STATUTORY INSTRUMENTS

1983 No. 1535 (S. 143)

EDUCATION, SCOTLAND

The Education Authority Bursaries (Scotland) Amendment (No. 2) Regulations 1983

Made - - - -	18*th October* 1983
Laid before Parliament	31*st October* 1983
Coming into Operation	21*st November* 1983

In exercise of the powers conferred upon me by section 49(3) of the Education (Scotland) Act 1980 (**a**) and of all other powers enabling me in that behalf, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Education Authority Bursaries (Scotland) Amendment (No. 2) Regulations 1983 and shall come into operation on 21st November 1983.

Interpretation

2. In these regulations, 'the principal regulations' means the Education Authority Bursaries (Scotland) Regulations 1978 (**b**).

Amendment of the principal regulations

3. The principal regulations shall be amended by—

(a) inserting in regulation 2(1) (Interpretation) at the appropriate respective places in alphabetical order, of the following definitions:—

" 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man;

'employment' means full-time employment or part-time employment which, in a normal week, involves a significant number of hours of work and 'employed' shall be construed accordingly; and for the purposes hereof references to employment include references to the holding of any office and to any occupation for gain;

'European Community' means the area comprised by the member states of the European Economic Community (including the United Kingdom) as constituted from time to time;

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

'relevant power' means any of the powers conferred on an education authority by section 49(1) or as the case may be section 49(2) of the Education (Scotland) Act 1980;";

(**a**) 1980 c.44.
(**b**) S.I. 1978/998, to which there are amendments not relevant to these regulations.

(b) inserting after paragraph (1) of regulation 2, the following paragraph:—

"(1A) In these regulations a reference to a person's child includes a reference to a person adopted in pursuance of adoption proceedings, a step-child and an illegitimate child of whom the person concerned is the mother or in whose case he has admitted paternity or been adjudged the putative father.";

(c) adding at the end of regulation 2 the following paragraph:—

"(6) A reference in a regulation or Schedule to a paragraph or a reference in a paragraph to a sub-paragraph, shall, unless the context otherwise requires, be construed as a reference to a paragraph of that regulation or Schedule or sub-paragraph of that paragraph as the case may be.";

and

(d) substituting for regulation 4 (requirements and other provisions for granting of bursaries) the following regulation:—

"**4.**—(1) Subject to the provisions of this regulation and Schedule A1 (further requirements regarding eligibility for bursaries) a relevant power shall not be exercised by an education authority in relation to a person, being a person mentioned in section 49(1), or as the case may be section 49(2) of the Education (Scotland) Act 1980 who does not fulfil such of the requirements for eligibility for a bursary specified for the purposes of this paragraph in Schedule A1, as are relevant to him, being requirements as to matters regarding eligibility for a bursary, other than matters as to residence in the area of an education authority.

(2) Notwithstanding that a person may fulfil such of the requirements for eligibility for a bursary specified in Schedule A1 as are relevant to him, a relevant power shall not be exercised by an education authority as respects such a person, if he does not fulfil at least one of the requirements specified for the purposes of this paragraph in paragraph (3), being requirments as to residence in the area of an education authority.

(3) Subject to the provisions of paragraphs (4) to (7), the requirements specified for the purposes of paragraph (2) above are that a person—

(a) shall be or shall have been ordinarily resident in the area of the education authority proposing to exercise the relevant power, on the relevant day; or

(b) shall be or have been the child of a parent or maintained by a guardian who shall be or shall have been so ordinarily resident as mentioned in sub-paragraph *(a)*; or

(c) being a person whose parent or guardian is a national of a member state of the European Community and whose parent or guardian—

(i) where he is employed on the relevant day, is then in employment in Scotland; or

(ii) where he is not employed on that day (by reason of retirement or otherwise), was last employed in such employment; or

(iii) whether or not he is employed on that day, has, during the period of three years ending therewith, been in such employment for an aggregate period of not less than a year;

shall himself be or have been resident in the area of the education authority proposing to exercise the relevant power, on the relevant day; or

(d) being a national of a member state of the European Community who has entered the United Kingdom wholly or mainly for the purpose of taking up or seeking employment; shall be or have been resident in the area of the education authority proposing to exercise the relevant power on the relevant day and—

(i) during the year preceeding that relevant day, shall have been in employment in Scotland for an aggregate period of not less than 9 months; and

(ii) shall be seeking a bursary in respect of a course provided by a vocational training establishment being a course leading to a qualification which is needed for or is designed to fit a person for engagement in a specific profession or trade; or

(e) shall be a person whom, or a member of a family which, the authority proposing to exercise the relevant power is satisfied has or has had on the relevant day a residential connection with their area of other than one of a temporary nature;

(4) In paragraph (3) references to the relevant day are references to the relevant day in relation to the payment period to which the proposed exercise of the relevant power relates and in paragraph (3)*(d)*(ii)—

"qualification" includes authorisation, recognition, registration, enrolment, approval and certification; and

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

(5) Where—

(a) any residence on the relevant day in the area of an authority, referred to in paragraph (3)*(a)* to *(d)* is or was residence of the person thereby required to be resident; wholly or mainly for the purpose of that person attenting a course of study, undertaking post graduate research or being temporarily employed in that area;

(b) that person would, but for that purpose, have been ordinarily resident on that day in the area of another education authority or a local education authority;

that person, shall for the purposes of this regulation be treated as if he had been ordinarily resident on that day in the area of that other authority; and in this paragraph "local education authority" has the meaning assigned to it in section 144 of the Education Act 1944(**b**).

(**a**) OJ No. L257, 19.10.68, p. 2 (OJ/SE 1968 (II), p. 475).
(**b**) 1944 c. 31; section 144 is amended by S.I. 1977/293.

(6) A person who is required by any of sub-paragraphs *(a)* to *(d)* of paragraph (3) to be ordinarily resident or resident on the relevant day in the area of an education authority shall be treated for the purposes of the sub-paragraph as being so resident if the education authority are satisfied that he was only not so resident in their area on that day because he, his spouse, his parent or guardian was temporarily attending a course of study, or undertaking post graduate research outside that area.

(7) Where a person being a person mentioned in section 49(1) or as the case may be section 49(2) of the Education (Scotland) Act 1980 (**a**) is or was on the relevant day in relation to any payment period in the care of a local authority under section 15 of the Social Work (Scotland) Act 1968 (**b**) that person or as the case may be his parent or guardian shall be deemed to be ordinarily resident in the area of the education authority which includes the area of that local authority or if that local authority are or were entitled to recover expenses incurred by them in respect of that person from another local authority, in the area of the education authority which includes the area of the other local authority.

(8) For the purposes of this regulation—

(a) a reference to a relevant day, shall be construed—

(i) in relation to a payment period commencing on any date during the period from 1st August to 31st December (both dates inclusive), as a reference to 30th June preceding that date;

(ii) in relation to a payment period commencing on any date during the period from 1st January to 31st March (both dates inclusive), as a reference to 31st October preceding that date;

(iii) in relation to a payment period commencing on any date during the period from 1st April to 31st July (both dates inclusive), as a reference to the last day of February preceding that date;

(b) "guardian" means any person, other than a parent who is legally liable to maintain a person mentioned in section 49(1) or as the case may be section 49(2) of the Act.".

4. Before Schedule 1 to the principal regulations there shall be inserted the Schedule to these regulations which shall form Schedule A1 to the principal regulations.

George Younger,
One of Her Majesty's Principal Secretaries of State.

New St Andrew's House,
Edinburgh.
18th October 1983.

(**a**) 1980 c.44.
(**b**) 1968 c.49.

SCHEDULE

(to be inserted as Schedule A1 to the principal regulations)

FURTHER REQUIREMENTS REGARDING ELIGIBILITY FOR BURSARY

1.—(1) In this Schedule—

"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 as extended by the Protocol thereto which entered into force on 4th October 1967 or a person who enjoys asylum in the United Kingdom in pursuance of a decision of Her Majesty's Government though not so recognised.

(2) In this Schedule any reference to a relevant date in relation to a person attending or proposing to attend a course of study being a course of study which is or may be first commenced by the person—

(a) in the autumn term of any year, is a reference to the earlier of 31st August in that year or the first day of that term;

(b) in the spring term of any year, is a reference to the earlier of 31st December in the year preceding that year or the first day of that term; and

(c) in the summer term of any year, is a reference to the earlier of 31st March in that year or the first day of that term.

(3) A person shall be treated for the purposes of paragraph 2(1)*(a)*, or, as the case may be *(b)*, as ordinarily resident in the British Islands or in the European Community ("the relevant area") for the period therein stated if the education authority proposing to exercise the relevant power is satisfied that he was only not so resident for that period in the relevant area because—

(a) he, his spouse, his parent or his guardian was temporarily employed outside the relevant area; or

(b) he, his spouse, his parent or his guardian was temporarily attending a course of study or undertaking post graduate research, outside the relevant area.

(4) Subject to sub-paragraph (3) above, a person may be treated for the purposes of paragraph 2(1)*(a)*, or, as the case may be *(b)*, as ordinarily resident in the British Islands or in the European Community for the period therein stated if the education authority proposing to exercise the relevant power is satisfied that he was born and has spent the greater part of his life in the British Islands or as the case may be, the European Community; and either—

(a) his parents or either of them have been ordinarily resident in the British Islands or the European Community for that period and he himself is not an independent student; or

(b) he has been ordinarily resident for at least one year of that period in the British Islands or the European Community and has not been so ordinarily resident for any part of that year for the purpose of receiving full-time education.

(5) In sub-paragraph (4)*(a)*, an "independent student" means a student who either—

(a) has attained the age of 25 years before the relevant date relative to the course of study to which the allowance applied for relates; or

(b) has supported himself out of his earnings for periods preceding the relevant date aggregating not less than three years.

(6) For the purposes of sub-paragraph (5) a student shall be treated as having supported himself out of his earnings for any period or periods, not exceeding twelve months in the aggregate, for which—

(a) the student was in receipt of training in pursuance of the Manpower Services Commission's Training Opportunities Programme or Youth Opportunities Programme; or

(b) the student was in receipt of unemployment benefit under section 14(1)*(a)* of the Social Security Act 1975 (a) ; or

(c) before 24th November 1980 (when Schedule 2 to the Social Security Act 1980 (b) came into force), the student was registered for employment; or

(d) on and after that date but before 18th October 1982, the student was registered and available for employment; or

(e) on and after 18th October 1982, the student was available for employment and, if under the age of 18 years, registered for employment.

(7) For the purposes aforesaid a student shall also be treated as having supported himself out of his earnings for any period—

(a) for which the student held a Scottish Studentship or comparable award;

(b) for which the student received sickness benefit, invalidity pension or maternity allowance under section 14(1)*(b)*, 15(1)*(b)*, 22(1) or 36(1) of the Social Security Act 1975; or

(c) for which the student could not reasonably have been expected to support himself out of his earnings because he had the care of a person under the age of 18 years who was dependent upon him.

(8) In sub-paragraph (6) any reference to a person registered or available for employment is a reference to his being so registered or available for the purposes of section 5 of the Supplementary Benefits Act 1976 (c) .

(9) In sub-paragraphs (6) and (7) any reference to an enactment contained in the Supplementary Benefits Act 1976 or the Social Security Act 1975 is a reference to that enactment as from time to time in force and includes, in relation to a period before the coming into force of the enactment in question, a reference to the corresponding enactment then in force.

2.—(1) Subject to the provisions of sub-paragraph (2) and (3) the requirement for eligibility for bursary specified for the purposes of regulation 4(1) are—

(a) in the case of any person, other than a person mentioned in sub-paragraphs *(b)*, *(c)* and *(d)* that he shall have been ordinarily resident in accordance with sub-paragraph (2) throughout the period of three years preceding the relevant date in the British Islands;

(b) in the case of a person mentioned in regulation 4(3)*(c)* or *(d)*, that he shall have been ordinarily resident in accordance with sub-paragraph (2) throughout the period of 3 years preceding the relevant date in the European Community;

(c) in the case of a refugee, that he shall have been ordinarily resident in the British Islands and shall not have ceased to be so ordinarily resident since he was recognised as a refugee or was accorded asylum;

(d) in the case of a spouse or child of a refugee, that the refugee is such a refugee as is mentioned in sub-paragraph *(c)*.

(2) For the purposes of sub-paragraph (1)*(a)* and *(b)* a person shall have been ordinarily resident in accordance with this sub-paragraph if his period of residence shall not as respects any part thereof have been wholly or mainly for the purposes of receiving full-time education.

(3) The requirement specified in sub-paragraph (1)*(a)* and *(b)* that a person shall have been ordinarily resident in accordance with sub-paragraph (2) shall not apply in the case of a person, who in pursuance of paragraph 1(3) or (4) is treated as ordinarily resident in the British Islands or as the case may be the European Community throughout the period mentioned in sub-paragraph (1)*(a)* or as the case may be *(b)*.

(a) 1975 c.14.
(b) 1980 c.30.
(c) 1976 c.71, as amended by section 6 of and Schedule 2 to the Social Security Act 1980.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Education Authority Bursaries (Scotland) Regulations 1978 (the "principal regulations"). The general arrangements made by education authorities for the purposes of their functions under section 49 of the Education (Scotland) Act 1980 have provided that a bursary should not be made unless certain requirements were fulfilled by the applicant. These regulations expressly prescribe those requirements. They provide that the powers under section 49 of the 1980 Act may not be exercised in any case unless the applicant fulfills conditions with respect to him being ordinarily resident in the United Kingdom or in some cases, the European Community. The basic requirement is that he shall have been so ordinarily resident throughout a three year period preceding the commencement of the first year of the proposed course and shall not during that period have been so ordinarily resident wholly or mainly for the purposes of receiving full-time education (regulations 3*(d)* and 4 substituting new regulation 4(1) and inserting Schedule A1 paragraph 2 in the principal regulations).

Further, those powers may not be exercised by an education authority in any case where the applicant does not satisfy at least one of several requirements prescribed with respect to residence or connection with the area of that authority, (regulation 3*(d)* substituting new regulation 4(2) to (7) in the principal regulations).

The regulations also express the arrangements operated in respect of eligibility of persons claiming to be ordinarily resident as refugees and extend those arrangements as respects spouses or children of such refugees (regulation 4, inserting Schedule A1 paragraph 2(1)*(c)* and *(d)* into the principal regulations) and other related but minor arrangements.

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