Executive Note

The Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment Regulations 2006 SSI/2006/323

1. The above regulations ("the Amendment Regulations") were made in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980; sections 1 and 2 of the Education (Fees and Awards) Act 1983; and section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The Amendment Regulations amend existing regulations in relation to the graduate endowment, student fees and student support. The regulations amended are the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992, the Education Authority Bursaries (Scotland) Regulations 1995, the Education (Fees and Awards) (Scotland) Regulations 1997, the Students' Allowances (Scotland) Regulations 1999, the Education (Student Loans) (Scotland) Regulations 2000, the Graduate Endowment (Scotland) Regulations 2001 and the Education Maintenance Allowances (Scotland) Regulations 2004 ("the principal regulations").

3. The main purpose of the Amendment Regulations is to ensure compliance with Scottish Ministers' EC law obligations, in particular the implementation of certain requirements of Council Directive 2004/38/EC (OJ L158, 30.04.2004, p77-123) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member states. A copy of the Directive and a transposition note is attached to this Executive Note.

4. The Amendment Regulations also amend the principal regulations (with the exception of the Education (Fees and Awards) (Scotland) Regulations 1997) by removing one of the qualifying requirements in one of the eligibility and liability categories in the principal regulations, the category of student who has been refused refugee status but granted some other form of leave to remain.

Background of Directive and Effect of Amendments

5. The Directive relates to the rights of EC nationals and their family members to move and reside freely in the territory of the member states. It consolidates and extends a number of existing rights of entry and residence applying to EC nationals and their family members and provides for the right of permanent residence. In terms of student support, it broadly ensures that those who have acquired a right of permanent residence under the Directive have a right to equal treatment in relation to maintenance support but that other non economically active EC nationals and their family members residing in the UK on the basis of the Directive only have a right to equal treatment in relation to tuition fee support. The Amendment Regulations amend the principal regulations to reflect these rights.

6. In addition, the Amendment Regulations update and extend other rights and obligations in the principal regulations to reflect either requirements of the Directive or of

wider Community law. These rights and obligations are included in the eligibility and liability categories specified in Schedules to the principal regulations. The categories are based on ordinary residence and the principal regulations also set out rules for determining ordinary residence, mainly in separate Schedules.

7. The Amendment Regulations take the approach of replacing the relevant Schedules. Certain groups are affected by these changes which either make them potentially now eligible for support (tuition fee, maintenance or both) or liable for the graduate endowment or confirm their existing entitlement or obligation. These groups are as follows:

- EC nationals and their family members who have acquired a right of permanent residence under the Directive
- EC nationals and their family members whose eligibility or liability is now assessed in accordance with their rights of residence under the Directive.
- European Economic Area (EEA) and Swiss self employed persons and their families.
- EEA and Swiss frontier workers and frontier self employed persons.
- Dependent direct relatives in the ascending line of EEA and Swiss migrant workers.
- The children of Swiss nationals.
- UK nationals exercising free movement rights under Community law.

8. The Amendment Regulations also amend the principal regulations (with the exception of the Education (Fees and Awards) (Scotland) Regulations 1997) to remove the requirement of 3 years ordinary residence in the UK and Islands as it applies to people who have been refused refugee status but granted some other form of leave to enter or remain (or the spouse/civil partner or child of such a person). This category of applicant is now required to fulfil similar residence criteria to those who have been granted refugee status, of having been ordinarily resident in the relevant area at all times since being granted their immigration status.

9. The Education (Fees and Awards) (Scotland) Regulations 1997 do not require to be amended in this way as people granted a leave to remain are already not required to meet the 3 years ordinary residence criterion in order to be exempt from being charged the higher "overseas" rate of fees.

Approach for Amendments and Consolidation

10. The principal regulations set out the eligibility and liability categories in Schedules to the regulations. As these are being comprehensively amended, rather than textual amendments to the relevant categories, the approach in the Amendment Regulations is to replace the entire text of each Schedule, which has the benefit of users having the full text of the Schedules in a single instrument. This is a major step towards consolidating the principal regulations. We have previously acknowledged the benefit of a consolidation, given the number of amendments already made to the principal Regulations While the Schedules

represent a large part of the principal regulations, there remains work outstanding on the consolidation of the main bodies of the principal regulations. However, the current changes in the Amendment Regulations were considered of sufficient importance to prioritise ahead of the remaining work on the consolidation exercises.

Financial Effects

11. The Amendment Regulations have negligible financial effects on the Scottish Executive, Local Government or on business. It has not been necessary to prepare a Regulatory Impact Assessment.

12. The Amendment Regulations will potentially increase the demand for support from students in higher education (HE). However, as the number of places which can be funded by the Scottish Funding Council in HE is limited, increased demand will not necessarily lead to an overall increase in expenditure. Students who are eligible for the EMA programme as a result of the Amendment Regulations will be funded through Annually Managed Expenditure (AME).

THE SCOTTISH EXECUTIVE

Contact: Valerie Sneddon
ETLLD: FFL
1st Floor, Europa Building
Tel: 0141 242 0113
valerie.sneddon@scotland.gsi.gov.uk
6 June 2006