying outside the relevant area; or

(b) the person was born and has spent the greater part of his or her life in the relevant area and that—

- (i) either of his or her parents, either of his or her guardians or any other person having parental responsibility for that person, or any other person having care of them when he or she is a child, has been ordinarily resident in the relevant area throughout the specified period and that person is not an independent student; or
- (ii) person has been ordinarily resident in the relevant area for at least 1 year of the specified period and, in the case of qualifying by virtue of paragraph 1 or 8A of schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.”; and

(c) after paragraph (8) insert—

“(9) In paragraph 2(4)(b), an “independent student” means a person who prior to the first day of the first academic year of the course—

- (i) has attained the age of 25 years;
- (ii) is married or in a civil partnership;
- (iii) has no parent living;
- (iv) had the care of a person under the age of 18 years who was wholly or mainly financially dependent on him or her; or
- (v) has been self-supporting out of his or her earnings for periods aggregating not less than 3 years.

(b) A person is to be regarded as having been self-supporting out of his or her earnings for any period during which that person—

- (i) 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);
- (ii) was in receipt of benefit payable by any state authority or agency (national, regional or local), in respect of a person who is available for employment but who is unemployed;
- (iii) was available for employment and had complied with the requirements of registration imposed by a body referred to in paragraphs (i) or (ii) as

- a condition of entitlement for participation in arrangements for training or receipt of benefit;
- (iv) 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 (national, regional or local), by an employer or any former employer or any other person; or
- (v) held an advance postgraduate award or comparable award.”
4. For regulation 4(9) (designated courses), substitute—
- “(9) 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 3(2) by reference to that particular course of education or to a particular category of courses of education.”
5. For paragraph 1(c) of schedule 1 (eligible students), substitute—
- “(c) is—
- (i) settled in the United Kingdom within the meaning given by section 33(2A)(4) of the Immigration Act 1971 on the first day of the first academic year of the course;
- (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or
- (iii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.”
6. After paragraph 9 of schedule 2 (designated courses) insert—
- “10. A course for the Certificate of Higher Education.”

#### **Amendment of the Education Authority Bursaries (Scotland) Regulations 2007**

7. For paragraph 1(c) of Schedule 1 (persons eligible for bursaries) of the Education Authority Bursaries (Scotland) Regulations 2007(5), substitute—

- “(c) is—
- (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date;
- (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the relevant date; or
- (iii) aged 18 years old or above and, preceding the relevant date, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.”

#### **Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007**

8. The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(6) are amended in accordance with regulations 9 to 11.

9. After regulation 3(1)(persons eligible for allowance), insert—

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(4) Section 33(2A) was inserted by the British Nationality Act 1981 (c.61), schedule 4, paragraph 7.

(5) S.S.I. 2007/149, amended by S.S.I. 2007/503, 2009/188 and 309, 2012/72, 2013/80 and 2016/82.

(6) S.S.I. 2007/151, amended by S.S.I. 2007/503, 2008/206, 2009/188 and 309, 2012/72, 2013/80 and 2016/82.

“(1A) 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.”.

**10.**—(1) In schedule 1 (persons eligible for allowances)—

- (a) in paragraphs 1(a), 7(c), 8(1)(b) and 10(c), for “the United Kingdom and Islands”, substitute “Scotland”;
- (b) in paragraphs 2(1)(c), 3(1)(c), (5)(b), (6)(a)(iii) and (b), 6A(a)(iii) and (b), and 6B(a)(iii) and (b), for “the United Kingdom”, substitute “Scotland”; and
- (c) in paragraph 4(1)(b), before “was settled in the United Kingdom” insert “was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and”.

(2) In paragraph 1(1) and (2) of schedule 2 (ordinary residence), for “the United Kingdom”, wherever it occurs, substitute “Scotland”.

**11.** For paragraph 1(c) of schedule 1 (persons eligible for allowances), substitute—

- “(c) is—
- (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date;
  - (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the relevant date; or
  - (iii) aged 18 years old or above and, preceding the relevant date, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.”.

### **Amendment of the Students’ Allowances (Scotland) Regulations 2007**

**12.** The Students’ Allowances (Scotland) Regulations 2007(7) are amended in accordance with regulations 13 and 14.

**13.** After regulation 3(1) (persons eligible for allowances), insert—

“(1A) 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.”.

**14.** For paragraph 1(c) of schedule 1 (persons eligible for allowances), substitute—

- “(c) is—
- (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date;
  - (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or

- (iii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.”.

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

**15.** The Education (Student Loans) (Scotland) Regulations 2007<sup>(8)</sup> are amended in accordance with regulations 16 to 20.

**16.** In regulation 2 (interpretation)—

(a) for paragraph (4) substitute—

“(4) For the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(1)(c), 8A(1)(b), 9(b) and 10(c) of schedule 1, a person shall be treated as having been ordinarily resident in the area specified and for the period specified in those paragraphs if the Scottish Ministers are satisfied that—

(a) the person was not actually ordinarily resident in the relevant area for the specified period only because—

- (i) that person, or his or her spouse or civil partner, or parent; or
- (ii) 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 for the time being temporarily employed or studying outside the relevant area; or

(b) the person was born and has spent the greater part of his or life in the relevant area and that—

- (i) his or her parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent student; or
- (ii) he or she has been ordinarily resident in the relevant area for at least 1 year of the specified period and, in the case of qualifying by virtue of paragraph 1 of schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.”.

(b) after paragraph (7) insert—

“(8) In paragraph 2(4)(b), an “independent student” means a person who prior the first day of the first academic year of the course—

- (i) has attained the age of 25 years;
- (ii) is married or in a civil partnership;
- (iii) has no parent living;
- (iv) had the care of a person under the age of 18 years who was wholly or mainly financially dependent on him or her; or
- (v) has been self-supporting out of his or her earnings for periods aggregating not less than 3 years.

(b) A person is to be regarded as having been self-supporting out of his or her earnings for any period during which that person—

<sup>(8)</sup> S.S.I. 2007/154, amended by S.S.I. 2007/503, 2008/205 and 206, 2009/188, 189 and 309, 2010/300, 2012/72, 2013/80, 2016/82 and S.I. 2010/1010.

- (i) 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);
- (ii) was in receipt of benefit payable by any state authority or agency (national, regional or local), in respect of a person who is available for employment but who is unemployed;
- (iii) was available for employment and had complied with the requirements of registration imposed by a body referred to in paragraphs (i) or (ii) as a condition of entitlement for participation in arrangements for training or receipt of benefit;
- (iv) 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 (national, regional or local), by an employer or any former employer or any other person; or
- (v) held an advance postgraduate award or comparable award.”.

17. For regulation 4(9) (designated courses), substitute—

“(9) 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 3(2) by reference to that particular course of education or to a particular category of courses of education.”.

18. After regulation 3(2)(d)(ii) (eligible students), insert—

“or

(iii) such other allowances awarded under the Students’ Allowances (Scotland) Regulations 2007 as the Scottish Ministers may determine;”.

19. For paragraph 1(c) of schedule 1 (eligible students), substitute—

“(c) is—

- (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course;
- (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or
- (iii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.”.

20. After paragraph 9 of schedule 2 (designated courses) insert—

“10. A course for the Certificate of Higher Education.”.

### **Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007**

21. The Education Maintenance Allowances (Scotland) Regulations 2007(9) are amended in accordance with regulations 22 and 23.

22. In regulation 2(3) and (4) (interpretation) for “paragraphs (1)(a)” substitute “paragraphs 1(a)”.

23. For paragraph 1(c) of schedule 1 (persons eligible for education maintenance allowances), substitute—

- “(c) is—
- (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the qualifying date;
  - (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the qualifying date; or
  - (iii) aged 18 years old or above and, preceding the qualifying date, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.”.

#### **Amendment of the Education (Fees) (Scotland) Regulations 2011**

**24.** For regulation 3(c) (relevant connection with Scotland) of the Education (Fees) (Scotland) Regulations 2011(**10**) substitute—

- “(c) is—
- (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date;
  - (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the relevant date; or
  - (iii) aged 18 years old or above and, preceding the relevant date, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.”.

St Andrew’s House, Edinburgh  
31st May 2017

*SHIRLEY-ANNE SOMERVILLE*  
Authorised to sign by the Scottish Ministers

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the SLTF Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”) the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing Regulations”), the Students’ Allowances (Scotland) Regulations 2007 (“the Allowances Regulations”), the Education (Student Loans) (Scotland) Regulations 2007 (“the Loans Regulations”), the Education Maintenance Allowances (Scotland) Regulations 2007 (“the EMA Regulations”) and the Education (Fees) (Scotland) Regulations 2011 (“the Fees Regulations”).

### **Amendments relating to the eligibility of persons with a period of long residence in the UK**

Regulations 5, 7, 11, 14, 19 and 23 amend the eligibility criteria applying to persons who are regarded as being settled in in the UK in the SLTF Regulations, the Bursaries Regulations, the Nursing Regulations, the Allowances Regulations, the Loans Regulations and the EMA Regulations. If a person is not regarded as being settled in the UK then he or she may now qualify for support by virtue of a period of long residence in the UK. To be eligible for support, any applicant under the age of 18 must have lived in the UK for a period of 7 years prior to the commencement of the course of education. A person aged 18 or over must have lived in the UK for either half of his or her life or a period of 20 years prior to the commencement of the course of education. Regulation 24 amends the Fees Regulations so that such persons are also regarded as having a relevant connection with Scotland for the purposes of the charging of tuition fees.

### **Amendments relating to the eligibility of persons for an allowance under the Nursing Regulations**

Regulation 10 makes amendments to the Nursing Regulations so as to require a person to be ordinarily resident in Scotland on the relevant date in order to be eligible for support. The Regulations previously enabled support to be provided to those ordinarily resident anywhere in the UK and Islands.

### **Miscellaneous amendments**

Regulation 3(a) removes a superfluous definition from the SLTF Regulations.

Regulations 3(b) and (c) and 16 amend the SLTF Regulations and the Loans Regulations to add provisions to assist with the interpretation of the eligibility criteria in relation to the meaning of ordinary residence.

Regulations 4 and 17 amend the SLTF Regulations and the Loans Regulations to clarify that the Scottish Ministers may determine that a course of education, which is not already designated under the Regulations, is designated for the purposes of regulation 3(2) of each set of Regulations. Regulations 6 and 20 also add a course for the Certificate of Higher Education to the list of designated courses mentioned in Schedule 2 of the SLTF Regulations and the Loans Regulations.

Regulations 9 and 13 amend the Nursing Regulations and the Allowances Regulations to clarify that, in paying an allowance, the Scottish Ministers may determine to pay different allowances for different purposes and impose different terms and conditions in relation to different allowances.



Regulation 18 amends the Loans Regulations so that a person who is eligible for a particular allowance under the Allowances Regulations (which Ministers may determine) will not be eligible for a student loan.

Regulation 22 corrects a minor error in the EMA Regulations.