SCOTTISH STATUTORY INSTRUMENTS

2002 No. 423

EDUCATION

The Nursing and Midwifery Student Allowances (Scotland) Amendment Regulations 2002

Made - - - -	*11th September 2002*
Laid before the Scottish Parliament - - - -	*13th September 2002*
Coming into force - -	*4th October 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 73(f) and 74(1) 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 Nursing and Midwifery Student Allowances (Scotland) Amendment Regulations 2002 and shall come into force on 4th October 2002.

Interpretation

2. In 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 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); or

(**1**) 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 74 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).
(**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).

(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 State which is a Contracting Party to the EEA Agreement;

"employed" includes holding any office or any occupation for gain;

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

"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 Community (including the United Kingdom) as constituted from time to time;

"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**).

"relevant day" in relation to a course of education for which an allowance is sought means–

(a) as respects a course starting in the period 1st August to 31st December, 1st August; or

(b) as respects a course starting in the period 1st January to 31st July, 1st January,

in either case the relevant day being in the year of commencement of the appropriate academic year of the course.

Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992

3. The Nursing and Midwifery Student Allowances (Scotland) Regulations 1992(**7**) are amended as follows.

4. For regulation 3 (persons eligible for allowance) there is substituted–

"**3.**—(1) The Scottish Ministers may pay an allowance in accordance with the provisions of section 73(f) of the Education (Scotland) Act 1980 and these Regulations, to or in respect of any person undertaking a course of pre-registration nursing and midwifery education leading to registration with the Nursing and Midwifery Council(**8**) who–

(a) is not at any time during that course an employee of an NHS Trust(**9**); and

(b) is a person described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect for the purposes of 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.".

5. In regulation 4(1)(a), for "attending", there is substituted "undertaking".

6. In regulation 5(1)(a), after "in writing", insert "(which, for the purposes of this regulation includes an application submitted by electronic means)".

7. In regulation 5(3)(a), for "attend regularly", there is substituted "comply with the requirements of".

(**5**) Cmnd 9171.
(**6**) Cmnd 3906.
(**7**) S.I.1992/580.
(**8**) The Nursing and Midwifery Council, a body corporate, was established by Article 3 of the Nursing and Midwifery Order 2001 (S.I. 2002/253).
(**9**) Provision for the establishment of NHS trusts is contained within the National Health Service and Community Care Act 1990 (c. 19). Section 5 thereof sets out the purposes and functions of such bodies.

8. The following Schedules shall be inserted:–

"SCHEDULE 1 Regulation 3(1)(b)

PERSONS ELIGIBLE FOR ALLOWANCES

1. A person who–

(a) is ordinarily resident in the United Kingdom on the relevant day;

(b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant day; and

(c) is settled in the United Kingdom within the meaning of the Immigration Act 1971(**10**) on the relevant day.

2. A person who is an EEA migrant worker who–

(a) is entitled to the payment of an allowance by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement(**11**)) or, where that person is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);

(b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and

(c) is ordinarily resident in the United Kingdom on the relevant day.

3. A person who is the spouse of an EEA migrant worker and who–

(a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day;

(b) is installed in the United Kingdom with his or her spouse; and

(c) is ordinarily resident in the United Kingdom on the relevant day.

4. A person who is the child of an EEA migrant worker and who–

(a) is entitled to the payment of an allowance by virtue of Article 12 of the above mentioned Council Regulation or, where that person's migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national or another member state in relation to matters which are the subject of Article 12;

(b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and

(c) is ordinarily resident in the United Kingdom on the relevant day.

5. A person who–

(a) at the date of the Scottish Ministers receiving an application for an allowance from that person, is–

(i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or

(ii) the spouse, child or step-child of such a refugee; and

(b) is ordinarily resident in the United Kingdom on the relevant day.

(**10**) 1971 c. 77.
(**11**) O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968 (11) p.475).