Executive Note

The Consolidation, Amendment and Revocation of the Graduate Endowment, Student Fees and Support Regulations:

The Education Authority Bursaries (Scotland) Regulations 2007 SSI/2007/149
The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007/151
The Education (Fees and Awards) (Scotland) Regulations 2007/152
The Students' Allowances (Scotland) Regulations 2007/153
The Education (Student Loans) (Scotland) Regulations 2007/154
The Graduate Endowment (Scotland) Regulations 2007/155
The Education Maintenance Allowances (Scotland) Regulations 2007/156
The Education (Graduate Endowment, Student Fees and Support) Revocation Regulations 2007/148
The Civil Partnership Act (Modification of Subordinate Legislation) Order 2005 Revocation (Scotland) Order 2007/157
The Education (Student Loans for Tuition Fees) (Scotland) Amendment Regulations 2007/158
The Repayment of Student Loans (Scotland) Amendment Regulations 2007/159

1. The 7 sets of consolidating regulations ("the Consolidation Regulations"), The Education (Graduate Endowment, Student Fees and Support) Regulations Revocation (Scotland) Regulations 2007 and The Civil Partnership Act (modification of Subordinate Legislation) Order 2005 Revocation (Scotland) 2007 (the "Revocation Instruments"), and the two sets of amending regulations ('Amending 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; section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 and section 259(1), (2) and (4) of the Civil Partnership Act 2004. The instruments are subject to negative resolution procedure.

Policy Objectives of The Consolidation Regulations

2. The Consolidation Regulations consolidate and amend existing regulations in relation to the graduate endowment, student fees and student support. The regulations affected 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 Consolidation Regulations is to consolidate the Principal Regulations. In addition they make a number of amendments to clarify the Principal Regulations where the policy intention is not clear or alignment of residence criteria was desirable across student support for Further Education, Higher Education and Education Maintenance Allowances, as set out below in relation to each set of regulations.

4. The Consolidating Regulations amend the Principal Regulations as follows:

- **Nursing and Midwifery Student Allowances (Scotland) Regulations 1992**

5. In addition to minor and drafting alterations, these Regulations make the following changes of substance: definitions of "employment" (including "employee") and "refugee" have been added; the definition of "parent" (including "child") and "relevant date" have been clarified; support in relation to fees only has been extended to include nationals of EU overseas territories.

- **The Education Authority Bursaries (Scotland) Regulations 2007**

6. In addition to minor and drafting alterations, these Regulations make the following changes of substance: the definitions of "employment" (including "employed") and "parent" (including "child") have been clarified; support in relation to fees only has been extended to include nationals of EU overseas territories.

- **The Education (Fees and Awards) (Scotland) Regulations 2007**

7. In addition to minor and drafting alterations, these Regulations make the following changes of substance: the definition of "parent" (including "child") has been clarified; the categories of excepted students have been extended to include nationals of British overseas territories (Schedule 1 paragraph 14). Nationals of EU overseas territories are extended the same treatment as EEA nationals; Schedule 3 paragraph 6 has been added to make excepted candidates of those people who were born and spent the greater part of their life in a relevant area notwithstanding that they have not resided there in the 3 years prior to the application and definitions of "relevant area" and "an independent student " have been inserted.

- **The Students' Allowances (Scotland) Regulations 2007**

8. In addition to minor and drafting alterations, these Regulations make the following changes of substance: the definitions of "employment" (including "employed") and "relevant date" have been clarified; support in relation to fees only has been extended to include nationals of EU overseas territories.

- **The Education (Student Loans) (Scotland) Regulations 2007**

9. In addition to minor and drafting alterations, these Regulations make the following changes of substance: provision of definitions of "EEA State", "employment" (including "employed") and "parent" (including "child"); Regulation 8 allows the Scottish Ministers to impose a condition on a student to provide them with that student's United Kingdom national insurance number; and regulation 9 also sets out in more detail the information to be provided to the Scottish Ministers.

- **The Graduate Endowment (Scotland) Regulations 2007**

10. In addition to minor and drafting alterations, these Regulations clarify the definition of "full-time course of higher education" and insert a new definition for "employment" (including "employed"); new definitions have also been inserted for "EU overseas territories" and "EU overseas territories national". An amendment has been made to Schedule 1 to ensure that any national of EU overseas territories who has received funding in respect of fees is liable to pay the graduate endowment; Regulation 9 includes provisions to enable the Scottish Ministers to make it a condition of entitlement to payment of a loan that the liable graduate provides a United Kingdom national insurance number; Regulation 11 sets out in more detail the information that may be required by the Scottish Ministers.

- **The Education Maintenance Allowances (Scotland) Regulations 2007**

11. In addition to minor and drafting alterations, these Regulations add a definition of "employed" and clarify the definitions of "parent" (including "child"). The definition of "independent person" in Schedule 2 has been extended to include persons in receipt of child

benefit or income support, persons who are looked after and accommodated by or who were formerly looked after by a local authority (or equivalent organisation) and those who do not reside with, have no regular contact with and receive no financial support from a parent or guardian.

12. Tables of Derivations and Destinations have been prepared identifying individual regulations in these Regulations with the equivalent provisions in the superseded Regulations and vice versa. Copies of the Tables may be obtained from the Scottish Executive, Higher Education and Learner Support Division, Europa Building, 450 Argyle Street, Glasgow, G2 8LG. The Tables have been prepared to assist readers of the Regulations and do not have any legal effect.

Background and Effect of Consolidation

13. The Scottish Executive provides fee and living costs support for eligible students undertaking study at advanced (higher education) level in Scotland or elsewhere in the UK, and non-advanced (further education) level in Scotland (support for further education study in England is generally at the discretion of local authorities). This includes Higher Education (HE) student support, Further Education (FE) student support, Education Maintenance Allowances (EMAs) and Individual Learning Accounts (ILAs).

14. In order to be eligible for support, students must meet certain criteria in relation to course choice, income and personal circumstances Ministers require information to evidence this. The main body of the Principle Regulations establish these criteria. In addition students must meet certain residence criteria to be eligible for support. These criteria, which have been a feature of student support across the UK in some form since 1962, ensure that eligibility is determined by residence rather than nationality, and are detailed in the Schedules within the Principal Regulations.

15. Since the regulations listed above were first introduced there have been a number of amendments made to each, resulting in numerous amending regulations that have to be taken into account before an interpretation of the regulations can be made. When considering The Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment (No. “) Regulations 2005, (SSI 2005.545), the Scottish Parliament Subordinate Legislation Committee asked the Executive what plans there were for consolidation of the Regulations amended by the instrument. the Executive undertook to carry out this exercise.

16. The consolidation exercise itself will not have a significant impact on the eligibility of an individual under various regulations. The additional amendments made to the regulations will not have a significant impact on the eligibility of any particular category of student to fees or maintenance support.

Approach for Consolidation and Consultation

17. The Consolidation Regulations take the approach of wholly replacing the Principal Regulations. The draft consolidated regulations formed part of a 12 week Scottish Executive consultation. The consultation also sought comments on the specific amendments proposed in relation to clarification and alignment of the Principal Regulations.

The Revocation Instruments

- **The Education (Graduate Endowment, Student Fees and Support) Regulations Revocation (Scotland) Regulations 2007**

18. These Regulations revoke earlier instruments as a result of the consolidation of the Principal Regulations The effect of the revoked regulations is saved in relation to any right or liability acquired by virtue of the revoked regulations.

- **The Civil Partnership Act (Modification of Subordinate Legislation) Order 2005 Revocation (Scotland) Order 2007**

19. This Order revokes The Civil Partnership Act (Modification of Subordinate Legislation) Orders 2005 as a result of the consolidation of the Principal Regulations. There is no need to save any of the provisions of the revoked Order as they are replicated in the Consolidations Regulations.

The Amending Regulations

- **The Education (Student Loans for Tuition Fees) (Scotland) Amendment Regulations 2007**

20. These Regulations make amendments to the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006. Regulation 2 inserts new provisions allowing the Scottish Ministers to impose a condition on a student to provide them with that student's United Kingdom national insurance number. The amendment in regulation 3, enables the Scottish Ministers to request an applicant or eligible student to enter into a repayment agreement, to verify the national insurance number and request sight of the identity card, passport or birth certificate of an applicant or eligible student and to withhold payment of the loan until all information requests have been satisfied or any repayment agreement completed.

- **The Repayment of Student Loans (Scotland) Amendment Regulations 2007**

21. These Regulations, amend the Repayment of Student Loans (Scotland) Regulations 2000 (S.S.I. 2000/110) ("the Repayment Regulations")..

22. Regulation 3 inserts new definitions into regulation 2 of the Repayment Regulations.

23. Regulation 4 inserts a new regulation 8 into the Repayment Regulations. The Scottish Ministers must write off a borrower's liability to repay that borrower's student loan in certain circumstances. The student loan must be written off if the borrower dies, if the borrower reaches the age of 65, or if the borrower receives a disability related benefit and as a result of the disability is permanently unfit to work. From 1st August 2007 certain categories of borrowers will have their student loans written off 35 years after they became liable to repay. Students on continuing courses will have their student loans written off when they reach the age of 65.

24. Regulation 5 inserts a new definition into regulation 10 of the Repayment Regulations.

25. Regulation 6 substitutes a new regulation 11 into the Repayment Regulations. Borrowers are under a duty to notify the Scottish Ministers when they move overseas for a period of over three months. They must also provide information as to their income as required by the Scottish Ministers.

26. Regulation 7 inserts a new paragraph into regulation 11C of the Repayment Regulations. Regulation 11C provides that the Scottish Ministers may impose penalties on borrowers who fail to comply with requests for information. If the borrower fails to provide information, they may be charged a penalty of £50. Regulation 7 inserts a provision to the effect that the Scottish Ministers may impose a further charge of £100 where a borrower has paid a penalty but continues to refuse to provide the information.

27. Regulation 8 makes a consequential amendment to regulation 11E of the Repayment Regulations.

28. Regulation 9 amends the Repayment Regulations so that where a borrower fails to provide information or to comply with a Penalty Notice, the Scottish Ministers may require the borrower to repay their student loan in full immediately.

29. Regulation 10 substitutes a new regulation 12 into the Repayment Regulations. When a borrower moves overseas, the Scottish Ministers may serve a notice requiring the borrower to repay that borrower's student loan in accordance with new regulation 13 of the Repayment Regulations. In such a notice, the Scottish Ministers may require the borrower who has failed to provide them with information required under regulation 11 of the Repayment Regulations to make a repayment to reduce the amount outstanding on the student loan to that which would have been outstanding had the borrower provided the information.

30. Regulation 11 substitutes a new regulation 13 into the Repayment Regulations. Borrowers will be required to repay their student loans by a fixed instalment under regulation 13 of the Repayment Regulations, unless regulation 13A applies. They will have to repay a fixed instalment each month, which will be calculated in accordance with regulation 13B.

31. Regulation 12 inserts new regulations 13A and 13B into the Repayment Regulations. Under regulation 13A of the Repayment Regulations a borrower who has complied with a request for information may repay their student loan for a period of 12 months by 12 income-related instalments. Each instalment is one twelfth of 9% of the borrower's gross income, disregarding income up to an applicable threshold, and any income in respect of which the borrower will be making student loan repayments through the UK tax system. At the end of the 12 month period, the borrower's repayments can be re-assessed, or the borrower can repay in accordance with regulations 13 and 13A. The borrower may also seek a re-determination of that borrower's income-related instalments during the 12 month period.

32. Regulation 13B of the Repayment Regulations sets out how the applicable threshold and fixed instalments are calculated. These will be calculated by reference to the price level index for consumer goods and services (measured in terms of Purchasing Power Standard per capita) of a borrower's country of residence. The price level index for that country will be calculated using the most recent provisional comparative price level indices expressed in gross domestic product published by the Statistical Office for the European Communities ("Eurostat"). The applicable threshold and fixed instalment for each of a series of bands of price level indices are set out in a table in regulation 13B. Where no data is available from Eurostat, data from the World Bank will be used. If there is no data available from the World

Bank in relation to a country, the applicable threshold and fixed instalment for band A will apply.

33. Regulation 13 substitutes a new regulation 14 into the Repayment Regulations which provides for borrowers returning to the United Kingdom to cease making repayments under that part of the Repayment Regulations.

34. Regulation 14 inserts a new regulation 15 into the Repayment Regulations which provides that the Scottish Ministers may require a defaulting borrower to repay the whole of that borrower's student loan.

Financial Effects of Consolidation, Revocation and Amendment Regulations and Instruments.

35. The Consolidation, Revocation and 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.

36. The Consolidation, Revocation and Amendment Regulations will have a negligible impact on the demand for support from students in higher education.

THE SCOTTISH EXECUTIVE

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