SCOTTISH STATUTORY INSTRUMENTS

2004 No. 469

EDUCATION

The Education (Graduate Endowment, Student Fees and Support) Switzerland (Scotland) Amendment Regulations 2004

Made - - - -	*2nd November 2004*
Laid before the Scottish Parliament	*2nd November 2004*
Coming into force - -	*24th November 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(**a**); sections 1 and 2 of the Education (Fees and Awards) Act 1983(**b**); sections 1, 2 and 3(2) of the Education and Training (Scotland) Act 2000(**c**); and section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001(**d**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Education (Graduate Endowment, Student Fees and Support) Switzerland (Scotland) Amendment Regulations 2004 and shall come into force on 24th November 2004.

Amendment of Nursing and Midwifery Regulations

2.—(1) The Nursing and Midwifery Student Allowances (Scotland) Regulations 1992(**e**) shall be amended as follows.

(2) In regulation 2–

(a) at the end of the definition of "allowance" omit "and";

(b) after that definition insert–

(**a**) 1980 c.44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c.30), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2); section 73B was inserted by the Teaching and Higher Education Act 1998 (c.30), section 29(2) and amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 3(2) and by the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 149; section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), 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).

(**b**) 1983 c.40; section 1 was relevantly amended by the Education Reform Act 1988 (c.40), Schedule 12, paragraph 91 and the Further and Higher Education (Scotland) Act 1992 (c.37), schedule 9, paragraph 8; section 2(3)(a) and the word "other" in paragraph (b) were repealed by the Teaching and Higher Education Act 1998 (c.30), section 44(2) and Schedule 4. 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).

(**c**) 2000 asp 8; section 1 was amended by S.S.I. 2000/292.

(**d**) 2001 asp 6.

(**e**) S.I. 1992/580, amended by S.S.I. 2002/423 and 2003/401.

""EEA migrant worker" means a person who is a national of an EEA State or Switzerland who has taken up an activity as an employed person in the United Kingdom–

(a) under Council Regulation (EEC) No. 1612/68(**a**) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area) or the Switzerland Agreement; or

(b) in circumstances where as a national of the United Kingdom that person has an enforceable Community right to be treated no less favourably than a national of another EEA State in relation to matters which are the subject of the above mentioned Regulation;

"EEA State" means a member State, Norway, Iceland or Liechtenstein;

"European Economic Area" means the area of the EEA States, and includes those States at any time before they became EEA States;";

(c) at the end of the definition of "Health Board" insert "; and"; and

(d) after that definition insert–

""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(**b**) and which came into force on 1st June 2002.".

(3) In Schedule 1–

(a) in paragraph 2(a)–

(i) for "by the EEA Agreement)" substitute ") or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles";

(b) in paragraph 2(b) after "European Economic Area" insert "or Switzerland";

(c) in paragraph 3(a) after "European Economic Area" insert "or Switzerland";

(d) in paragraph 4(a)–

(i) after "Council Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 12" substitute "subject of either of those Articles";

(e) in paragraph 4(b) after "European Economic Area" insert "or Switzerland"; and

(f) in paragraph 7(b) after "European Economic Area" insert "or Switzerland".

(4) In paragraph 2(1) of Schedule 2 for "either the United Kingdom or the European Economic Area" substitute "the United Kingdom, the European Economic Area or Switzerland".

Amendment of Bursaries Regulations

3.—(1) The Education Authority Bursaries (Scotland) Regulations 1995(**c**) shall be amended as follows.

(2) In regulation 2(1)–

(a) omit the definition of "EEA Agreement";

(b) in the definition of "EEA migrant worker"–

(i) after "EEA State" in the first place where it occurs insert "or Switzerland"; and

(ii) in sub-paragraph (a) for "by the EEA Agreement)" substitute ") or the Switzerland Agreement";

(**a**) 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).
(**b**) Cm. 5639.
(**c**) S.I. 1995/1739, amended by S.I. 1997/1049.

(c) for the definition of "EEA State" substitute ""EEA State" means a member State, Norway, Iceland or Liechtenstein;";

(d) for the definition of "European Economic Area" substitute ""European Economic Area" means the area of the EEA States, and includes those States at any time before they became EEA States;";

(e) at the end of the definition of "relevant date" for "term." substitute "term; and"; and

(f) after that definition insert–

""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 and which came into force on 1st June 2002.".

(3) In Schedule 1–

(a) in paragraph 2(a)–

(i) for "by the EEA Agreement)" substitute ") or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles";

(b) in paragraph 2(b) after "European Economic Area" insert "or Switzerland";

(c) in paragraph 2A(a) after "European Economic Area" insert "or Switzerland";

(d) in paragraph 2B(a)–

(i) after "Council Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 12" substitute "subject of either of those Articles";

(e) in paragraph 2B(b) after "European Economic Area" insert "or Switzerland"; and

(f) in paragraph 4(b) after "European Economic Area" insert "or Switzerland".

(4) In Schedule 2–

(a) in paragraph 2(1) replace "either the British Islands or the European Economic Area." with "the British Islands, the European Economic Area or Switzerland.";

(b) in paragraph 2(2) after "European Economic Area" insert "or Switzerland"; and

(c) in paragraph 2(3) after "British Islands"–

(i) in the first place where it occurs insert ", in Switzerland"; and

(ii) in each remaining place where it occurs insert ", Switzerland".

Amendment of Fees and Awards Regulations

4.—(1) The Education (Fees and Awards) (Scotland) Regulations 1997(**a**) shall be amended as follows.

(2) In regulation 2(1)–

(a) omit the definition of "EEA Agreement";

(b) in the definition of "EEA migrant worker"–

(i) after "EEA State" in the first place where it occurs insert "or Switzerland"; and

(ii) in sub-paragraph (a) replace "by the EEA Agreement)" with ") or the Switzerland Agreement";

(c) for the definition of "EEA State" substitute ""EEA State" means a member State, Norway, Iceland or Liechtenstein;";

(d) in the definition of "European Economic Area" for "the EEA Agreement came into force in relation to them" substitute "they became EEA States";

(**a**) S.I. 1997/93, amended by S.I. 1997/2008 and 1998/2324.

(e) at the end of the definition of "refugee" for "1967." substitute "1967; and"; and

(f) after that definition insert–

""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 and which came into force on 1st June 2002.".

(3) In Schedule 1–

(a) in paragraph 2(2)(a) after "European Economic Area" insert "or Switzerland";

(b) in paragraph 5(1) after "European Economic Area" in both places where it occurs insert "or Switzerland";

(c) in paragraph 6(1)(a)(ii)–

(i) for "by the EEA Agreement)" substitute ") or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles";

(d) in paragraph 6(1)(c)(ii)–

(i) after "Council Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 12" substitute "subject of either of those Articles"; and

(e) in paragraph 6(2)(a) after "European Economic Area" insert "or Switzerland".

(4) In Schedule 2–

(a) in paragraph 2(1)(a)(ii)–

(i) for "by the EEA Agreement)" substitute ") or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles";

(b) in paragraph 2(1)(c)(ii)–

(i) after "Council Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 12" substitute "subject of either of those Articles";

(c) in paragraph 2(2)(a) after "European Economic Area" insert "or Switzerland"; and

(d) in paragraph 4(2) after "European Economic Area" in both places where it occurs insert "or Switzerland".

(5) In Schedule 3–

(a) in paragraph 3(3)(a) after "European Economic Area" insert "or Switzerland"; and

(b) in paragraph 5 after "European Economic Area" in both places where it occurs insert "or Switzerland".

Amendment of Students' Allowances Regulations

5.—(1) The Students' Allowances (Scotland) Regulations 1999(**a**) shall be amended as follows.

(2) In regulation 2(1)–

(a) omit the definition of "EEA Agreement";

(b) in the definition of "EEA migrant worker"–

(i) after "EEA State" in the first place where it occurs insert "or Switzerland"; and

(ii) in sub-paragraph (a) for "by the EEA Agreement)" substitute ") or the Switzerland Agreement";

(**a**) S.I. 1999/1131, amended by S.S.I. 2001/229.

(c) for the definition of "EEA State" substitute ""EEA State" means a member State, Norway, Iceland or Liechtenstein;";

(d) in the definition of "European Economic Area" for "the EEA Agreement comes into force in relation to them" substitute "they became EEA States";

(e) at the end of the definition of "relevant day" for "course." substitute "course; and"; and

(f) after that definition insert–

""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 and which came into force on 1st June 2002.".

(3) In Schedule 1–

(a) in paragraph 2–

(i) in sub-paragraph (a)–

(aa) for "by the EEA Agreement)" substitute ") or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(bb) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles"; and

(ii) in sub-paragraph (b) after "European Economic Area" insert "or Switzerland";

(b) in paragraph 3(a) after "European Economic Area" insert "or Switzerland";

(c) in paragraph 4(a)–

(i) after "Council Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 12" substitute "subject of either of those Articles";

(d) in paragraph 4(b) after "European Economic Area" insert "or Switzerland"; and

(e) in paragraph 7(b) after "European Economic Area" insert "or Switzerland".

(4) In paragraph 2(1) of Schedule 2 for "either the United Kingdom or the European Economic Area" substitute "the United Kingdom, the European Economic Area or Switzerland".

Amendment of Student Loans Regulations

6.—(1) The Education (Student Loans) (Scotland) Regulations 2000(**a**) shall be amended as follows.

(2) In regulation 2–

(a) in paragraph (1)–

(i) at the end of the definition of "student loan account number" omit "and"; and

(ii) after that definition insert–

""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 and which came into force on 1st June 2002; and";

(b) in paragraph (3) after "United Kingdom and Islands"–

(i) in the first place where it occurs insert ", in Switzerland"; and

(ii) in second place where it occurs insert ", Switzerland"; and

(c) in paragraph (5)–

(i) after "European Economic Area" insert "or Switzerland"; and

(**a**) S.S.I. 2000/200, amended by S.S.I. 2001/228 and S.S.I. 2001/311.

(ii) in sub-paragraph (a) for "by the EEA Agreement" substitute "to apply to the whole European Economic Area, or the Switzerland Agreement".

(3) In Schedule 1–

(a) in paragraph 4(a)–

(i) for "by the EEA Agreement" substitute "to apply to the whole European Economic Area, or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles";

(b) in paragraph 6(1)(a)–

(i) after "Council Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement"; and

(ii) for "subject of Article 12" substitute "subject of either of those Articles";

(c) in paragraph 7(b) after "European Economic Area" insert "or Switzerland"; and

(d) in paragraph 7(c) after "European Economic Area" insert "or in Switzerland".

Amendment of Graduate Endowment Regulations

7.—(1) The Graduate Endowment (Scotland) Regulations 2001(**a**) shall be amended as follows.

(2) In paragraph 1(1) of Schedule 1–

(a) in the definition of "EEA migrant worker"–

(i) after "European Economic Area" insert "or Switzerland"; and

(ii) in sub-paragraph (a) for "by the EEA Agreement" substitute "to apply to the whole European Economic Area, or the Switzerland Agreement";

(b) at the end of the definition of "relevant day" replace "education." with "education; and"; and

(c) after that definition insert–

""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 and which came into force on 1st June 2002.".

(3) In paragraph 3 of Schedule 1–

(a) in paragraph (a)–

(i) for "by the EEA Agreement)" substitute ") or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles"; and

(b) in sub-paragraph (b) after "European Economic Area" insert "or Switzerland".

(4) In paragraph 4(a) of Schedule 1 after "European Economic Area" insert "or Switzerland".

(5) In paragraph 5 of Schedule 1–

(a) in sub-paragraph (a) after "Council Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement,";

(b) in sub-paragraph (a) for "subject of Article 12" substitute "subject of either of those Articles"; and

(c) in sub-paragraph (b) after "European Economic Area" insert "or Switzerland".

(6) In paragraph 7(b) of Schedule 1 after "European Economic Area" insert "or Switzerland".

(7) In paragraph 2(1) of Schedule 2 replace "either the United Kingdom or the European Economic Area" with "the United Kingdom, the European Economic Area or Switzerland".

(**a**) S.S.I. 2001/280.

Amendment of Individual Learning Account Regulations

8.—(1) The Individual Learning Account (Scotland) Regulations 2004(**a**) shall be amended as follows.

(2) In regulation 1(2)–

(a) at the end of the definition of "Scheme" for "Regulations." substitute "Regulations; and"; and

(b) after that definition insert–

""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(**b**) and which came into force on 1st June 2002.".

(3) In regulation 3(4)–

(a) at the end of sub-paragraph (e) for "Area." substitute "Area; or"; and

(b) after sub-paragraph (e) insert–

"(f) is a person not falling within paragraphs (a) to (d) but is a national of Switzerland and who is entitled to become a learning account holder by virtue of Article 3(6) or of Article 9(3) of Annex I to the Switzerland Agreement.".

Amendment of Education Maintenance Allowances Regulations

9.—(1) The Education Maintenance Allowances (Scotland) Regulations 2004(**c**) shall be amended as follows.

(2) In regulation 2(1)–

(a) omit the definition of "EEA Agreement";

(b) in the definition of "EEA migrant worker"–

(i) after "EEA State " insert "or Switzerland"; and

(ii) in sub-paragraph (a) after "Free Movement Regulation" insert ", or the Switzerland Agreement";

(c) for the definition of "EEA State" substitute ""EEA State" means a member State, Norway, Iceland or Liechtenstein;";

(d) in the definition of "European Economic Area" for "the EEA Agreement came into force in relation to them" substitute "they became EEA States";

(e) in the definition of "Free Movement Regulation" omit "by the EEA Agreement";

(f) at the end of the definition of "refugee" omit "and"; and

(g) after that definition insert–

""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 and which came into force on 1st June 2002; and".

(3) In Schedule 1–

(a) in paragraph 2(a)–

(i) after "Free Movement Regulation" insert "or Article 9(3) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 7(2) and (3)" substitute "subject of either of those Articles";

(b) in paragraph 2(b) after "European Economic Area" insert "or Switzerland";

(**a**) S.S.I. 2004/83, amended by S.S.I. 2004/270.
(**b**) Cm. 5639.
(**c**) S.S.I. 2004/273, amended by S.S.I. 2004/301.

(c) in paragraph 3(a) after "European Economic Area" insert "or Switzerland";

(d) in paragraph 4(a)–

(i) after "Free Movement Regulation" insert "or Article 3(6) of Annex I to the Switzerland Agreement,"; and

(ii) for "subject of Article 12" substitute "subject of either of those Articles"; and

(e) in paragraph 4(b) after "European Economic Area" insert "or Switzerland".

(4) In paragraph 2(1) of Schedule 2 for "either the United Kingdom and Islands or the European Economic Area" substitute "the United Kingdom and Islands, the European Economic Area or Switzerland".

JAMES R WALLACE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
2nd November 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 24th November 2004, amend the regulations listed in the table below to treat Swiss migrant workers, their spouses and children on the same basis as EEA migrant workers.

These amendments are in part consequential on 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 (Cm. 5639) and which came into force on 1st June 2002.

These Regulations also amend the regulations listed in the table below to include Switzerland in the area within which an EC national, or the child of an EC national, can meet the ordinary residence requirements in those regulations. They also update where necessary references, in the regulations listed in the table below, to the European Economic Area and definitions associated with that term, to take account of the accession of new member States.

Amended regulations	*Provisions which are amended*	*Relevant regulation of these Regulations*
Nursing and Midwifery Student Allowances (Scotland) Regulations 1992	Regulation 2, paragraphs 2(a), 2(b), 3(a), 4(a), 4(b) and 7(b) of Schedule 1 and paragraph 2(1) of Schedule 2.	regulation 2
Education Authority Bursaries (Scotland) Regulations 1995	Regulation 2(1), paragraphs 2(a), 2(b), 2A(a), 2B(a), 2B(b) and 4(b) of Schedule 1 and paragraphs 2(1), 2(2) and 2(3) of Schedule 2.	regulation 3
Education (Fees and Awards) (Scotland) Regulations 1997	Regulation 2(1), paragraphs 2(2)(a), 5(1), 6(1)(a)(ii), 6(1)(c)(ii), 6(2)(a) of Schedule 1, paragraphs 2(1)(a)(ii), 2(1)(c)(ii), 2(2)(a) and 4(2) of Schedule 2 and paragraphs 3(3)(a) and 5 of Schedule 3.	regulation 4
The Students' Allowances (Scotland) Regulations 1999	Regulation 2(1), paragraphs 2, 3(a), 4(a), 4(b) and 7(b) of Schedule 1 and paragraph 2(1) of Schedule 2.	regulation 5
Education (Student Loans) (Scotland) Regulations 2000	Regulations 2(1), 2(3) and 2(5) and paragraphs 4(a), 6(1)(a), 7(b) and 7(c) of Schedule 1.	regulation 6
Graduate Endowment (Scotland) Regulations 2001	Paragraphs 1(1), 3(a), 3(b), 4(a), 5(a), 5(b) and 7(b) of Schedule 1 and paragraph 2(1) of Schedule 2.	regulation 7
The Individual Learning Account (Scotland) Regulations 2004	Regulations 1(2) and 3(4).	regulation 8
The Education Maintenance Allowances (Scotland) Regulations 2004	Regulation 2(1), paragraphs 2(a), 2(b), 3(a), 4(a) and 4(b) of Schedule 1 and paragraph 2(1) of Schedule 2.	regulation 9

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