

2006 No. 333

EDUCATION

The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006

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<i>Coming into force</i>	<i>1st July 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 73(f), 73B and 74(1) of the Education (Scotland) Act 1980^[1] and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I

GENERAL

1. Citation and commencement

These Regulations may be cited as the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 and shall come into force on 1st July 2006.

2.— Interpretation

(1) In these Regulations—

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

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

“child of such a national” includes in relation to that national a stepchild, a child in his or her guardianship, a child for whom he or she has parental responsibility and a child in his or her care;

“designated course” means a course designated by regulation 4 or by the Scottish Ministers under regulation 4;

¹ 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) (“the 1998 Act”). Section 73B was inserted by section 29(2) of the 1998 Act. 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).

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992^[2] as adjusted by the Protocol signed at Brussels on 17th March 1993^[3];

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

(a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and

(b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” means an EEA national who–

(a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and

(b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;

“EEA national” means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;

“eligible student” means a person whom the Scottish Ministers have determined is eligible for a loan in connection with his or her undertaking a course in accordance with regulation 5 or 6;

“end-on course” means–

(a) a full time degree course (other than a first degree for the initial training of teachers) which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a full-time course mentioned in paragraphs 2 and 3 of Schedule 2 for which the student was receiving support for tuition fees under the Students' Allowances (Scotland) Regulations 1999^[4]; or

(b) a full time honours degree course which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a full time foundation degree course for which the student was receiving support for tuition fees under the Students' Allowances (Scotland) Regulations 1999;

“end-on course student” means a student who starts a designated course on or after 1st September 2006 where that course is an end-on course; “European Economic Area” means the European Community and, subject to the conditions laid down in the EEA Agreement, Iceland, Norway and Liechtenstein;

“family member” means–

(a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, an EEA self-employed person–

² Cmnd 2073.

³ Cmnd 2183.

⁴ As amended by S.S.I. 2001/229, 2004/469, 2005/217, 314, 545 and 572.

- (i) his or her spouse or civil partner;
 - (ii) his or her child or the child of his or her spouse or civil partner;
 - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
- (i) his or her spouse or civil partner;
 - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
- (i) his or her spouse or civil partner;
 - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
 - (aa) under the age of 21;
 - (bb) dependants of him or her or his or her spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
- (i) his or her spouse or civil partner;
 - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
 - (aa) under the age of 21;
 - (bb) dependents of him or her or his or her spouse;
 - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1—
- (i) his or her spouse or civil partner;
 - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
 - (aa) under the age of 21;
 - (bb) dependents of him or her or his or her spouse;
 - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;

“gap year student” means in relation to a course provided by or on behalf of an institution that was publicly funded as at 1st August 2005 a person who meets the conditions in sub-paragraph (a) or (c);

- (a) the conditions are—
 - (i) the person had on or before 1st August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the current course or a similar course; and
 - (ii) the first academic year of the current course begins on or after 1st September 2006 but before 1st September 2007;
- (b) in paragraph (a), a course (the “original course”) is similar to the current course if—
 - (i) it appears to the governing body of the institution providing the current course that the subject-matter of the course is in whole or in part the same as the subject-matter of the original course; and

- (ii) except where the original course is no longer being provided, the current course is provided by the institution which was to have provided the original course;
- (c) the conditions are—
 - (i) the person had received an offer of a place on a designated course (whether or not at the same institution as the current course) the first academic year of which begins before 1st September 2006;
 - (ii) the person was unable to take up the offer because a specified qualification or grade was not awarded to him or her;
 - (iii) the person appealed against the decision not to award him or her the qualification or grade;
 - (iv) the appeal was allowed after the last date on which he or she could have taken up the offer;
 - (v) as a result, he or she was offered a place on the current course; and
 - (vi) the first academic year of the current course begins on or after 1st September 2006 but before 1st September 2007;

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

“loan” means a loan towards a student's tuition fees under the Act and any regulations made thereunder, including the interest accrued on the loan and any penalties or charges made in connection with it;

“non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;

“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;

“period of work experience” has the meaning given to it in regulation 4(4);

“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^[5] as extended by the Protocol thereto which entered into force on 4th October 1967^[6] and any reference to the child of a refugee includes a reference to a step-child;

“relevant date”, in relation to a course, means—

- (a) as respects a course starting in the period 1st August to 31st December, 1st August;
- (b) as respects a course starting in the period 1st January to 31st March, 1st January;
- (c) as respects a course starting in the period 1st April to 30th June, 1st April; and
- (d) 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;

“Repayment Regulations” means the Repayment of Student Loans (Scotland) Regulations 2000^[7];

⁵ Cmnd 9171.

⁶ Cmnd 3906 (Out of print; photocopies are available, free of charge, from the Student Support Division, Department for Education and Employment, Mowden Hall, Staindrop Road, Darlington DL3 9BG or the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

⁷ As amended by S.S.I. 2000/200, 2001/227 and 2005/314.

“student loan account number” means the account number assigned by the lender to a loan made under the Act, the Education (Student Loans) Act 1990^[8], the Education (Student Loans) (Northern Ireland) Order 1990^[9], the Teaching and Higher Education Act 1998^[10], the Education (Student Support) (Northern Ireland) Order 1998 or any Regulations made under any of the foregoing;

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier employed person;

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week; and

“Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;

“Switzerland Agreement” means the Agreement between the European Community and its member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999^[11] and which came into force on 1st June 2002;

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules^[12];

“transferring student” means a student who starts a designated course (“the current course”) on or after 1st September 2006 having transferred to that course from a previous course (“the original course”) in connection with which the student was receiving support for tuition fees under the Students' Allowances (Scotland) Regulations 1999, where the original course was—

- (a) commenced before 1st September 2006 or, before 1st September 2007 in relation to which he or she was a gap year student; and
- (b) subject to (c), similar to the current course;
- (c) in paragraph (b) an original course is similar to a current course if it appears to the governing body of the institution providing the current course that the

⁸ Repealed by the 1998 Act Schedule 4.

⁹ S.I. 1990/1506 (N.I. 11) amended by S.I. 1996/1274 (N.I. 1), 1996/1918 (N.I. 15) and 1998/258 (N.I. 1).

¹⁰ As amended by the Learnings and Skills Act 2000 (c.21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6; the Finance Act 2003 (c.14), section 147 and the Higher Education Act 2004 (c.8), sections 42 and 43 and Schedule 7.

¹¹ Cm 5639.

¹² HC 395: relevant amending instrument is HC 194.

subject-matter of the current course is in whole or in part the same as the subject-matter of the original course; and

“Turkish worker” means a Turkish national who–

- (a) is ordinarily resident in Scotland; and
- (b) is, or has been, lawfully employed in the United Kingdom.

(2) For the purposes of these Regulations a person who is resident in Scotland, England, Northern Ireland, Wales, the Channel Islands or the Isle of Man as a result of having moved from another of those areas for the purpose of undertaking–

- (a) his or her present course; or
- (b) a previous designated course which (disregarding any intervening vacation) he or she was undertaking immediately before commencing his or her present course,

shall be considered to be ordinarily resident in the place from which he or she moved.

(3) For the purposes of paragraphs 1(a) and 8(b) of Schedule 1, a person shall be treated as ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that he or she was not actually resident only because that person, or his or her spouse or civil partner, or either of his or her parents, his or her guardian or any other person having parental responsibility for him or her, or any person having care of him or her when he or she is a child, or in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was temporarily employed outside Scotland.

(4) For the purposes of [paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c), 9(b) and 10(c) of Schedule 1]¹³, 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 the person was not actually ordinarily resident in the relevant area for the specified period only because that person, or his or her spouse or civil partner, or either of his or her parents, his or her guardian or any other person having parental responsibility for him or her, or any person having care of him or her when he or she is a child, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was for the time being temporarily employed outside the relevant area.

(5) For the purposes of paragraph 1(a) of Schedule 1 and subject to paragraph (6), a person shall not be treated as being ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that his or her residence there on that day is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the first day of the first academic year of the course as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(6) Paragraph (5) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

(7) For the purposes of paragraph 1(b) of Schedule 1, a person shall not be treated as having been ordinarily resident in the United Kingdom and Islands for the three year period, if the Scottish Ministers are satisfied that he or she was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless–

- (a) the person is treated as ordinarily resident in accordance with paragraph (4); or

¹³ words substituted by Education (Amendments in respect of Graduate Endowment, Student Fees and Support) (Scotland) Regulations 2007/503 (Scottish SI) Reg. 9(2)(b)

- (b) the person has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the person must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.
- (8) 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 Community or the European Economic Area, as appropriate.

PART II

ELIGIBILITY AND APPLICATIONS

3.— Eligible students

- (1) The Scottish Ministers may pay a loan, in accordance with the provisions of section 73(f) of the Act and these Regulations, to or in respect of an eligible student.
- (2) Subject to and in accordance with these Regulations a person shall be eligible for a loan for tuition fees in connection with his or her undertaking a designated course if the person—
- (a) is a person mentioned in Schedule 1;
 - (b) starts the designated course on or after 1st September 2006 and is not—
 - (i) a gap year student;
 - (ii) an end-on course student; or
 - (iii) a transferring student; and
 - (c) is not in breach of any obligation to repay any loan.
- (3) Notwithstanding that he or she satisfies the requirements specified in paragraph (2) a person shall not be eligible for a loan if—
- (a) he or she has, in the opinion of the Scottish Ministers, shown himself or herself by his or her conduct to be unfitted to receive a loan;
 - (b) the designated course is a part-time course; or
 - (c) except in the case of a person undertaking a course leading to a postgraduate Certificate of or Diploma in Education, the person holds a first degree from an educational institution in the United Kingdom or a comparable qualification from an educational institution outside the United Kingdom.
- (4) For the purposes of paragraph (2)(c) “loan” means a loan made under the Act, the Education (Student Loans) Act 1990, the Education (Student Loans) (Northern Ireland) Order 1990, the Teaching and Higher Education Act 1998, the Education (Student Support) (Northern Ireland) Order 1998 or under any regulations made under any of the foregoing.
- (5) A person in respect of whom the first day of the first academic year of the course is on or after 1st September 2006 shall not, at any one time, be eligible for support for more than one designated course.

4.— Designated courses

- (1) A course shall be designated for the purposes of regulation 3(2) if it is—
 - (a) mentioned in Schedule 2;
 - (b) a full-time course or sandwich course;
 - (c) of at least one academic year's duration; and
 - (d) wholly provided by an educational institution or institutions in the United Kingdom but outside Scotland, maintained or assisted by recurrent grants out of public funds or is provided by such an institution or institutions in conjunction with an institution or institutions outside the United Kingdom.
- (2) For the purposes of this regulation a sandwich course is a course, other than a course for the initial training of teachers referred to in paragraph 4 of Schedule 2, consisting of alternate periods of full-time study in an institution and periods of work experience so organised that, taking the course as a whole, the student attends the periods of full-time study for an average of not less than 18 weeks in each year; and for the purposes of calculating his or her attendance the course shall be treated as beginning with the first period of full-time study and ending with the last such period.
- (3) For the purposes of paragraph (2), where periods of both full-time study and work experience occur within any week of the course, the days of full-time study shall be aggregated with any weeks of full-time study in determining the number of weeks of full-time study in each year.
- (4) For the purposes of these Regulations “periods of work experience” means—
 - (a) periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outwith the institution; and
 - (b) in the case of a course which includes the study of one or more modern languages for not less than one half of the time spent studying on the course, and which includes periods of residence in a country whose language is a language of the course, such periods of residence during which the student is employed.
- (5) 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 into an agreement with the student to provide the course.
- (6) For the purposes of paragraph (1) a university and any constituent college or institution in the nature of a college of a university shall be regarded as maintained or assisted by recurrent grants out of public funds if either the university or the constituent college or institution is so maintained or assisted.
- (7) For the purposes of paragraph (1) an institution shall not be regarded as maintained or assisted by recurrent grants out of public funds by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992¹⁴.
- (8) For the purposes of these Regulations a course, the standard of which is not higher than a first degree course, which leads to a qualification as a medical doctor, a dentist, a veterinary surgeon, an architect, a landscape architect, a landscape designer, a landscape manager, a town planner or a town and country planner, shall be considered to be a single course for a first degree or for an equivalent qualification notwithstanding that the course may lead to another degree or qualification

¹⁴ Section 65(3A) was inserted by section 27 of the 1998 Act.

being conferred before the degree or equivalent qualification, and notwithstanding that part of the course may be optional.

(9) For the purposes of regulation 3(2) the Scottish Ministers may designate courses of higher education which are not designated under paragraph (1).

5.— Applications for loans

(1) A student shall apply for a loan, not exceeding the maximum amount applicable in his or her case, in connection with his or her undertaking a designated course by completing and submitting to the Scottish Ministers an application in such form as the Scottish Ministers may require.

(2) The maximum amount applicable in his or her case shall be the maximum amount of tuition fee charged to the student for the current academic year of the designated course which the student is undertaking.

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

- (a) the student's United Kingdom national insurance number, unless he or she does not have one;
- (b) the student's most recent student loan account number, if any; and
- (c) the names, addresses and telephone numbers of two referees who know the student.

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

- (a) the particulars given in the form are correct to the best of his or her knowledge and belief;
- (b) he or she will notify the Scottish Ministers of any change in them which might affect his or her eligibility for a loan; and
- (c) he or she will, if required to do so, repay to the Scottish Ministers—
 - (i) any amount paid to him or her or to any other person on his or her behalf which exceeds for whatever reasons the amount of loan to which he or she is entitled under these Regulations; and
 - (ii) any amount lent to him or her, together with interest and applicable charges and penalties, in accordance with the Act and any Regulations made under it from time to time.

(5) The application form must reach the Scottish Ministers by the date they determine from time to time (and different dates may be determined by them in respect of loans for different courses) unless the Scottish Ministers consider that, having regard to the circumstances of the particular case, the time limit should be relaxed in which case the application must reach the Scottish Ministers not later than the date they specify.

(6) A student shall demonstrate his or her eligibility for a loan by providing such evidence as the Scottish Ministers may require.

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

(8) If the Scottish Ministers determine that a student is eligible for a loan they shall notify him or her of that fact and thenceforth the student shall be an “eligible student” for the purposes of these Regulations.

(9) Where an eligible student who has submitted an application for a loan in accordance with paragraph (1) has not applied for the maximum amount of loan to which he or she is entitled in relation to an academic year under the preceding paragraphs he or she may apply to borrow an additional amount, which when added to the amount already applied for shall not exceed the maximum applicable in his or her case.

(10) An application under paragraph (9) shall be made by completing and submitting to the Scottish Ministers an application in such form as they may require not later than the date the Scottish Ministers determine from time to time and shall contain a declaration signed by the student, either in writing or electronically, in the terms set out in paragraph (4).

[5A.— Provision of United Kingdom national insurance number

(1) The Scottish Ministers may make it a condition of eligibility for a loan that the student must provide them with that student's United Kingdom national insurance number.

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

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

]¹⁵

6.— Transfers of eligibility

(1) An eligible student may request that the Scottish Ministers transfer his or her eligibility in any case where—

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

¹⁵ added by Education (Student Loans for Tuition Fees) (Scotland) Amendment Regulations 2007/158 (Scottish SI) Reg. 2

(2) The Scottish Ministers, on being satisfied of the matters referred to in paragraph (1) and that the second course is a designated course, shall transfer the eligible student's eligibility, and thenceforth the eligible student shall for all purposes be an eligible student in connection with his or her undertaking the second course, whether or not he or she might have been eligible for a loan if he or she had applied under regulation 5.

(3) An eligible student's eligibility for a loan may not be transferred after it has expired or been terminated under regulation 7.

(4) An eligible student who transfers his or her eligibility under this regulation after the Scottish Ministers have assessed his or her loan in connection with the academic year of the course from which he or she is transferring but before he or she completes that year may not, in connection with the academic year of the course to which he or she transfers, apply for another loan of a kind that he or she has already applied for under these Regulations in connection with the academic year of the course from which he or she is transferring.

7.— Termination of eligibility

(1) Subject to paragraph (2) an eligible student shall cease to be eligible for a loan on the expiry of the period ordinarily required for the completion of the course, and accordingly he or she shall then cease to be an “eligible student”.

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

(3) Where an eligible student has withdrawn from a course in circumstances where the Scottish Ministers have not transferred or will not transfer his or her eligibility to another course under regulation 6, or has abandoned or been expelled from his or her course, the Scottish Ministers shall determine that he or she is no longer eligible for a loan, and on such determination he or she shall then cease to be an “eligible student”.

(4) Where an eligible student has shown himself or herself by his or her conduct to be unfitted to receive a loan the Scottish Ministers may determine that he or she is no longer eligible for a loan, and on such determination he or she shall then cease to be an “eligible student”.

8.— Information

(1) Every applicant and every eligible student shall as soon as reasonably practicable after he or she is requested to do so provide the Scottish Ministers with such information as they consider necessary for the exercise of their functions under these Regulations.

(2) Every applicant and every eligible student shall forthwith inform the Scottish Ministers if any of the following occurs, and provide them with particulars—

- (a) he or she withdraws from, abandons or is expelled from his or her course;
- (b) he or she transfers to another course, at the same or a different institution, whether or not the new course is a designated course;

- (c) he or she ceases to undertake his or her course and does not intend to, or is not permitted to, return for the remainder of the academic year;
- (d) he or she is absent from his or her course for more than 60 days due to illness, or is absent from his or her course for any period for any other reason;
- (e) the month for the start or completion of the course changes;
- (f) his or her home or term time address or telephone number changes.

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

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

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

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

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

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

(8) Where the Scottish Ministers have requested an agreement as to the method of repayment under this regulation, they may withhold any payment of a loan until the applicant or eligible student provides what has been requested.]¹⁶

PART III

LOANS

9. Maximum amounts of loans

The maximum amount of loan in respect of each academic year shall not exceed an amount determined from time to time by the Scottish Ministers and shall, in any event, not exceed the maximum amount of tuition fee charged to the student for the current academic year of the designated course which the student is undertaking.

¹⁶ added by Education (Student Loans for Tuition Fees) (Scotland) Amendment Regulations 2007/158 (Scottish SI) Reg. 3

PART IV PAYMENTS

10. Payment of loans

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

PART V INTEREST AND INSOLVENCY

11.— Interest

(1) Subject to paragraph (2), loans made in each twelve month period commencing on 1st August shall bear interest at a rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980^[17] equal to the percentage by which the retail prices all items index published by the Office for National Statistics for the month of March immediately preceding the commencement of that period has increased compared with that for the previous March.

(2) If the rate 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 loans shall bear interest at the rate so specified.

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

12. Insolvency

Where after the date of sequestration of an eligible student's estate, he or she receives, or is entitled to receive, sums by way of loan—

- (a) the sheriff shall not, in fixing an amount under section 32(2) of the Bankruptcy (Scotland) Act 1985^[18] treat the sums as income of the eligible student; and
- (b) for the purpose of section 32(6) of that Act the sums shall not be treated as estate vesting in, or requiring to be conveyed or delivered to, the eligible student's permanent trustee; and
- (c) any debt or liability to which the eligible student is, or may become, subject in respect of the sums 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

¹⁷ Amended by S.I. 1983/1562, 1989/596 and 1999/3177.

¹⁸ Section 32 was amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 6, the Pensions Act 1995 (c.26), Schedule 3, paragraph 14 and the Civil Partnership Act (c.33), Schedule 28(3), paragraph 34.

(ii) from which the eligible student is discharged on the expiry of a period after the date of sequestration, under or by virtue of section 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 or her and the permanent trustee).

NICOL STEPHEN

A member of the Scottish Executive
St Andrew's House, Edinburgh

7th June 2006

SCHEDULE 1

ELIGIBLE STUDENTS

Regulation 3(2)(a)

1.

A person who—

- (a) is ordinarily resident in Scotland on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of three years immediately preceding the first day of the first academic year of the course; and
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971¹⁹.

2.—

(1) A person who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) an EEA frontier worker or an EEA frontier self-employed person;
 - (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
- (c) subject to sub-paragraph (2), is ordinarily resident in the Scotland on the first day of the first academic year of the course.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iii) or (iv).

3.—

(1) A person who—

- (a) is—
 - (i) the family member of a person mentioned in paragraph 2(1)(a); or

¹⁹ Section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

- (ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers^[20], as extended by the EEA Agreement;
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
 - (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the first day of the first academic year of the course.
- (2) Sub-paragraph (1)(c) not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

4.—

- (1) A person who—
- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
 - (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right 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;
 - (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
 - (e) in the case where his or her ordinary residence referred to in sub-paragraph (d) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in sub-paragraph (d).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—
- (a) is—
 - (i) a United Kingdom national;
 - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
 - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
 - (b) either—
 - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a State other than the United Kingdom; or
 - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the State within the territory comprising the European Economic Area and Switzerland of which he or she is a

²⁰ O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No 2434/92 (O.J. No. L 245, 26.8.92, p.1).

national or of which the person in relation to whom he or she is a family member is a national.

[(3) Sub-paragraph (1)(a) does not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).]²¹

5.

A person who—

(a) is—

(i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or

(ii) the spouse, civil partner or child of such a refugee; and

(b) is ordinarily resident in Scotland on the first day of the first academic year of the course.

6.

A person who—

(a)

(i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom and he or she has been granted leave to enter or to remain accordingly;

(ii) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted leave to enter or remain, and

(iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or

(b) is the spouse, civil partner, child or stepchild of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the first day of the first academic year of the course.

7.

A person who—

(a) has been granted temporary protection, who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted temporary protection;

(b) has not attained the age of 18 years on the relevant date; and

(c) is ordinarily resident in Scotland on the first day of the first academic year of the course.

8.

A person who—

(a) is a non UK EC national or the child of such a national;

(b) is ordinarily resident in Scotland on the first day of the first academic year of the course;

(c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date; and

(d) in the case where his or her ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the

²¹ added by Education (Amendments in respect of Graduate Endowment, Student Fees and Support) (Scotland) Regulations 2007/503 (Scottish SI) Reg. 9(3)(a)(ii)

territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (c).

9.

A person who—

- (a) is the child or stepchild of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course;
- (c) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
- (d) in the case where his or her ordinary residence referred to in paragraph (b) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (b).

[10.

A person who—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the first day of the first academic year of the course.]²²

SCHEDULE 2

DESIGNATED COURSE

Regulation 4(1)(a)

1.

A first degree course other than a course referred to in paragraph 4.

2.

A course for the Diploma of Higher Education.

3.

A course for the Higher National Diploma or Higher National Certificate of the Business & Technician Education Council.

4.

A course for the initial training for teachers, including such a course leading to a first degree.

²² added by Education (Amendments in respect of Graduate Endowment, Student Fees and Support) (Scotland) Regulations 2007/503 (Scottish SI) Reg. 9(3)(b)

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

(b) the examination for the National Certificate or the National Diploma of the body 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), 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 Order)

These Regulations provide for loans for tuition fees for eligible students attending designated courses provided by an institution located in the UK but outside Scotland (“an RUK institution”). The Regulations apply to loans payable for an academic year starting on or after 1st September 2006 (regulation 3(2)(b)).

Students are eligible for the loan under these Regulations if they fall within one of the eligibility categories laid down in Schedule 1. The majority of eligible students will be eligible due to their ordinary residence in Scotland on the first day of the first academic year of the course if they are additionally settled in the United Kingdom for the purposes of the Immigration Act 1971 and have been ordinarily resident in the UK for 3 years preceding the first academic year of the course. (Schedule 1, paragraph 1).

However, subject to certain residence conditions, students may also be eligible if they are an EEA migrant worker or self-employed person, an EEA frontier worker or frontier self-employed person, a Swiss employed or self-employed person or a Swiss frontier worker or frontier self-employed person (Schedule 1, paragraph 2) and certain family members of such persons (Schedule 1, paragraph 3).

Additionally, a person who is settled in the United Kingdom and has exercised free movement rights in order to reside in the EEA and/or Switzerland may qualify for a loan if ordinarily resident in Scotland on the first day of the first academic year of the course (Schedule 1, paragraph 4).

Finally, the following categories of person may be eligible for a loan, subject to satisfying certain residence conditions; refugees, persons with rights to enter or remain in the UK, persons with

temporary protection, EU nationals and children of Swiss nationals (Schedule 1, paragraphs 5, 6, 7, 8 and 9 respectively).

To be eligible students must also start their course on or after 1st September 2006 and not be gap year students, end-on course students (these are students who continue from one course on to another course where the first course can be seen as an integral part of the second course e.g. foundation degree courses leading on to a degree), or transferring students (i.e. students who have started an original course prior to 1st September 2006 and who are commencing a designated course after 1st September 2006 only as a result of transferring their course). In addition students must not be in breach of any obligation to repay any type of student loan, must not by their conduct be unfitted to receive a loan and must not already hold a first degree (regulation 3).

Courses which are designated courses for the purposes of these Regulations include full-time courses for a first degree, a Diploma of Higher Education, a Higher National Diploma or Higher National Certificate, the initial training of teachers or youth or community workers, certain professional examinations and certain other courses of education which are of a standard not higher than that of a first degree course. In each case such courses must be provided on a full-time or sandwich course basis, must be of at least one academic year's duration and must be provided by an RUK institution which is maintained by public funds (regulation 4).

The Scottish Ministers may designate other courses (regulation 4(9)).

Students must apply for a loan in accordance with Regulation 5. The maximum amount of loan shall be the maximum amount of tuition fee charged to the student for the current academic year of a designated course which the student is undertaking (regulation 5(2)). As part of the application a student must make a declaration in relation to the information given to Scottish Ministers and their obligation to repay the loan (regulation 5(4)).

In certain circumstances a student who changes the course which they are studying can request that Scottish Ministers transfer their eligibility for a loan. However a student's eligibility for a loan cannot be transferred after it has expired or been terminated and an application for a loan for tuition fees can only be made once in any one academic year (regulation 6).

An eligible student shall no longer be eligible for a loan in the following circumstances. When the period ordinarily required for the completion of the course expires (although Scottish Ministers can make exceptions under regulation 7(2)), where an eligible student withdraws from a course and does not transfer to another course, where an eligible student has abandoned or been expelled from a course and where the eligible student shows himself or herself to be unfitted to receive a loan due to conduct.

Students are under an obligation to provide specified information to Scottish Ministers (regulation 8).

Provision is made for interest which the loans will bear. In accordance with section 73B(6) and (7) of the Education (Scotland) Act 1980 the prescribed rate of interest is no higher than that which the Scottish Ministers are 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 conferred by virtue of the Consumer Credit Act 1974 (regulation 11).

Student loans paid or payable after the commencement of the sequestration of a student's estate shall not form part of his or her estate, and accordingly cannot be claimed by his trustee. The student will not be discharged from liability to repay loan repayments after a sequestration when he or she

is discharged under or by virtue of section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (regulation 12).