

THE EDUCATION (ACCESS FUNDS) (SCOTLAND) (No. 4) DETERMINATION 2022

Scottish Ministers make the following determination in exercise of the powers conferred by regulations 3, 4 and 5(c) and (d) of the Education (Access Funds) (Scotland) Regulations 1990 (a) (“the 1990 Regulations”) and all other powers enabling them to do so.

PART I GENERAL

Citation and Effect

1. This Determination may be cited as the Education (Access Funds) (Scotland) (No. 4) Determination 2022 and has effect from 20 December 2022.

Making of Determinations

2. The Scottish Ministers (who may pay grants under regulation 2 of the 1990 Regulations for the purpose of providing financial assistance for students) make the determinations set out in paragraphs 3 to 13.

Eligible persons

- 3.—(1) To be eligible for a payment under paragraphs 4 to 13, a person must—
- (a) be ordinarily resident in Scotland on the relevant date,
 - (b) have been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date,
 - (c) have a form of leave to enter or remain in the United Kingdom, which has not expired, and
 - (d) not qualify for a payment under the Education (Access Funds) (Scotland) (No. 3) Determination 2022.
- (2) “Relevant date” in relation to a course means, for a course starting in the period—
- (a) 1 August to 31 December 2022, 1 August 2022,
 - (b) 1 January to 31 March 2023, 1 January 2023,
 - (c) 1 April to 30 June 2023, 1 April 2023,
 - (d) 1 July to 31 July 2023, 1 July 2023.
- (3) The schedule informs the meaning of “ordinarily resident” for the purposes of this paragraph.

PART II

Further Education Bursaries

Persons eligible for further education bursaries

4.—(1) Subject to sub-paragraph (2), a college of further education may pay an allowance to be known as a “further education bursary” to or in respect of any person undertaking a course of education at the college who is an eligible person within the meaning of paragraph 3.

(a) S.I. 1990/1534 as amended by S.I. 1993/1892 and S.S.I. 2013/80. The functions of the Secretary of State under sections 4 and 5(c) and (d) of the 1990 Regulations were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) To be eligible for the payment of a further education bursary a person must be undertaking fundable further education (as defined in section 5 of the Further and Higher Education (Scotland) Act 2005(a) (“the 2005 Act”)) in the academic year 2022/23.

Amount of further education bursaries

5.—(1) The amount of a further education bursary may, subject to sub-paragraph (2), include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the further education bursary,
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in undertaking the course of education in respect of which the further education bursary is awarded,
- (c) the maintenance of the holder and of any persons dependent on them during periods of full time study and during vacations, and
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) The amount of a further education bursary may take account of the sums, if any, which the holder, the holder’s partner, the holder’s parents and the holder’s parents’ partners can reasonably be expected to contribute towards the holder’s expenses.

(3) The amount of a further education bursary may be revised at any time if the college of further education thinks fit having regard to—

- (a) the failure of the holder to comply with the requirements of the further education bursary,
- (b) all the circumstances of the holder, the holder’s partner, the holder’s parents and the holder’s parents’ partners as the case may be, or
- (c) any error made in determining the amount of, or entitlement to, the further education bursary.

(4) For the purposes of this Part, “partner”, in relation to the holder or the holder’s parent, means—

- (a) the spouse of that person,
- (b) the civil partner of that person,
- (c) a person ordinarily living with that person as if he or she were the spouse or civil partner of that person.

Conditions and requirements of further education bursaries

6.—(1) The following shall be conditions of payment of every further education bursary for each academic year—

- (a) an application in such form as the college of further education may require shall be received by them by such date as they may require in respect of that year, and different dates may be required by them in respect of different courses, and
- (b) that application shall include an undertaking by the applicant to repay to the college of further education any amount of which they request repayment following a revision in terms of paragraph 5(3).

(2) A college of education may treat an application received after any date required for the purposes of sub-paragraph (1)(a) as having been received by that date where they consider that, having regard to the circumstances of the particular case, it should be so treated.

(3) Every further education bursary shall be held subject to the following requirements—

- (a) the holder shall comply with the requirements of the course of education in respect of which the further education bursary is awarded,

(a) 2005 asp 6.

- (b) the college of further education shall be satisfied as to the conduct and progress of the holder,
- (c) the holder shall provide the college of further education with such information and such documents as they may from time to time require to enable them to act in accordance with this Determination, and
- (d) the holder shall repay to the college of further education any sum in respect of which the holder has given an undertaking in terms of sub-paragraph (1)(b) and which falls to be repaid following a revision in terms of paragraph 5(3).

Method of payment

7.—(1) The further education bursary may be paid to the holder or to another person for their behoof, or in part to the holder and in part to the said other person, and any sum in respect of fees payable to an educational institution which is included in the amount of the further education bursary may be paid on behalf of the holder to the institution.

(2) The further education bursary may be paid in a single payment or by instalments as the college of further education thinks fit, but no payment shall be made before the holder has been accepted for admission to the course of education in respect of which the further education bursary is awarded.

(3) Payments may be made in such manner as the college of further education considers appropriate, and they may make it a condition of entitlement to payment that the eligible student shall provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

PART III

Discretionary Funds

Persons eligible for payments from discretionary funds

8.—(1) A college of further education may pay a grant from discretionary funds to any person undertaking a course of education at the college in accordance with paragraphs 9 to 12.

(2) An institution within the higher education sector may pay a grant from discretionary funds to any person undertaking a course of education at the institution in accordance with paragraphs 11 to 13.

Further Education Discretionary Fund

9. To be eligible for the payment of a grant from the Further Education Discretionary Fund, the person applying for support from that fund must—

- (a) be an eligible person within the meaning of paragraph 3,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the Education (Scotland) Act 1980(a) (“the 1980 Act”),
- (c) be studying at least on a part-time basis, and
- (d) be undertaking fundable further education (as defined in section 5 of the 2005 Act) in the academic year 2022/23.

College Childcare Fund

10. To be eligible for the payment of a grant from the College Childcare Fund the person applying for support from that fund must—

(a) 1980 (c.44).

- (a) be an eligible person within the meaning of paragraph 3,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying at least on a part-time basis,
- (d) be undertaking fundable further education or fundable higher education (as defined in section 5 of the 2005 Act) in the academic year 2022/23, and
- (e) have responsibility for the care of a child or children.

Higher Education Undergraduate Discretionary Fund

11. To be eligible for the payment of a grant from the Higher Education Undergraduate Discretionary Fund the person applying for support from that fund must—

- (a) be an eligible person within the meaning of paragraph 3,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying on at least a part-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act) in the academic year 2022/23,
- (e) have availed himself or herself in the current academic year of student support provided by Government, and
- (f) be an undergraduate or in receipt of student support available to undergraduates.

Higher Education Postgraduate Discretionary Fund

12. To be eligible for the payment of a grant from the Higher Education Postgraduate Discretionary Fund the person applying for support from that fund must—

- (a) be an eligible person within the meaning of paragraph 3 or be eligible to receive student support under equivalent provisions of legislation made under sections 22, 42(6) and 43(1) of the Teaching Act or articles 3 and 8(4) of the NI Order,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying on at least a part-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act) above first degree level, and
- (e) have availed himself or herself in the current academic year of student support provided by Government.

University Childcare Fund

13. To be eligible for the payment of a grant from the University Childcare Fund the person applying for support from that fund must—

- (a) be an eligible person within the meaning of paragraph 3,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying on a full-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act) in the academic year 2022/23,
- (e) have availed himself or herself in the current academic year of the full entitlement to student support provided by Government, and
- (f) have responsibility for the care of a child or children.

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SCHEDULE

Paragraph 3

Ordinary Residence

1. For the purposes of paragraph 3(1)(a), a person who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland or the Islands for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the place from where they moved.

2.—(1) For the purposes of paragraph 3(1)(a), a person shall be treated as ordinarily resident in Scotland on the relevant date if the college of further education or institution within the higher education sector is satisfied that that person was not actually resident only because—

- (b) that person, or their spouse or civil partner, or parent, or
- (c) in the case of a dependant direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner, was temporarily—
 - (i) employed outside Scotland;
 - (ii) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of paragraph 3(1)(a), a person shall not be treated as being ordinarily resident in Scotland on the relevant date if the college of further education or institution within the higher education sector is satisfied that that person's residence there on that date is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full time education.

3.—(1) Sub-paragraphs (2) to (4) shall apply in determining, for the purposes of paragraph 3(1)(b), whether a person is to be treated as having been or not having been ordinarily resident for the period specified in the United Kingdom.

(2) A person shall not be treated as having been ordinarily resident in the United Kingdom for the specified period if the college of further education or the institution within the higher education sector is satisfied that that person was resident therein or any part of that period wholly or mainly for the purpose of receiving full-time education, unless the person has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the person must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A person shall be treated as having been ordinarily resident in the United Kingdom for the specified period if the college of further education or institution within the higher education sector is satisfied that the person was born and has spent the greater part of their life in the United Kingdom and that—

- (a) their parents or either of them have been ordinarily resident in the United Kingdom throughout the specified period and he or she is not an independent student, or
- (b) that person has been ordinarily resident in the United Kingdom for at least 1 year of the specified period and no part of that residence was wholly or mainly for the purposes of receiving full time education.

(4) A person shall be treated as having been ordinarily resident in the United Kingdom for the specified period if the college of further education or institution within the higher education sector is satisfied that the person was not actually ordinarily resident in the United Kingdom for the specified period only because—

- (a) that person, or their spouse or civil partner, or either of their parents, or
- (b) in the case of a dependant direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner, was temporarily—
 - (i) employed outside the United Kingdom, or

- (ii) attending a course of study or undertaking postgraduate research outside the United Kingdom.

4.—(1) For the purposes of this schedule, “an independent student” means a person who immediately prior to the relevant date—

- (a) had attained the age of 25 years,
- (b) was married or in a civil partnership,
- (c) had no parent living,
- (d) had the care of a person under the age of 18 years who was wholly or mainly financially dependent on them, or
- (e) had been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having been self-supporting out of their earnings for any period during which that person—

- (a) was participating in arrangements for training for the unemployed under any scheme operated, sponsored or funded by any state authority or agency, national, regional or local,
- (b) was in receipt of benefit payable by any state authority or agency, national, regional or local, in respect of a person who is available for employment but who is unemployed,
- (c) was available for employment and had complied with any requirement of registration imposed by a body referred to in heads (a) or (b) as a condition of entitlement for participation in arrangements for training or receipt of benefit,
- (d) received any pension, allowance or other benefit paid by reason of a disability to which that person is subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, national, regional or local, by an employer or any former employer or by any other person, or
- (e) held an advance postgraduate award or comparable award.

EXPLANATORY NOTE

(This note is not part of the Order)

This determination is made under the Education (Access Funds) (Scotland) Regulations 1990 S.S.I. 1990/1534 (“the 1990 Regulations”). Under the 1990 Regulations, the Scottish Ministers are empowered to pay grants for the financial assistance of students attending colleges of further education and institutions within the higher education sector on such terms and conditions as the Scottish Ministers determine. These grants are sub-divided into sums for payment of (i) further education bursaries and (ii) discretionary funds.

Under the Education (Access Funds) (Scotland) Direction 2022, the Scottish Ministers have directed the Scottish Further and Higher Education Council to administer further education bursaries and the discretionary funds for the financial assistance of students attending colleges of further education on their behalf. The Student Awards Agency Scotland is the executive agency of the Scottish Ministers with regard to the higher education sector and administers the discretionary funds for the financial assistance of students attending institutions within the higher education sector.

Through this determination, the Scottish Ministers are setting out the terms and conditions on which further education bursaries and discretionary funds are to be paid.

This determination has been made to align the eligibility criteria for access to further education bursaries and discretionary funds with a special payment scheme established by the Scottish Ministers to address the judgment of the Court of Session in *Jasim v Scottish Ministers* [2022] CSOH 64, in which certain provisions of the Students’ Allowances (Scotland) Regulations 2007 were found to be unlawful in light of Article 14 and Article 2 of Protocol 1 of the European Convention on Human Rights.