SCOTTISH STATUTORY INSTRUMENTS

2001 No. 222

EDUCATION

The Education (Assisted Places) (Scotland) Regulations 2001

Made - - - -	*8th June 2001*
Laid before the Scottish Parliament - - - -	*11th June 2001*
Coming into force - -	*1st August 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 75A(9) and (10) and 75B of the Education (Scotland) Act 1980(**1**) and of all other powers enabling them in that behalf, and after having consulted such bodies as appear to the Scottish Ministers to be appropriate and to be representative of participating schools in accordance with section 75A(11) of that Act, hereby make the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Education (Assisted Places) (Scotland) Regulations 2001 and shall come into force on 1st August 2001.

Interpretation

2.—(1) In these Regulations–

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

"assisted place" means any place at a participating school, in respect of which place fees are to be remitted in accordance with these Regulations;

"assisted pupil", subject to regulation 13(1), means any pupil in attendance at a participating school who had been admitted to an assisted place at that school;

(**1**) 1980 c. 44; sections 75A and 75B were inserted by section 5 of the Education (Scotland) Act 1981 (c. 58). Section 75A was amended by the Education (Schools) Act 1997 (c. 59), sections 5 and 6 and the Schedule, and by the School Standards and Framework Act 1998 (c. 31), sections 130 and 140 and Schedule 31. Section 135(1) contains a definition of "prescribed" relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

"British Islands" means the United Kingdom, the Channel Islands and the Isle of Man;

"child" includes a step child and a child adopted in pursuance of adoption proceedings (and "father" and "mother" shall be construed accordingly) and, notwithstanding the definition in section 135(1) of the Act, includes a person who is over school age but has not attained the age of 20 years at the commencement of any school year of the participating school which that person attends or proposes to attend in that year;

"determination" in relation to a school means a determination made under section 75A(2) of the Act;

"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 State" means a State which is a Contracting Party to the EEA Agreement;

"employment" includes the holding of any office and any occupation for gain (including self employment in any trade, profession or vocation); 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;

"fees" means–

(a) tuition and other fees the payment of which is a condition of attendance at a participating school excluding–

  (i) boarding fees;

  (ii) such other charges if any as may be excluded in the determination relating to the school; and

(b) fees for public examinations paid by a participating school in respect of candidates from the school;

"financial year" has the meaning assigned thereto by regulation 8(1);

"first assisted year" means the school year in which a child first takes up an assisted place;

"income", "relevant income" and "total income" have the meanings respectively assigned thereto by regulation 9(1) and (2);

"participating school" means a school determined under section 75A(2) of the Act to be a participating school for the purposes of the scheme mentioned in section 75A(1) of the Act, and references to a school include references to the proprietors and managers thereof;

"refugee" means a person who–

(a) 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(**4**) as extended by the Protocol thereto which entered into force on 4th October 1967(**5**); or

(b) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although they are considered not to qualify for recognition as a refugee, it is thought right to allow them to enter or remain in the United Kingdom, and has been granted leave to enter or remain accordingly;

"relevant date" means 1st January in the calendar year in which an assisted pupil's first assisted year begins;

(**2**) Cmnd. 2073.
(**3**) Cmnd. 2183.
(**4**) Cmnd. 9171.
(**5**) Cmnd. 3906.

"scheme" means the scheme for the time being in force established and operated by the Secretary of State under section 75A(1) of the Act;

"school day" means any day during which the school is open for the attendance of pupils; and

"school year" means a period of 12 months commencing on 1st August of any year.

(2) Any reference in these Regulations to the parents of a child or assisted pupil is a reference–

(a) in the ordinary case, to the father and mother (whether or not they are married to each other) of the child or assisted pupil or, where one is dead, to the survivor and, should they remarry, the spouse of the survivor;

(b) where the father or mother of the child or assisted pupil, with whom the child or assisted pupil normally lives, has married a person who is not the parent of the child or assisted pupil, to that parent and their spouse;

(c) where the parents of the child or assisted pupil, as defined in sub paragraph (a), are divorced or, in any of the circumstances mentioned in paragraph (4), separated, to that one of them with whom the child or assisted pupil normally lives or who, in pursuance of a court order, is entitled to have the child or assisted pupil normally live with them and, should that person remarry, their spouse;

(d) where the child or assisted pupil has no parents as defined in sub paragraphs (a) to (c), to their guardian or guardians (if any) or to any person or persons with whom the child or assisted pupil normally lives in accordance with either–

(i) an order relating to parental responsibilities or parental rights made under section 11(1) of the Children (Scotland) Act 1995(**6**); or

(ii) any subsisting court order (other than an order made under section 11(1) of the Children (Scotland) Act 1995) which specifies who is to have actual custody or care and control of the child or assisted pupil;

(e) where the child or assisted pupil has no parents so defined and no guardian, or where there is no order as mentioned in sub paragraph (d), to the person or persons who have care of the child or assisted pupil.

(3) Where a child or assisted pupil–

(a) either has no parents defined as in paragraph (2)(a), (b), (c) or (d) or has such parents whose whereabouts are unknown; and

(b) is looked after by a local authority under the Children (Scotland) Act 1995,

then, for the purposes of these Regulations, they shall be treated as a child or assisted pupil whose parents have no income and, subject thereto, any reference in these Regulations to their parents shall be construed as a reference to the local authority who are looking after them.

(4) The circumstances referred to in paragraph (2)(c) are that the parents are separated under an order of a court of competent jurisdiction or by a deed of separation or, where they are not so separated (and whether or not they are married to each other), that–

(a) it is not reasonably practicable to find one of the parents; or

(b) in pursuance of a court order or in accordance with a maintenance assessment under the Child Support Act 1991(**7**) one parent is liable to make periodic payments to or for the benefit of the other or one or more of their children; or

(c) in pursuance of a court order–

(i) one parent has been given care of, or access to, one or more of their children; or

(**6**) 1995 c. 36.
(**7**) 1991 c. 48.

(ii) one parent is prohibited from entering the matrimonial home.

PART II

ELIGIBILITY FOR ASSISTED PLACES

Conditions as to eligibility

3.—(1) A child shall be eligible for admission to an assisted place only if all the conditions mentioned in this Part are, so far as relevant, satisfied in their case.

(2) Nothing in this regulation shall prevent a child from being admitted to an assisted place in advance of its being ascertained that such a condition is satisfied if the admission is subject to the condition being satisfied.

Conditions as to residence

4.—(1) It shall be a condition that the child shall–

(a) have been ordinarily resident in the British Islands throughout the period of two years immediately preceding the relevant date; or

(b) be a national of an EEA State–

(i) who has been ordinarily resident in the European Economic Area throughout the period of two years immediately preceding the relevant date; and

(ii) to whom paragraph (2) applies; or

(c) be a refugee or the child of a refugee who has not been ordinarily resident outside the British Islands since the child or, as the case may be, their parent was recognised as a refugee or granted leave to enter or remain in the British Islands as a refugee.

(2) This paragraph applies to a child whose parents are entitled to a remission of fees by virtue of Article 7(2) or (3) or Article 12 of the Council Regulation (EEC) No. 1612/68(**8**) on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement).

(3) A child shall be treated for the purposes of sub paragraph (a) and (b) of paragraph (1) as having been ordinarily resident in the British Islands or in the European Economic Area if the school is satisfied that the child would have been so resident but for the fact that the child's parent is or was temporarily employed outside the British Islands or European Economic Area during any part of the period mentioned in those sub paragraphs.

Conditions as to age and education

5.—(1) It shall be a condition that the child shall have attained the age of 5 years before 1st March of the calendar year immediately succeeding the calendar year in which their first assisted year commences.

(2) A participating school shall not admit to an assisted place a child in relation to whom it is not satisfied that the child will be committed throughout the whole of his first assisted year and any subsequent assisted year to follow a course of school education other than activities in nursery schools and nursery classes.

(**8**) 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).

Conditions as to income

6.—(1) It shall be a condition that the parents of the child, when applying to the participating school for an assisted place, shall have furnished the school with–

(a) (i) a declaration of relevant income for the financial year immediately preceding the school year in relation to which the application is made; or

(ii) if such a declaration cannot be furnished, a declaration of relevant income for the financial year preceding that financial year and a declaration of estimated relevant income for that financial year; and

(b) such other information as may be specified for the purposes hereof by the Scottish Ministers.

(2) A participating school shall not admit to an assisted place a child whose fees for their first assisted year would not fall to be remitted in whole or in part in pursuance of Part III of these Regulations.

PART III

REMISSION OF FEES

References to remission questions

7. For the purposes of this Part "remission questions" mean the questions whether or not the parents of an assisted pupil are entitled to any remission of fees payable in respect of the assisted pupil and the extent of such remission.

References to financial years

8.—(1) For the purposes of this Part "financial year" means, subject to paragraph (2), a year ending with 5th April and, in relation to a particular school year, "preceding financial year" means the financial year preceding that school year and "current financial year" means the financial year which includes the first day of that school year.

(2) Where the parents of a pupil satisfy the school that their income is wholly or mainly derived from the profits of a business, profession or vocation carried on by either or both of them then, if the parents and the school so agree, any reference in this Part to a financial year shall be construed as a reference to a year ending with such date as appears to the school expedient, having regard to any accounts kept in respect of that business, profession or vocation and the periods covered thereby:

Provided that, where that year ends with a date after 5th April but before the beginning of a school year then, in relation to that school year, "preceding financial year" shall mean the year last so ending before 6th April in the calendar year in which the school year begins and "current financial year" shall mean the year so ending on or after that 6th April and before the beginning of the school year.

References to income

9.—(1) For the purposes of this Part the income of any person for a financial year shall, subject to the provisions of Schedule 1, be taken to be their total income for that year; and, in this paragraph and that Schedule, "total income" has the same meaning as in section 835 of the Income and Corporation Taxes Act 1988(**9**).

(**9**) 1988 c. 1. Section 835 was amended by the Finance Act 1988 (c. 39) section 35 and Schedule 3, paragraph 22 and section 148 and Schedule 14, Part IV; the Capital Allowances Act 1990 (c. 1) section 164 and Schedule 1, paragraph 8(38); the Finance Act