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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 10**

**INCOME AND CAPITAL**

**CHAPTER 10**

**Students**

**Interpretation**

**131.**—(1) In this Chapter—

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course is to be considered to begin in the autumn rather than the summer;

“access funds” means—

- (a) grants made under section [F168] of the Further and Higher Education Act 1992 <sup>F2F3</sup>... for the purpose of providing funds on a discretionary basis to be paid to students;
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980 <sup>F4</sup>;
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 <sup>F5</sup>, or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 <sup>F6</sup> in each case being grants, or grants, loans or other payments as the case may be, made for the purpose of assisting students in financial difficulties;
- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the [F7][F8]Secretary of State under section 14 of the Education Act 2002] or <sup>F9</sup>... under sections 100 and 101 of [F10the Apprenticeships, Skills, Children and Learning Act 2009]]<sup>F11</sup>; or
- (e) Financial Contingency Funds made available by the Welsh Ministers;

“college of further education” means, in Scotland, an educational establishment by which further education is provided;

[F12“contribution” means—

- (a) any contribution in respect of the income of a student or any person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of a student's grant or student loan; or
- (b) any sums, which in determining the amount of a student's allowance or bursary in Scotland under the Education (Scotland) Act 1980, the Scottish Ministers or education

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authority takes into account being sums which the Scottish Ministers or education authority consider that it is reasonable for the following persons to contribute towards the holder's expenses—

- (i) the holder of the allowance or bursary;
- (ii) the holder's parents;
- (iii) the holder's parent's spouse, civil partner or a person ordinarily living with the holder's parent as if he or she were the spouse or civil partner of that parent; or
- (iv) the holder's spouse or civil partner;]

“course of advanced education” means—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ, or equivalent, including a course which is of a standard above a general certificate of education (advanced level), a Scottish national qualification (higher or advanced higher);

“covenant income” means the income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student's grant or award;

“education authority” means a government department, [<sup>F13</sup>a local authority as defined in section 579 of the Education Act 1996 (interpretation)], an education authority as defined in section 123 of the Local Government (Scotland) Act 1973<sup>F14</sup>, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>F15</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965<sup>F16</sup> or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“full-time course of advanced education” means a course of advanced education which is—

- (a) a full-time course of study which is not funded in whole or in part by the [<sup>F17</sup>Secretary of State under section 14 of the Education Act 2002][<sup>F18</sup>or under section 100 of the Apprenticeships, Skills, Children and Learning Act 2009] or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) a course of study which is funded in whole or in part by the [<sup>F17</sup>Secretary of State under section 14 of the Education Act 2002][<sup>F19</sup>or under section 100 of the Apprenticeships, Skills, Children and Learning Act 2009] or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
  - (i) [<sup>F20</sup>in the case of a course funded by the [<sup>F17</sup>Secretary of State]<sup>F21</sup>..., in the student's learning agreement signed on behalf of the establishment which is funded by [<sup>F22</sup>the Secretary of State] for the delivery of that course; or]
  - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) a course of study (not being higher education) which is funded in whole or in part by the Scottish Ministers at a college of further education if it involves—

- (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
- (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the [<sup>F23</sup>Secretary of State under section 14 of the Education Act 2002][<sup>F24</sup>or section 100 of the Apprenticeships, Skills, Children and Learning Act 2009] or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) a course of study which is funded in whole or in part by the [<sup>F23</sup>Secretary of State under section 14 of the Education Act 2002][<sup>F25</sup>or section 100 of the Apprenticeships, Skills, Children and Learning Act 2009] or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
  - (i) [<sup>F26</sup>in the case of a course funded by the [<sup>F23</sup>Secretary of State]<sup>F27</sup> ..., in the student’s learning agreement signed on behalf of the establishment which is funded by [<sup>F28</sup>the Secretary of State] for the delivery of that course; or]
  - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education if it involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time student” means a person who is not a qualifying young person or child within the meaning of section 142 of the Contributions and Benefits Act <sup>F29</sup> (child and qualifying young person) and who is—

- (a) aged less than 19 and is attending or undertaking a full-time course of advanced education;
- (b) aged 19 or over but under pensionable age and is attending or undertaking a full-time course of study at an educational establishment; or
- (c) on a sandwich course;

“grant” (except in the definition of “access funds”) means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not

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include a payment from access funds or any payment to which paragraph 13 of Schedule 8 or paragraph 52 of Schedule 9 applies;

“grant income” means—

- (a) any income by way of a grant;
- (b) in the case of a student other than one to whom paragraph (c) refers, any contribution which has been assessed whether or not it has been paid;
- (c) in the case of a student who is a lone parent<sup>F30</sup>, is a person who has no partner and who is responsible for and a member of the same household as a young person] or is a person to whom Part 4 applies, any contribution which has been assessed and which has been paid, and any such contribution which is paid by way of a covenant is to be treated as part of the student's grant income;

“higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 <sup>F31</sup>;

“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either—
  - (i) the day before the start of the next year of the course in a case where the student's grant or loan is assessed at a rate appropriate to the student's studying throughout the year or, if the claimant does not have a grant or loan, where a loan would have been assessed at such a rate had the claimant had one; or
  - (ii) in any other case the day before the start of the normal summer vacation appropriate to the student's course;
- (c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

“periods of experience” means periods of work experience which form part of a sandwich course;

[<sup>F32</sup>“postgraduate master's degree loan” means a loan which a student is eligible to receive under the Education (Postgraduate Master's Degree Loans) Regulations 2016;]

“sandwich course” has the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2007 <sup>F33</sup>, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 <sup>F34</sup> or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007 <sup>F35</sup>;

“standard maintenance grant” means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 <sup>F36</sup> (“the 2003 Regulations”) for such a student;

- (b) except where paragraph (c) applies, in the case of a student residing at the student's parent's home, the amount specified in paragraph 3(2) of Schedule 2 to the 2003 Regulations;
- (c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980 <sup>F37</sup>, the amount of money specified for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 2003 Regulations other than in paragraph (a) or (b) of that paragraph;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking a course of study at an educational establishment;

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998 <sup>F38</sup>, sections [<sup>F39</sup>73(f)], 73B and 74 of the Education (Scotland) Act 1980 or article 3 of the Education (Student Support) (Northern Ireland) Order 1998 <sup>F40</sup> and is to include, in Scotland, amounts paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 2007 <sup>F41</sup>.

(2) For the purposes of the definition of “full-time student” in paragraph (1), a person is to be regarded as attending or, as the case may be, undertaking a full-time course of study, a full-time course of advanced education or as being on a sandwich course—

- (a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—
  - (i) on the last day on which the claimant is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or
  - (ii) on such earlier date (if any) as the claimant finally abandons the course or is dismissed from it;
- (b) in any other case, throughout the period beginning on the date on which the claimant starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the claimant finally abandons it or is dismissed from it.

(3) For the purpose of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph is to include—

- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the claimant was attending or undertaking a part of the course as a full-time course of study, any period in respect of which the claimant attends or undertakes the course for the purpose of retaking those examinations or that module;
- (b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which the claimant is required to attend or undertake the course.

(4) In paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

**Textual Amendments**

- F1** Word in reg. 131(1) substituted (26.10.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(1), **11(14)(a)**
- F2** 1992 c. 13.
- F3** Words in reg. 131(1) omitted (26.10.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(1), **11(14)(b)**
- F4** 1980 c. 44.
- F5** [S.I. 1993/2810 \(N.I. 12\)](#). The functions under article 30 were transferred by [S.R. 1999/481](#) and the relevant amending instruments are [S.I.1997/1772 \(N.I. 15\)](#), [S.I. 2005/1116 \(N.I. 5\)](#) and [S.I. 2005/1963 \(N.I. 13\)](#).
- F6** [S.I. 1997/1772 \(N.I. 15\)](#).
- F7** Words in reg. 131(1) substituted (1.9.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2010 \(S.I. 2010/1941\)](#), **art. 28(4)(a)**, reg. 1
- F8** Words in reg. 131(1) substituted (1.5.2012) by [The Young Peoples Learning Agency Abolition \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2012 \(S.I. 2012/956\)](#), arts. 1, **22(4)(a)(i)**
- F9** Words in reg. 131(1) omitted (26.5.2015) by virtue of [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), **Sch. 3 para. 14(4)(a)**
- F10** Words in reg. 131(1) substituted (1.5.2012) by [The Young Peoples Learning Agency Abolition \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2012 \(S.I. 2012/956\)](#), arts. 1, **22(4)(a)(ii)**
- F11** 2000 c. 21. Section 5 was amended by the [Education Act 2002 \(c. 32\)](#), **section 178(1)**, (2)(a) and (b). Section 6 was amended by the [Special Educational Needs and Disability Act 2001 \(c. 10\)](#), **sections 34(7)** and 42(6) and Schedule 9. Section 9 was amended by the [Education and Inspections Act 2006 \(c. 40\)](#), **section 176(2)**.
- F12** Words in reg. 131(1) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **10(7)**
- F13** Words in reg. 131 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) \(Local and Subordinate Legislation\) Order 2010 \(S.I. 2010/1172\)](#), art. 1(1), **Sch. 3 para. 81**
- F14** 1973 c. 65, **section 123** was substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#), **section 180** and Schedule 13, paragraph 92(28).
- F15** [S.I. 1986/594 \(N.I. 3\)](#).
- F16** 1965 c. 4.
- F17** Words in reg. 131(1) substituted (1.5.2012) by [The Young Peoples Learning Agency Abolition \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2012 \(S.I. 2012/956\)](#), arts. 1, **22(4)(b)(i)**
- F18** Words in reg. 131(1) substituted (26.5.2015) by [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), **Sch. 3 para. 14(4)(b)(i)**
- F19** Words in reg. 131(1) substituted (26.5.2015) by [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), **Sch. 3 para. 14(4)(b)(ii)**
- F20** Words in reg. 131(1) substituted (1.9.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2010 \(S.I. 2010/1941\)](#), **art. 28(4)(b)(ii)**, reg. 1
- F21** Words in reg. 131(1) omitted (26.5.2015) by virtue of [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), **Sch. 3 para. 14(4)(b)(iii)(aa)**
- F22** Words in reg. 131(1) substituted (26.5.2015) by [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), **Sch. 3 para. 14(4)(b)(iii)(bb)**

- F23** Words in reg. 131(1) substituted (1.5.2012) by The Young Peoples Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012 (S.I. 2012/956), arts. 1, **22(4)(c)(i)**
- F24** Words in reg. 131(1) substituted (26.5.2015) by The Deregulation Act 2015 (Consequential Amendments) Order 2015 (S.I. 2015/971), art. 1(2)(a), **Sch. 3 para. 14(4)(c)(i)**
- F25** Words in reg. 131(1) substituted (26.5.2015) by The Deregulation Act 2015 (Consequential Amendments) Order 2015 (S.I. 2015/971), art. 1(2)(a), **Sch. 3 para. 14(4)(c)(ii)**
- F26** Words in reg. 131(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 28(4)(c)(ii)**, reg. 1
- F27** Words in reg. 131(1) omitted (26.5.2015) by virtue of The Deregulation Act 2015 (Consequential Amendments) Order 2015 (S.I. 2015/971), art. 1(2)(a), **Sch. 3 para. 14(4)(c)(iii)(aa)**
- F28** Words in reg. 131(1) substituted (26.5.2015) by The Deregulation Act 2015 (Consequential Amendments) Order 2015 (S.I. 2015/971), art. 1(2)(a), **Sch. 3 para. 14(4)(c)(iii)(bb)**
- F29** Section 142 was substituted by the Child Benefit Act 2005 (c. 6), **section 1(2)**.
- F30** Words in reg. 131(1) inserted (31.10.2011) by The Social Security (Work-focused Interviews for Lone Parents and Partners) (Amendment) Regulations 2011 (S.I. 2011/2428), regs. 1, **5(4)**
- F31** 1992 c. 37.
- F32** Words in reg. 131(1) inserted (4.8.2016) by The Social Security (Treatment of Postgraduate Masters Degree Loans and Special Support Loans) (Amendment) Regulations 2016 (S.I. 2016/743), regs. 1, **5(2)**
- F33** S.I. 2007/176.
- F34** S.S.I. 2007/154.
- F35** S.R. 2007/195.
- F36** S.I. 2003/1994.
- F37** 1980 c. 44.
- F38** 1998 c. 30. Section 22 was amended by the Learning and Skills Act 2000 (c. 21), **section 146(1)** and (2)(a), the Higher Education Act 2004 (c. 8), **sections 42(1)**, 43(1), (2) and (3) and 50 and Schedule 7, the Income Tax (Earnings and Pensions) Act 2003 (c. 1), **section 722** and Schedule 6, Part 2, paragraph 236(a) and (b) and the Finance Act 2003 (c. 14), **section 147(3)**.
- F39** Word in reg. 131(1) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **8(9)**
- F40** S.I. 1998/1760 (N.I. 14).
- F41** S.S.I. 2007/153.

### Calculation of grant income

**132.**—(1) The amount of student's grant income to be taken into account, subject to paragraphs (2) and (3), is to be the whole of the student's grant income.

(2) There is to be disregarded from the amount of a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) intended to meet additional expenditure incurred by a disabled student in respect of that student's attendance on a course;
- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which the student resides while attending the course but only to the extent that the student's rent is not met by housing benefit;
- (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of that person;

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- (f) intended to meet the cost of books and equipment;
  - (g) intended to meet travel expenses incurred as a result of the student's attendance on the course;
  - (h) intended for the maintenance of a child dependant;
  - (i) intended for the child care costs of a child dependant.
- [<sup>F42</sup>(j) of higher education bursary for care leavers made under Part III of the Children Act 1989.]
- (3) Where a student does not have a student loan [<sup>F43</sup>or a postgraduate master's degree loan] and is not treated as possessing [<sup>F44</sup>a student loan or a postgraduate master's degree loan], there is to be excluded from the student's grant income—
- (a) the sum of [<sup>F45</sup>£303] per academic year in respect of travel costs; and
  - (b) the sum of [<sup>F46</sup>£390] per academic year towards the costs of books and equipment,
- whether or not any such costs are incurred.
- (4) Subject to paragraph (6), a student's grant income except any amount intended for the maintenance of adult dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 is to be apportioned—
- (a) subject to paragraph (7), in a case where it is attributable to the period of study, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study;
  - (b) in any other case, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.
- (5) Any grant in respect of an adult dependant paid under section 63(6) of the Health Services and Public Health Act 1968 <sup>F47</sup> (grants in respect of the provision of instruction to officers of hospital authorities) and any amount intended for the maintenance of an adult dependant under the provisions referred to in paragraph (4) is to be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53 weeks.
- (6) In a case where a student is in receipt of a student loan or where that student could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of an adult dependant under provisions other than those referred to in paragraph (4) is to be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.
- (7) In the case of a student on a sandwich course, any periods of experience within the period of study is to be excluded and the student's grant income is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

#### Textual Amendments

- F42** Reg. 132(2)(j) added (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **10(8)**
- F43** Words in reg. 132(3) inserted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(3)(a)**



- F44** Words in reg. 132(3) substituted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(3)(b)**
- F45** Word in reg. 132(3)(a) substituted (1.8.2009 for specified purposes and with effect in accordance with reg. 1(3)) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/1575\)](#), regs. 1(3), 2(2)(4)(e)
- F46** Word in reg. 132(3)(b) substituted (1.8.2009 for specified purposes and with effect in accordance with reg. 1(3)) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/1575\)](#), regs. 1(3), 2(3)(4)(e)
- F47** 1968 c. 46. Section 63(6) was amended by the [Health and Medicines Act 1988 \(c. 49\)](#), **section 20**.

### Calculation of covenant income where a contribution is assessed

**133.**—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of the student's covenant income to be taken into account for that period and any summer vacation immediately following is to be the whole amount of the student's covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant income is to be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53; and
- (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution is to be treated as increased by the amount, if any, by which the amount excluded under regulation 132(2)(g) (calculation of grant income) falls short of the amount for the time being specified in paragraph 7(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003<sup>F48</sup> (travel expenditure).

#### Textual Amendments

- F48** [S.I. 2003/1994](#), the relevant amending instrument is [S.I. 2007/1629](#).

### Calculation of covenant income where no grant income or no contribution is assessed

**134.**—(1) Where a student is not in receipt of income by way of a grant the amount of the student's covenant income is to be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 132(2)(a) to (e), necessary as a result of the student's attendance on the course, are to be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded is to be apportioned equally between the weeks of the period of study and there is to be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 132(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;
- (c) the balance, if any, is to be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 and treated as weekly income of which £5 is to be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of the student's covenant income is to be calculated in accordance with paragraph (1), except that—

- (a) the value of the standard maintenance grant is to be abated by the amount of the student's grant income less an amount equal to the amount of any sums disregarded under regulation 132(2)(a) to (e); and

- (b) the amount to be disregarded under paragraph (1)(b) is to be abated by an amount equal to the amount of any sums disregarded under regulation 132(2)(f) and (g) and (3).

### **Relationships with amounts to be disregarded under Schedule 8**

**135.** No part of a student's covenant income or grant income is to be disregarded under paragraph 16 of Schedule 8 (charitable and voluntary payments).

### **Other amounts to be disregarded**

**136.—**(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 137 (treatment of student loans), any amounts intended for any expenditure specified in regulation 132(2) (calculation of grant income) necessary as a result of the student's attendance on the course is to be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 132(2) and (3), 133(3) (calculation of covenant income where a contribution is assessed), 134(1)(a) or (b) (calculation of covenant income where no grant income or no contribution is assessed) and 137(6) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a Deed of Covenant which commences or takes effect after the first day of that vacation, that income is to be disregarded.

### **Treatment of student loans <sup>F49</sup> and postgraduate master's degree loans]**

**137.—**(1) <sup>F50</sup>A student loan and a postgraduate master's degree loan are to be treated as income unless the loan] is a specified loan or award in which case it is to be disregarded.

(2) For the purposes of paragraph (1), a "specified loan or award" means—

- (a) in relation to England, a loan made by the Higher Education Funding Council for England under section 65 of the Further and Higher Education Act 1992 <sup>F51</sup>;
- (b) in relation to Wales, a loan made by the Higher Education Funding Council for Wales under section 65 of the Further and Higher Education Act 1992;
- (c) in relation to Scotland, a loan made by an educational institution from funds it has received under the Education (Access Funds) (Scotland) Regulations 1990 <sup>F52</sup>;
- (d) in relation to Northern Ireland, an award made by the Department for Employment and Learning under article 51 of the Education and Libraries (Northern Ireland) Order 1986 <sup>F53</sup>.

(3) In calculating the weekly amount of the loan to be taken in account as income—

- (a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period is to be apportioned equally between the weeks in the period beginning with—
  - (i) except in a case where paragraph (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year;
  - (ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,
 and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;

- (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which coincides with,

or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Secretary of State, the longest of any vacation is taken;

- (c) for the purposes of sub-paragraph (b), “quarter” is to have the same meaning as for the purposes of regulation 104(6) (calculation of income other than earnings);
- (d) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year is to be apportioned equally between the weeks in the period beginning with—
  - (i) except in a case where paragraph (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year;
  - (ii) where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,

and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;

- (e) in any other case, the loan is to be apportioned equally between the weeks in the period beginning with the earlier of—
  - (i) the first day of the first benefit week in September; or
  - (ii) the benefit week, the first day of which coincides with, or immediately follows, the first day of the autumn term,

and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of June,

and, in all cases, from the weekly amount so apportioned there is to be disregarded £10.

(4) A student is to be treated as possessing a student loan [<sup>F54</sup>or a postgraduate master's degree loan] in respect of an academic year where—

- (a) a student loan [<sup>F54</sup>or a postgraduate master's degree loan] has been made to that student in respect of that year; or
- (b) [<sup>F55</sup>subject to paragraph (4A)] the student could acquire [<sup>F56</sup>a student loan or a postgraduate master's degree loan] in respect of that year by taking reasonable steps to do so.

[<sup>F57</sup>(4A) A student is not to be treated as possessing any part of a student loan [<sup>F58</sup>or a postgraduate master's degree loan] which has not been paid to that student in respect of an academic year where the educational institution at which the student was attending a course has confirmed in writing that the student has suspended attendance at the course due to a health condition or disability that renders the student incapable of continuing that course.]

(5) Where a student is treated as possessing a student loan under paragraph (4), the amount of the student loan to be taken into account as income is to be, subject to paragraph (6)—

- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to the maximum student loan the student is able to acquire in respect of that year by taking reasonable steps to do so and either—
  - (i) in the case of a student other than one to whom paragraph (ii) refers, any contribution whether or not it has been paid to that student; or
  - (ii) in the case of a student who is entitled to an income-related allowance by virtue of being a student to whom regulation 18 (circumstances in which the condition that the claimant is not receiving education does not apply) applies;

*Status: Point in time view as at 04/08/2016.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, CHAPTER 10. (See end of Document for details)*

- (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
- (i) the student took all reasonable steps to obtain the maximum student loan that student is able to acquire in respect of that year; and
  - (ii) no deduction in that loan was made by virtue of the application of a means test.

[<sup>F59</sup>(5A) Where a student is treated as possessing a postgraduate master's degree loan under paragraph (4) in respect of an academic year, the amount of that loan to be taken into account as income is to be, subject to paragraph (6), a sum equal to 30 per cent. of the maximum postgraduate master's degree loan the student is able to acquire in respect of that academic year by taking reasonable steps to do so.]

(6) There is to be deducted from the amount of income taken into account under paragraph (5) [<sup>F60</sup>or (5A)]—

- (a) the sum of [<sup>F61</sup>£303] per academic year in respect of travel costs; and
- (b) the sum of [<sup>F62</sup>£390] per academic year towards the costs of books and equipment, whether or not any such costs are incurred.

#### Textual Amendments

- F49** Words in [reg. 137 heading](#) added (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(4)(a)**
- F50** Words in [reg. 137\(1\)](#) substituted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(4)(b)**
- F51** 1992 c. 13.
- F52** S.I. 1990/1534 (S. 157).
- F53** S.I. 1986/594 (N.I. 3).
- F54** Words in [reg. 137\(4\)](#) inserted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(4)(c)(i)**
- F55** Words in [reg. 137\(4\)\(b\)](#) inserted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), **11(3)(a)**
- F56** Words in [reg. 137\(4\)\(b\)](#) substituted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(4)(c)(ii)**
- F57** [Reg. 137\(4A\)](#) inserted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), **11(3)(b)**
- F58** Words in [reg. 137\(4A\)](#) inserted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(4)(d)**
- F59** [Reg. 137\(5A\)](#) inserted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(4)(e)**
- F60** Words in [reg. 137\(6\)](#) inserted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, **5(4)(f)**
- F61** Word in [reg. 137\(6\)\(a\)](#) substituted (1.8.2009 for specified purposes and with effect in accordance with [reg. 1\(3\)](#)) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/1575\)](#), regs. 1(3), 2(2)(4)(e)

**F62** Word in [reg. 137\(6\)\(b\)](#) substituted (1.8.2009 for specified purposes and with effect in accordance with [reg. 1\(3\)](#)) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/1575\)](#), [regs. 1\(3\), 2\(3\)\(4\)\(e\)](#)

### Treatment of payments from access funds

**138.**—(1) This regulation applies to payments from access funds that are not payments to which regulation 142(2) or (3) (income treated as capital) applies.

(2) A payment from access funds, other than a payment to which paragraph (3) applies, is to be disregarded as income.

(3) Subject to paragraph (4) and paragraph 39 of Schedule 8, any payments from access funds which are intended and used for food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1) (c) or 68(1)(d) (housing costs), of a single claimant or, as the case may be, of the claimant's partner, and any payments from access funds which are used for any council tax or water charges for which that claimant or partner is liable is to be disregarded as income to the extent of £20 per week.

(4) Where a payment from access funds is made—

- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
- (b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment is to be disregarded as income.

### Treatment of fee loans

**139.** A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 <sup>F63</sup>, section 22 of the Teaching and Higher Education Act 1998 <sup>F64</sup> or section 73(f) of the Education (Scotland) Act 1980 <sup>F65</sup>, is to be disregarded as income.

#### Textual Amendments

**F63** [S.I. 1998/1760 \(N.I. 14\)](#).

**F64** [1998 c. 30](#).

**F65** [1980 c. 44](#).

### [<sup>F66</sup>Treatment of special support loans

**139A.** A special support loan within the meaning of regulation 68 of the Education (Student Support) Regulations 2011 is to be disregarded as income.]

#### Textual Amendments

**F66** [Reg. 139A](#) inserted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), [regs. 1, 5\(5\)](#)

*Status: Point in time view as at 04/08/2016.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, CHAPTER 10. (See end of Document for details)*

### **Disregard of contribution**

**140.** Where the claimant or the claimant's partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution is to be disregarded for the purposes of assessing that other partner's income.

### **Further disregard of student's income**

**141.** Where any part of a student's income has already been taken into account for the purposes of assessing that student's entitlement to a grant<sup>F67</sup>, student loan or postgraduate master's degree loan], the amount taken into account is to be disregarded in assessing that student's income.

#### **Textual Amendments**

**F67** Words in reg. 141 substituted (4.8.2016) by [The Social Security \(Treatment of Postgraduate Masters Degree Loans and Special Support Loans\) \(Amendment\) Regulations 2016 \(S.I. 2016/743\)](#), regs. 1, 5(6)

### **Income treated as capital**

**142.—**(1) Any amount by way of a refund of tax deducted from a student's income is to be treated as capital.

(2) An amount paid from access funds as a single lump sum is to be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d), of a single claimant or, as the case may be, of the claimant's partner, or which is used for an item other than any council tax or water charges for which that claimant or partner is liable is to be disregarded as capital but only for a period of 52 weeks from the date of the payment.

### **Disregard of changes occurring during summer vacation**

**143.** In calculating a student's income there is to be disregarded any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of the student's period of study, from the date on which the change occurred up to the end of that vacation.

**Status:**

Point in time view as at 04/08/2016.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, CHAPTER 10.