
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 157

EDUCATION

The Student Support (Scotland) Regulations 2022

<i>Made</i>	- - - -	<i>4th May 2022</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th May 2022</i>
<i>Coming into force</i>	- -	<i>1st August 2022</i>

The Scottish Ministers, make the following Regulations in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(1), and all other powers enabling them to do so.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Student Support (Scotland) Regulations 2022 and come into force on 1 August 2022.

Interpretation

2.—(1) In these Regulations—

“academic year” in relation to a course, means the period of twelve months beginning on the relevant date,

“the Act” means the Education (Scotland) Act 1980,

“allowance” means an allowance paid or to be paid under these Regulations,

(1) 1980 c. 44. Section 73(f) was amended by section 29(1) of the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”). Section 73B was inserted by section 29(2) of the 1998 Act and was amended by section 3(3) of the 2001 Act, paragraph 149(a) and (b) of schedule 6 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 34(1) of the Bankruptcy (Scotland) Act 2007 (asp 3) and paragraph 8 of schedule 8 of the Bankruptcy (Scotland) Act 2016 (asp 21). Section 74(1) was amended by paragraph 8(17) of schedule 10 of the Self Governing Schools etc. (Scotland) Act 1989 (c. 39). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act (c. 46).

“bursary” means a bursary, scholarship or other allowance granted under section 49 (1) or (2) (power of education authorities to assist persons to take advantage of educational facilities) of the Act,

“child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 (asylum-seeker: definition) of the Nationality, Immigration and Asylum Act 2002⁽²⁾,

“Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020⁽³⁾,

“Directive 2004/38” means [Directive 2004/38/EC](#) of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely in the territory of the Member States⁽⁴⁾, and reference to a provision of the Directive—

- (a) is reference to the Directive as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“education maintenance allowance” means an education maintenance allowance paid or to be paid under Part 6,

“eligible student” means a person whom the Scottish Ministers have determined is eligible for a loan in connection with their undertaking a course in accordance with Part 4 (student loans),

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁵⁾, together with the protocol signed at Brussels on 17 March 1993⁽⁶⁾, as modified or supplemented from time to time, but does not include any retained direct EU legislation,

“EEA EFTA separation agreement” means (as modified from time to time in accordance with any provision of it) the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA agreement and other agreements applicable between the United Kingdom and the EEA EFTA states by virtue of the United Kingdom’s membership of the European Union⁽⁷⁾,

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“EEA frontier worker” means an EEA national who—

- (a) is a worker in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker but who is not an EEA frontier worker,

“EEA national” means any person who is a national of any EEA State,

(2) 2002 c. 41.

(3) [S.I. 2020/1209](#).

(4) OJ L 158, 30.4.2004, p. 77.

(5) CP 2073 and OJ L 1, 3.1.1994, p.3.

(6) CP 2183 and OJ L 1, 3.1.1994, p.572.

(7) CP 217.

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person but who is not an EEA frontier self-employed person,

“EEA state” means—

- (a) any Member State of the European Union, or
- (b) any other state that is party to the EEA agreement,

“employment” means full time or part time employment which, in a normal week, involves a significant number of hours of work and “employed” is construed accordingly, and references to employment include references to the holding of any office and to any occupation for monetary gain,

“EU national” means any person who is a national of any Member State of the European Union,

“EU overseas territories” means Aruba, Faroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland, Mayotte, Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon and Wallis and Futuna Islands,

“European Economic Area” means the European Union and, subject to the conditions laid down in the EEA agreement, Iceland, Norway and Liechtenstein,

“family member” means, in relation to any person—

- (a) their spouse or civil partner, or
- (b) their direct descendants or those of their spouse or civil partner who are—
 - (i) under the age of 21, or
 - (ii) their dependants or those of their spouse or civil partner, or
- (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner,

“Islands” means the Channel Islands and the Isle of Man,

“loan” means in relation to—

- (a) a student undertaking a course at an RUK institution, a loan towards that student’s tuition fees under the Act,
- (b) a student undertaking a full-time or part-time taught course leading to a postgraduate diploma or to a postgraduate masters degree, or undertaking a full-time or part-time research course leading to a postgraduate masters degree, a loan towards that student’s tuition fees under the Act,
- (c) a student undertaking a full-time (but not a part-time) taught course leading to a postgraduate diploma or to a postgraduate masters degree, or undertaking a full-time (but not a part-time) research course leading to a postgraduate masters degree, a loan towards that student’s maintenance under the Act,
- (d) a student who is a person mentioned in paragraph 2(3) (EU nationals etc. with protected rights who have been living in the UK and Islands for three years) of schedule 1 or in schedule 2, a loan towards that student’s tuition fees under the Act and any regulations made under the Act,
- (e) any other student, a loan towards that student’s maintenance under the Act and any regulations made under the Act, including the interest accrued on the loan and any penalties or charges made in connection with it,

“parent” includes a step-parent, a guardian, any other person having parental responsibilities for a child and any person having care of a child, and “child” is construed accordingly,

“person with protected rights” means—

- (a) a person within the scope of Article 10 (personal scope) of the EU withdrawal agreement, Article 9 (personal scope) of the EEA EFTA separation agreement, or Article 10 (personal scope) of the Swiss citizens' rights agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens' Rights Regulations where the relevant period (within the meaning of that regulation) has not ended,
 - (iii) otherwise has rights deemed to apply by virtue of Article 18(1)(d), (2) and (3) (issuance of residence documents) of the EU withdrawal agreement, Article 17(1)(d), (2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement, or Article 16(1)(d), (2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement, or
 - (iv) is an Irish national who, pursuant to section 3ZA (Irish citizens) of the Immigration Act 1971⁽⁸⁾, does not require leave to enter or remain in the UK, or
- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,

"refugee" means a person within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951⁽⁹⁾, as extended by article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967⁽¹⁰⁾, and any reference to the child of a refugee includes a reference to a step-child,

"relevant date" in relation to a course, means, for a course starting in the period—

- (a) 1 August to 31 December, 1 August,
- (b) 1 January to 31 March, 1 January,
- (c) 1 April to 30 June, 1 April,
- (d) 1 July to 31 July, 1 July,

in each case the relevant date being in the year of commencement of the appropriate academic year of the course,

"relevant person of Northern Ireland" has the meaning given in residence scheme immigration rules,

"residence scheme immigration rules" has the meaning given by section 17(1) (Interpretation: Part 3) of the European Union (Withdrawal Agreement) Act 2020⁽¹¹⁾,

"RUK institution" means an institution located in the United Kingdom but outside Scotland,

"self-employed person" means—

- (a) in relation to an EEA national in the United Kingdom, a person who is self-employed within the meaning of either Article 7 (right of residence for more than three months) of Directive 2004/38 or Article 28 of the EEA agreement, as the case may be, or
- (b) in relation to a Swiss national in the United Kingdom, a person who is a self-employed person (within the meaning of Annex 1 to the Switzerland agreement), but who is not a Swiss frontier self-employed person,

⁽⁸⁾ 1971 c. 77.

⁽⁹⁾ Cmnd 9171.

⁽¹⁰⁾ Cmnd 3906.

⁽¹¹⁾ The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

“student support” means—

- (a) an allowance payable under Parts 2 (allowances), 3 (paramedic science, nursing and midwifery student allowances) or 6 (education maintenance allowances),
- (b) a loan payable under Part 4 (student loans),
- (c) a bursary payable under Part 5 (bursaries),

“Swiss citizens’ rights agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens’ rights following the withdrawal of the United Kingdom from the European Union and the free movement of persons agreement⁽¹²⁾,

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person (within the meaning of Annex 1 to the Switzerland agreement), but who is not a Swiss frontier employed person,

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland agreement) in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland agreement) in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“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 21 June 1999⁽¹³⁾ and which came into force on 1 June 2002, and reference to a provision of the agreement—

- (a) is reference to the agreement as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA agreement as the case may be,

(2) Where a student (“A”)—

- (a) is a person eligible for student support within the meaning of schedule 1 for the purposes of an application for student support for—
 - (i) the first year of A’s current course, or
 - (ii) an earlier year of A’s current course, and
- (b) as at the day before the relevant date for the academic year in respect of which A is applying for student support—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,

⁽¹²⁾ CP 64.

⁽¹³⁾ OJ L 114, 30.4.2002, p. 6.