SCOTTISH STATUTORY INSTRUMENTS

2004 No. 273

EDUCATION

The Education Maintenance Allowances (Scotland) Regulations 2004

Made - - - -	*8th June 2004*
Laid before the Scottish Parliament - - - -	*10th June 2004*
Coming into force - -	*2nd July 2004*

The Scottish Ministers, in exercise of the powers conferred on them by section 73(f) of the Education (Scotland) Act 1980(**1**) 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 Maintenance Allowances (Scotland) Regulations 2004 and shall come into force on 2nd July 2004.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Education (Scotland) Act 1980;

"course of education" means a full-time–

(a) course of school education;

(b) course of non-advanced education undertaken at a home within an area of an education authority and approved by that education authority; or

(c) course of non-advanced education undertaken elsewhere within an area of an education authority under the supervision of that education authority;

"course of non-advanced education" means any course which prepares a person to a standard not higher than that required for–

(a) a qualification awarded by the Scottish Qualifications Authority; or

(**1**) 1980 c. 44. Section 73(f) was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). 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) a General Certificate of Education qualification of England and Wales or Northern Ireland;

"education maintenance allowance" means an allowance paid or to be paid under these Regulations;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(**2**) as adjusted by the Protocol thereto signed at Brussels on 17th March 1993(**3**);

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

(a) under the Free Movement Regulation; or

(b) in circumstances where as a national of the United Kingdom he or she 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 state which is a Contracting Party to the EEA Agreement;

"employment" shall include the holding of any office and any occupation for gain and "employed" shall be construed accordingly;

"European Economic Area" means the area of the EEA States, and includes those States at any time before the EEA Agreement came into force in relation to them;

"Free Movement Regulation" means Council Regulation (EEC) No. 1612/68(**4**) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement);

"Islands" means the Channel Islands and the Isle of Man;

"parent" is to be construed in accordance with the definition below of person's child;

"person's child" includes a reference to a person adopted in pursuance of adoption proceedings, a stepchild, and a child in whose case the person concerned has admitted paternity or has been adjudged the putative father;

"qualifying date" means the first day of the term of the course of education for which an education maintenance allowance is sought;

"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

"temporary protection" has the meaning defined in Council Directive 2001/55/EC(**7**) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

(2) In these Regulations, except where the context otherwise requires, any reference–

(a) to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations;

(**2**) Cmnd. 2073.
(**3**) Cmnd .2183.
(**4**) 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).
(**5**) Cmnd. 9171.
(**6**) Cmnd. 3906. (Out of Print: photocopies are available free from the Students Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, Edinburgh EH12 9HH.
(**7**) O.J. No. L 212, 20.7.01, p.12.

(b) in a regulation or Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule, as the case may be.

Exercise of power to grant an education maintenance allowance

3.—(1) Subject to paragraphs (3) and (4), the Scottish Ministers may pay an education maintenance allowance in accordance with section 73(f) of the Act and these Regulations to any person undertaking a course of education in Scotland who–

(a) is deemed to have attained the age of 16 years under section 33 of the Act (School leaving dates);

(b) has not, on the qualifying date, attained the age of 20 years; and

(c) is described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect as regards determining whether a person is to be treated, for the purposes of Schedule 1, as being, or having been, ordinarily resident in a place at or for a particular time.

(3) The Scottish Ministers shall not pay an education maintenance allowance to a person described in paragraph 7 of Schedule 1 if that person has attained the age of 18 years.

(4) The Scottish Ministers shall not pay an education maintenance allowance to any person who attained the age of 16 years prior to 1st March 2004.

Amount of education maintenance allowances

4.—(1) The amount of an education maintenance allowance shall be determined by the Scottish Ministers and may include sums in respect of the maintenance of the holder during periods of full-time study excluding vacations.

(2) In determining the amount of an education maintenance allowance, the Scottish Ministers may take account of the sums, if any, which in their opinion the holder of the education maintenance allowance, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(3) The amount of an education maintenance allowance may be revised at any time if the Scottish Ministers think fit having regard to–

(a) the failure of that holder to comply with the conditions of the education maintenance allowance;

(b) all the circumstances of that holder, his or her parents and his or her spouse; or

(c) any error made in the computation of the amount of the education maintenance allowance.

(4) In paragraphs (2) and (3) above 'holder's spouse' shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not married to each other but who are living together as husband and wife.

Conditions of education maintenance allowance

5.—(1) Every education maintenance allowance shall be held subject to the following conditions–

(a) the holder of the educational maintenance allowance shall attend in accordance with any requirements specified by the educational establishment for the course of education in respect of which the education maintenance allowance is awarded;

(b) the Scottish Ministers shall be satisfied as to the conduct and progress of that holder; and

(c) that holder shall provide the Scottish Ministers with such information and such documents as they may from time to time require to enable them to exercise their functions under these Regulations.

(2) If the conditions specified in paragraph (1) are not complied with or if the holder receives from any other source any sum which, in the opinion of the Scottish Ministers, makes it unnecessary for the holder to be assisted by means of an education maintenance allowance, the Scottish Ministers may suspend payment of the education maintenance allowance or terminate the education maintenance allowance.

(3) It shall be a condition of payment of an education maintenance allowance that the applicant gives a written undertaking to pay to the Scottish Ministers any amount of which they may request repayment in the circumstances specified in paragraph (4).

(4) Where the Scottish Ministers are satisfied that there has been an overpayment of education maintenance allowance for any reason and request repayment of the overpayment or so much thereof as they think fit, the holder of the education maintenance allowance shall be obliged to pay to the Scottish Ministers the amount requested.

JAMES R WALLACE

St Andrew's House, Edinburgh
8th June 2004

A member of the Scottish Executive