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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 222**

**The Education (Assisted Places) (Scotland) Regulations 2001**

**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;

“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(1) as adjusted by the Protocol thereto signed at Brussels on 17th March 1993(2);

“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—

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(1) Cmnd. 2073.

(2) Cmnd. 2183.

- (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<sup>(3)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(4)</sup>; 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;

“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—

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<sup>(3)</sup> Cmnd. 9171.

<sup>(4)</sup> Cmnd. 3906.

- (i) an order relating to parental responsibilities or parental rights made under section 11(1) of the Children (Scotland) Act 1995<sup>(5)</sup>; 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<sup>(6)</sup> 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
  - (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—

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(5) 1995 c. 36.

(6) 1991 c. 48.

- (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(7) 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.

#### **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.

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(7) 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).

## 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<sup>(8)</sup>.

(2) For the purposes of this Part “relevant income” as respects parents of an assisted pupil means, in relation to any financial year, their income for that year aggregated with the unearned income for that year, if any, of the pupil and of any other of the parents' children who are wholly or mainly dependent on them at the time the relevant income is calculated less, where paragraph (3) or (5) applies, the sum there mentioned; and in this paragraph the reference to unearned income is a reference to income other than such as arises from gainful employment.

(3) Subject to paragraph (5), the relevant income, calculated as aforesaid, shall be reduced by £1,430 in respect of each person other than the assisted pupil who—

- (a) at the time the relevant income is calculated, is wholly or mainly dependent on the parents or on payments made to that person or for their benefit as mentioned in paragraph (4);
- (b) is a child or other relative of one or both of the parents; and
- (c) normally resides in the same household as the parents and the assisted pupil.

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(8) 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 1996 (c. 8) section 73 and Schedule 6, paragraph 24; and the Finance Act 1998 (c. 36) section 31 and Schedule 3, paragraph 40 and section 44 and Schedule 6, paragraph 16.

(4) The payments referred to in paragraph (3)(a) are ones made by one or both of the parents, including sums paid as mentioned in paragraph 3(2)(f) of Schedule 1, but excluding any other payments which fall to be deducted in ascertaining total income for the purposes of these Regulations.

(5) Where a child (other than the assisted pupil) who is wholly or mainly dependent on the parents or on payments made to the child or for the child's benefit by one or both of them is the holder of an award of a kind described in paragraph (6) and there has been deducted, in calculating the amount of that award, a sum exceeding £1,430 in respect of the parental contribution which is assumed to be available as part of the resources of that child, that sum shall be deducted from the relevant income in lieu of the £1,430 prescribed in respect of that child by paragraph (3).

(6) The awards referred to in paragraph (5) are—

- (a) an allowance granted by the Scottish Ministers pursuant to regulations from time to time in force and having effect under sections 73 and 74 of the Act(9) providing for the payment of allowances to students(10);
- (b) a bursary granted by an education authority pursuant to regulations from time to time in force and having effect under section 49 of the Act(11) providing for the payment of bursaries to persons undertaking courses of full-time education which are not courses of school education(12);
- (c) a mandatory award paid by a local education authority in England or Wales pursuant to regulations from time to time in force under section 1 of the Education Act 1962(13) providing for the payment of awards to students attending specified courses of further or higher education(14);
- (d) an award made by—
  - (i) the Northern Ireland Executive's Higher and Further Education, Training and Employment Department pursuant to article 50 of the Education and Libraries (Northern Ireland) Order 1986(15) and regulations from time to time in force thereunder(16), being an award in respect of attendance at a course which commenced before 1st September 1999, a first degree course or a postgraduate course for the training of teachers; or

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- (9) Sections 73 and 74 were amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), section 73 and section 82 and Schedule 10, paragraph 8(17) respectively and section 73 was amended by the Teaching and Higher Education Act 1998 (c. 30) section 29.
  - (10) The Regulations in force at the date on which these Regulations were made are the Students' Allowances (Scotland) Regulations 1999 (S.I.1999/1131). The administrative arrangements for assessing assumed parental contributions are set out in the booklet "Student Support in Scotland" published in April 2001 by the Student Awards Agency, copies of which are obtainable from the Student Awards Agency for Scotland, Awards Branch, Gyleview House, 3 Redheughs Rigg, Edinburgh, EH12 9HH.
  - (11) Section 49 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), section 82 and Schedule 10, paragraph 8(9).
  - (12) The Regulations in force at the date on which Regulations were made are the Education Authority Bursaries (Scotland) Regulations 1995 (S.I. 1995/1739, as amended by S.I. 1997/1049).
  - (13) 1962 c. 12; section 1 was substituted by section 19 of and Schedule 5 to the Education Act 1980 (c. 20) and amended by section 4 of the Education (Grants and Awards) Act 1984 (c. 11); the entire Act was repealed by the Teaching and Higher Education Act 1998 (c. 30), section 44(2) and Schedule 4, subject to the saving and transitional provisions set out in the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order 1998 (S.I. 1998/3237 (c.81)), article 4.
  - (14) The Regulations in force at the date on which these Regulations were made were the Education (Mandatory Awards) Regulations 1999 (S.I. 1999/1494 as amended by S.I. 2000/1425).
  - (15) S.I. 1986/594 (N.I. 3). Article 50(1) and (2) was repealed by the Education (Student Support) (Northern Ireland) Order 1998, article 9 and the Schedule (S.I. 1998/1760) (N.I. 14), subject to the transitional and saving provisions in Part II of the Education (Student Support) (Northern Ireland) Order 1998 (Commencement No. 2 and Transitional Provisions) Order 1998, S.R. 1998 No. 460 (c.22).
  - (16) The Regulations in force at the date on which these Regulations were made are the Student Awards Regulations (Northern Ireland) 2000 (S.R. 2000 No. 311).

- (ii) the Northern Ireland Executive's Higher and Further Education, Training and Employment Department pursuant to article 51 of the said Order(17), being an award in respect of attendance at an approved postgraduate course at universities, colleges or other institutions, or other approved courses, or for the purpose of enabling or encouraging the holder to take advantage of educational facilities available to them.

(7) In this regulation, any reference to the parents of an assisted pupil is a reference to the persons who are the parents of the assisted pupil at the time the relevant income is calculated.

### **General provisions relating to remission**

**10.**—(1) The parents of an assisted pupil shall not be entitled to any remission of fees for which they are liable in respect of a period before the pupil took up the assisted place or (in lieu of notice or otherwise) after the pupil has left the school or, if they remain at the school, after the end of the school year in which they attain the age of 20 years.

(2) The parents of an assisted pupil shall be under no obligation to apply for remission of fees as respects a particular school year if they consider themselves not entitled thereto but if, as respects such a year, they do not—

- (a) duly apply to the school for remission of fees payable for that year; or
- (b) subject to regulation 12(4), duly furnish the school with the information and supporting evidence requisite for determining remission questions,

they shall not be entitled to any remission of fees for that year.

(3) If the Scottish Ministers are satisfied that the parents of an assisted pupil have furnished information required for determining remission questions which they know to be false in a material particular, they may direct that those parents shall not be entitled to any remission of fees in the case of that pupil and, if they so direct, in the case of any other of their children who are assisted pupils, as respects a specified school year and, if they so direct, any subsequent school year.

Provided that—

- (a) the Scottish Ministers shall not give a direction hereunder without affording the parents concerned an opportunity to make representations or without considering such representations;
- (b) the giving of a direction hereunder shall be without prejudice to its variation or revocation by a subsequent direction.

(4) This regulation shall have effect notwithstanding anything in regulation 11 or any other provision of these Regulations.

### **Determination of remission questions**

**11.**—(1) Subject to paragraph (2), in the case of each assisted pupil remission questions shall be determined by the school, in accordance with this Part, for each school year, whether or not the parents have been entitled to any remission as respects a previous school year.

(2) Where either—

- (a) the pupil holds an assisted place at the school for part only of a school year or leaves the school part way through the school year; or
- (b) the number of children of the parents who hold assisted places differs for different parts of a school year,

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(17) Article 51 was substituted by article 43 of and Part II of Schedule 5 to S.I. 1996/274 (N.I. 1).

the said questions shall be determined by the school for that part, or separately for those parts, and the extent to which fees in respect of part of a school year are to be remitted shall be that proportion of the amount by which the fees for the whole school year would fall to be remitted which is the proportion which the fees for the part bear to the fees for the whole school year; and for the purposes of this paragraph the duration of the school year and such part shall be calculated with reference to the total number of school days occurring therein respectively.

### **Calculation of remission**

**12.—(1)** Subject to paragraphs (2), (3) and (4), remission questions shall be determined by reference to relevant income in the preceding financial year.

(2) Where one of the pupil's parents has died after remission questions have been determined but before the end of the current financial year and the school are satisfied that the income of the surviving parent in that year, when aggregated with that of the deceased parent, is likely to be less than their aggregated income in the preceding financial year, the remission questions shall be redetermined by reference to the current financial year, and in such a case paragraph (1) shall have effect as if the reference therein to the preceding financial year were a reference to the current financial year and the reference to the pupil's parents in paragraph (2) of regulation 9 included a reference to the deceased parent (notwithstanding the provision of paragraph (7) of that regulation).

(3) This paragraph shall apply in a case not falling within paragraph (2) if—

- (a) the participating school concerned are satisfied that the relevant income in the current financial year is, as a result of some event beyond the control of the pupil's parents, likely to be not more than 85% of the relevant income in the preceding financial year; or
- (b) the school, though not satisfied as aforesaid, are satisfied that the relevant income in the current financial year is likely to be so much less than the relevant income in the preceding financial year that financial hardship would result from remission questions being determined by reference to that year, and the Scottish Ministers approve the application of this sub-paragraph,

and, in a case to which this paragraph applies, remission questions shall be determined in relation to the school year in question and, unless and until the Scottish Ministers otherwise direct, any subsequent school year by reference to the current financial year and, in such case, paragraph (1) shall have effect as if the reference therein to the preceding financial year were a reference to the current financial year.

(4) Where it is not reasonably practicable for the parents to furnish, before the beginning of the school year, the requisite information as to relevant income for the appropriate financial year then, in relation to that school year, remission questions may be determined provisionally, by reference to relevant income for earlier financial years as the school thinks fit but—

- (a) no such provisional determination shall be more favourable to the parents than one arrived at by reference to an estimate furnished by the parents of relevant income for the appropriate financial year;
- (b) a provisional determination shall cease to have effect when the parents have furnished the requisite information or if the school is satisfied that it has become reasonably practicable for them to do so but they have failed to furnish it; and
- (c) within three months of the determination of the remission question any over remission or under remission of fees shall be adjusted by payments between the parents and the school.

### **Scales of remission**

**13.—(1)** In this regulation—



- (a) “assisted pupil” means any child who holds an assisted place and, for the purposes of paragraphs (5), (6) and (7) of this regulation, an assisted pupil who is aided by virtue of the St Mary’s Music School (Aided Places) (Scotland) Regulations 2001<sup>(18)</sup>, or the Education (Grants) (Music and Ballet Schools) Regulations 1995<sup>(19)</sup>; and
- (b) a reference to a relevant assisted place, in relation to an assisted pupil, is a reference to the assisted place held by them,

and for the purposes of this regulation, column (1) of Schedule 2 specifies bands of relevant income and column (2) of that Schedule specifies percentages of relevant income to be used in calculating parental contributions.

(2) Where the relevant income of parents of an assisted pupil in a preceding financial year does not exceed £11,116, fees for the school year to which that preceding year relates as respects any relevant assisted place shall be remitted in full by the participating school or schools concerned.

(3) Where—

- (a) parents receive assistance in respect of only one child; and
- (b) the relevant income of such parents in a preceding financial year falls within a band, or bands, of income specified in column (1) of Schedule 2,

the parents shall contribute from that income an amount (rounded down to the nearest multiple of £3) equal to the aggregate of the percentages (specified in column (2) of that Schedule) of those parts of the relevant income referred to in column (1) of that Schedule.

(4) Subject to paragraph (5)—

- (a) fees for the school year in relation to which the preceding financial year referred to in paragraph (3)(b) relates as respects any relevant assisted place shall be remitted by the participating school or schools concerned to the extent of the amount by which the aggregate fees of such school or schools exceed the sum of parental contribution computed in accordance with paragraph (3); and
- (b) that sum of parental contribution shall be recoverable by such school or schools from those parents in accordance with paragraphs (6) and (7) below.

(5) Where the number of assisted pupils in the same family is, for the time being, two or more, the sum of parental contribution mentioned in paragraph (3) shall be increased in accordance with the following scale:—

- (a) where the number of such pupils is 2, by the factor of 1.5; and
- (b) where the number of such pupils is 3 or more, by the factor of 1.75.

(6) Where assisted pupils from the same family attend two or more different participating schools, each participating school concerned shall be entitled to recover such amount of the parental contributions, relating to those pupils, as bears to that contribution the same proportion as the number of those pupils attending that school bears to the total number of assisted pupils for the time being in the family.

(7) Where a pupil does not hold an assisted place at a participating school for the full duration of the school year, that part of the parental contribution which is attributable in relation to that pupil shall be reduced by the same proportion as the part of the school year during which the pupil held the assisted place bears to the whole school year; and, for the purposes of this paragraph, the duration of the school year and such part shall be calculated with reference to the total number of school days occurring therein respectively.

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<sup>(18)</sup> S.S.I. 2001/223.

<sup>(19)</sup> S.I. 1995/2018, as amended by S.I. 1997/1967, 1998/1583 and 1999/1503.

## PART IV

### MAKING OF GRANTS AND REMISSION OF CHARGES

#### General

**14.—(1)** The provisions of this Part shall apply in relation to the making of grants and remission of charges in respect of an assisted pupil.

(2) Subject to the provisions of this Part, a participating school shall make grants in respect of school travel expenditure (hereinafter in this Part referred to as “school travel grants”) and clothing expenditure (hereinafter in this Part referred to as “clothing grants”) and shall remit charges in respect of meals provided and participation in field study courses all in accordance with the provisions of this Part.

(3) Subject to the provisions of regulations 15(4), 16(7) and 17(1), no grant shall be made in pursuance of these Regulations to a parent of an assisted pupil in respect of school travel or clothing expenditure incurred or relating to any period before the date on which they took up an assisted place or after the date on which they ceased to hold an assisted place; and no such charges as are mentioned in paragraph (2) in respect of any such period shall be remitted in pursuance of these Regulations.

(4) Where a pupil attended a school before they took up an assisted place thereat then, in pursuance of these Regulations—

- (a) no grants shall be paid to their parents in respect of expenditure incurred before the date they took up their assisted place;
- (b) no charges shall be remitted in respect of a period before that date.

(5) The parents of an assisted pupil shall not be entitled to any grants from a participating school in respect of such expenditure incurred relating to a period after the pupil has left the participating school or, if the pupil remains at the school, after the end of the school year in which the pupil attains the age of 20 years nor shall they be entitled to any remission of charges for which they are liable (in lieu of notice or otherwise) in respect of such a period.

(6) In this regulation, “school travel expenditure” includes school travel expenditure as defined in regulations 15(2) and 16(2) and “clothing expenditure” has the meaning assigned thereto by regulation 17(1).

#### School travel grants for day pupils and amounts thereof

**15.—(1)** This regulation shall apply in relation to school travel grants in the case of an assisted pupil who is a day pupil in attendance at a participating school.

(2) In this regulation “school travel expenditure” means such amount as may be determined, in accordance with the provisions of this regulation, to be the aggregate amount of travelling expenses incurred by the parents of an assisted pupil who is a day pupil in attendance at a participating school in respect of their travel to and from the school by any of the following means:—

- (a) by public transport, that is to say, by train, bus, boat, hovercraft or air services available to the public;
- (b) by transport provided in pursuance of arrangements made by that school and for the time being approved by the Scottish Ministers;
- (c) by any combination thereof,

where the walking distance between his home and that school exceeds 3.2 kilometres each way in the case of pupils whose age does not exceed 8 years and 4.8 kilometres each way in the case of pupils of any other age, in each case measured by the nearest available route.

(3) A school travel grant shall also be payable in respect of school travel expenditure reasonably incurred in relation to journeys actually made by the pupil in the school year within the British Islands for the purpose of attending a university, college or other establishment of further education at the invitation of the establishment with a view to being admitted to that establishment for the purpose of further education; and said grant shall be payable in respect of not more than three such journeys from the school or from the pupil's home to such an establishment and three journeys from the establishment to the school or to the pupil's home in any school year.

(4) A participating school, in accordance with this regulation—

- (a) shall, in respect of any school year, make a school travel grant in respect of any assisted pupil in whose case this regulation applies in attendance at the school to the parents of that pupil in respect of school travel expenditure incurred by them in respect of that pupil for that year; and
- (b) may, in the course of, or immediately before the commencement of any school year, make payments in advance on account of any school travel grant in respect of school travel expenditure, being grant which it appears to it will fall to be made in respect of that year to the parents of such an assisted pupil,

and, where payments are made in accordance with sub-paragraph (b), any overpayment or underpayment of grant for the year in question shall, within three months of the final determination of the amount (if any) of the school travel grant, be adjusted by payments between the parents and the school.

(5) For the purposes of determining the aggregate amounts of travelling expenses mentioned in paragraph (2), the following provisions shall apply:—

- (a) where an assisted pupil's travelling expenses are incurred in respect of journeys in excess of 40.2 kilometres each way between home and school by any of the means of transport mentioned in paragraph (2), account shall be taken of only so much of the expenses as bears the same proportion to the full amount thereof as 40.2 kilometres bears to the length in kilometres of the journey in question measured with reference to the actual distance by the nearest available route between the pupil's home and the school;
- (b) where such expenses are in respect of journeys by public transport and they are in excess of the expenses which would have been incurred if advantage had been taken of available arrangements for season tickets or reduced or concessionary fares, the excess shall be disregarded.

(6) The amount (if any) of school travel grant to be made in relation to an assisted pupil in respect of any school year in accordance with this regulation shall be determined in accordance with this paragraph by reference to the school travel expenditure incurred in respect of that pupil for that school year and to the relevant income of their parents in the preceding financial year as follows:—

- (a) in any case where the relevant income does not exceed £11,129 per annum, the school travel grant shall be such sum as is equal to the amount of the school travel expenditure so incurred;
- (b) in any other case, the school travel grant shall be such sum as is equal to the amount (if any) by which the school travel expenditure so incurred exceeds one twelfth rounded down to the nearest multiple of £3 of the sum by which that relevant income exceeds £10,950.

### **School travel grants for boarding pupils and amounts thereof**

**16.—**(1) This regulation shall apply in relation to school travel grants in the case of an assisted pupil who is a boarder in attendance at a participating school.

(2) In this regulation “school travel expenditure” means such amount as may be determined, in accordance with the provisions of this regulation, to be the aggregate amount of travelling expenses

reasonably incurred by the parents of an assisted pupil in respect of whom this regulation applies in respect of travel to and from the school by the assisted pupil by any of the following means:–

- (a) by public transport services including any train, bus, boat, hovercraft or air services within such services;
- (b) by transport provided in pursuance of arrangements made by that school and for the time being approved by the Scottish Ministers;
- (c) by any combination thereof.

(3) A participating school, in accordance with this regulation, shall make, in respect of any school year, a school travel grant to the parents of the assisted pupil in respect of their school travel expenditure:

Provided that–

- (a) in the case of a pupil who is a boarder (other than a weekly boarder) grant shall not be payable in respect of more than 12 single journeys, either to or from school in any school year;
- (b) in the case of a pupil who is a weekly boarder no grant shall be payable unless the pupil's walking distance between home and school exceeds 4.8 kilometres, but in respect of journey's in excess of 80.5 kilometres in each direction by any such transport as is mentioned in paragraph (2) account shall be taken of only so much of those expenses as bears to the full amount thereof the same proportion as 80.5 kilometres bears to the length in kilometres of the journey in each direction measured with reference to the actual distance by the nearest available route between the pupil's home and the school;
- (c) in the case of any pupil–
  - (i) where the pupil's expenses are in respect of journeys by public transport and they are in excess of what they would have been if advantage had been taken of available arrangements for reduced or concessionary fares, the excess shall be disregarded;
  - (ii) where the journey is to or from a place outside the British Islands, so much of the expenses as are in respect of a journey between a port, hoverport or airport within the British Islands and that place shall be disregarded;
  - (iii) where the pupil's expenses are in respect of journeys by air and they are in excess of what they would have been if advantage had been taken of available train, boat or hovercraft services and arrangements for reduced or concessionary fares, the excess shall be disregarded.

(4) A school travel grant shall also be payable in respect of school travel expenditure reasonably incurred in relation to journeys actually made by the pupil in the school year within the British Islands for the purpose of attending a university, college or other establishment of further education at the invitation of the establishment with a view to being admitted to that establishment for the purpose of further education; and said grant shall be payable in respect of not more than three such journeys from the school or from the pupil's home to such an establishment and three journeys from the establishment to the school or to the pupil's home in any school year.

(5) The amount of any grant awarded in relation to an assisted pupil in respect of any school year under paragraph (4) shall be determined in accordance with this paragraph by reference to the actual cost of such journeys subject to the provisions of paragraph (3)(c) and to the relevant income of his parents in the preceding financial year so that–

- (a) in any case where the relevant income does not exceed £11,129 per annum, the school travel grant shall be such sum as is equal to the amount of the school travel expenditure so incurred;

(b) in any other case, the school travel grant shall be such sum as is equal to the amount (if any) by which the school travel expenditure so incurred exceeds one twelfth rounded down to the nearest multiple of £3 of the sum by which that relevant income exceeds £10,950.

(6) For the purposes of paragraphs (4) and (5), sub-paragraphs (a) and (b) of paragraph (3) shall have no effect.

(7) A participating school may, in the course of or immediately before a school year, make payments, on account of any school travel grant in respect of school travel expenditure, being grant which it appears to it will fall to be made in respect of that year to the parents of that pupil; and where any such payments on account are made, any overpayment or underpayment of grant for the year in question shall, within 3 months of the final determination of the amount (if any) of the school grant, be adjusted by payments between the parents and the school.

### **Clothing grants**

17.—(1) In this regulation “clothing expenditure” means expenditure on items of uniform and other clothing (including sports clothing) required to be worn at school by an assisted pupil which the school is satisfied—

- (a) has been incurred by the parents of that pupil; or
- (b) is about to be incurred by them but which they cannot, without financial hardship, incur in advance of the making of grant under this regulation.

(2) A clothing grant shall be made in the case of an assisted pupil as respects whom the relevant income does not exceed £11,952 and shall be of an amount equal to so much of the clothing expenditure (disregarding expenditure in respect of which a previous grant has been paid) as does not exceed—

- (a) £73, where the relevant income is £11,116 or less;
- (b) £38, where that income exceeds £11,116 but does not exceed £11,952.

### **Remission of charges for meals**

18. Where the parents of an assisted pupil satisfy the school that at any time during a school year, or the month preceding the beginning of a school year, they are in receipt of income support under Part VII of the Social Security Contributions and Benefits Act 1992<sup>(20)</sup> or income based jobseeker’s allowance under the Jobseekers Act 1995<sup>(21)</sup>, the school shall make such provision for meals in the middle of the day for that pupil as appears to the school to be requisite and shall remit the whole of any charges in respect of such provision—

- (a) during the whole of that school year, where it is satisfied as aforesaid at or before the beginning of that year; or
- (b) for the remainder of the school year, where it is so satisfied in the course thereof.

notwithstanding that the parents may cease to be in receipt of income support between the participating school being so satisfied and the end of the school year in question.

### **Questions arising under regulations 14 to 18**

19.—(1) The questions whether or not the parents of an assisted pupil are entitled in or for any school year to—

- (a) school travel grant under regulations 15 and 16;

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<sup>(20)</sup> 1992 c. 4.

<sup>(21)</sup> 1995 c. 18.

- (b) school clothing grant under regulation 17;
- (c) remission of charges for meals under regulation 18,

and the amount or extent thereof shall be determined as provided in regulation 11 in like manner as questions relating to fee remission in that year are determined under that last mentioned regulation:

Provided that, in any case where the circumstances are such as are mentioned in either regulation 11(2)(a) or (b) and the amount or extent of a school clothing grant requires to be determined, the foregoing provision shall not apply.

(2) Regulations 8, 9, 10(2), (3) and (4), 11(1) and 12 and Schedule 1 shall apply for the purposes of regulations 14 to 18 as if any references therein—

- (a) to the remission of fees were a reference to the grants and remission of charges for meals mentioned in paragraph (1);
- (b) to remission questions were a reference to the questions so mentioned.

### **Remission of charges for field study courses**

**20.**—(1) In this regulation a “field study course” means a course of field study (provided by a participating school or otherwise) which forms part of a course of school education at the school for any examination conducted by the Scottish Qualifications Authority or other examinations comparable thereto, being examinations in—

- (a) biology;
- (b) botany;
- (c) geography;
- (d) geology;
- (e) zoology; or
- (f) any other subject approved for the purposes hereof by the Scottish Ministers

and a reference to a relevant public examination shall be construed accordingly.

(2) Charges which a participating school would otherwise make in respect of the participation in a field study course of an assisted pupil while holding an assisted place at that school shall be remitted in accordance with this regulation.

(3) The remission of charges mentioned in paragraph (2) shall be made if, and only if, the pupil in respect of whom remission is to be made—

- (a) is a candidate or prospective candidate for a relevant public examination; and
- (b) their parents are entitled in accordance with Part III of these Regulations to remission of fees in whole or in part for the school year in which the course is held.

### **Reimbursement of amounts of grants made or charges remitted by a participating school**

**21.**—(1) Subject to paragraph (2), the Scottish Ministers shall in accordance with these Regulations reimburse to a participating school the aggregate amounts granted or remitted by it in respect of travel grants, clothing grants, charges for meals and charges for field study courses as respects assisted pupils holding assisted places in the school.

(2) The amounts so reimbursed to any participating school shall not exceed in relation to any school year the maximum annual amount in respect of that year allocated for the purposes of section 75B of the Act and stated in accordance with section 75A(3) of the Act in the determination of that school.

## PART V

### REIMBURSEMENT CLAIMS AND CONDITIONS OF PAYMENT

#### Reimbursement claims

22.—(1) Claims for reimbursement of fees remitted and grants made and charges remitted in pursuance of these Regulations (hereinafter referred to as “reimbursement claims”) may be submitted to the Scottish Ministers by a participating school in respect of such periods, not being less than a term, as appear to it appropriate and, with their consent, claims may be submitted on the basis of an estimate of fees or charges so remitted or grants made (“provisional claims”); but where a provisional claim is submitted, the school shall, as soon as is reasonably practicable, submit a reimbursement claim in respect of the period in question which is not based on such an estimate and that claim shall supersede the provisional claim.

(2) As soon as is reasonably practicable after they are satisfied as respects a reimbursement claim, the Scottish Ministers shall reimburse the school in pursuance of the claim in accordance with these Regulations without prejudice, however, where they consider it expedient to do so, to their making earlier payments on account in pursuance of the reimbursement claim or in pursuance of a provisional claim in respect of the same period.

(3) Any overpayment or underpayment which appears to the Scottish Ministers to have occurred shall be adjusted as soon as is reasonably practicable by payments between the Scottish Ministers and the school concerned and, in particular, but without prejudice to that generality, where the amount of any reimbursement claim under these Regulations is less than the amount paid to the school under a provisional claim, the Scottish Ministers shall be entitled to recover the amount overpaid from that school and, without prejudice to any other method of recovery available to them, they may deduct that amount from the amount of any other reimbursement claim falling to be paid to that school in accordance with these Regulations.

#### Conditions of payment

23.—(1) Any reimbursement under these Regulations shall be subject to the condition that the Scottish Ministers shall be satisfied that the participating school, to which such reimbursement is made, shall comply or shall have complied with the requirements specified in these Regulations.

(2) If the Scottish Ministers are satisfied that a participating school has failed to observe any of the conditions or requirements specified in these Regulations in relation to any school year, they may—

- (a) refuse to make payment in whole or in part of any claim falling to be paid to that school in respect of that year in accordance with the Regulations; or
- (b) withhold payment of such claim or such part thereof as they consider appropriate for such period or periods as they consider appropriate,

and, where a reimbursement claim has been paid to such a school in advance of the Scottish Ministers being so satisfied, the Scottish Ministers shall be entitled to recover from the school such sum as they consider appropriate, being a sum equal to the whole or such part of the payment made in respect of such claim as they think expedient, and, without prejudice to any other method of recovery available to them, they may deduct such sum from the amount of any other reimbursement claim falling to be paid to that school in accordance with these Regulations.

## PART VI

### TRANSFER OF ASSISTED PLACES

#### Transfer of assisted places – general

24.—(1) This regulation applies where a participating school—

- (a) merges with another grant aided or independent school (including a school which is not also a participating school);
- (b) closes (whether wholly or in part); or
- (c) notifies the Scottish Ministers that it no longer wishes to provide assisted places.

(2) Where this regulation applies, the Scottish Ministers may authorise the new school or, as the case may be, any other participating school to provide any assisted places which the old school was authorised to provide.

(3) Where the Scottish Ministers decide to authorise a replacement school pursuant to paragraph (2), they shall give written notice of their decision to that school; and that notice shall specify in respect of every transferred assisted pupil—

- (a) their name, address and date of birth; and
- (b) the period for which they may be provided with an assisted place by the replacement school (which, subject to paragraph (4), shall correspond to the remainder of the period for which their assisted place at the participating school first mentioned would have been available).

(4) The period for which the transferred assisted pupil may be provided with an assisted place by the replacement school shall be adjusted, as necessary, to take account of any period during which they are treated as holding an assisted place at the new school by virtue of regulation 25(1)(b) or (2).

(5) Subject to any subsequent decision by the Scottish Ministers under section 75A(1B)(b) of the Act, a transferred assisted pupil shall cease to hold an assisted place at the replacement school at the end of the period specified in the notice given under paragraph (3).

(6) In this regulation and in regulation 25—

“new school” means a school formed by the merger of the old school and another school;

“old school” means the participating school first mentioned in paragraph (1);

“replacement school” means a school authorised under paragraph (2) to provide assisted places;

“transferred assisted pupil” means a pupil admitted to an assisted place at the old school and for whom the replacement school is authorised under paragraph (2) to provide an assisted place.

#### Transfer of assisted places on school merger – transitional provisions

25.—(1) In a case falling within regulation 24(1)(a)—

- (a) authorisation pursuant to regulation 24(2) may be given no later than 3 months after the date on which the old school ceased to provide assisted places; and
- (b) pending a decision on authorisation or the expiry of those 3 months without a decision being given, an assisted pupil at the old school shall be treated as holding an assisted place at the new school if they are in attendance at that school.

(2) In such a case, if the Scottish Ministers consider when giving authorisation that it is appropriate for an assisted pupil to transfer to a replacement school, other than the new school, at a future date no later than the beginning of the first term in the immediately following school year and to remain in attendance at the new school meantime, the pupil shall, if they remain in attendance



at the new school, be treated until that date as holding an assisted place there and as not holding an assisted place at the replacement school.

### **Transfer of assisted place for individual pupil**

**26.**—(1) This regulation applies to a pupil who holds (or has, at any time since the beginning of the first term of the 1997 98 school year, held) an assisted place at a school which is, or is treated as, a participating school.

(2) The Scottish Ministers may, in a case where they are satisfied that it is reasonable to do so in view of any particular circumstances relating to a pupil to whom this regulation applies, authorise another school which is, or is treated as, a participating school to provide for the pupil the assisted place which the school mentioned in paragraph (1) was authorised to provide.

## **PART VII**

### **REQUIREMENTS AS TO SUPPLY OF INFORMATION, FEES ETC.**

#### **Supply of information**

**27.** Each participating school shall supply in writing to the parent of a pupil eligible for an assisted place in its school, on a written request being made therefor, information of the kinds specified in Schedule 3.

#### **Updating of information**

**28.** Each participating school shall review yearly and revise as necessary its provision of information of the kinds specified in Schedule 3 and such provision shall at all times state the school year to which the information therein referred to relates or refers and shall contain a warning that, although the information given is believed to be correct in relation to that year at a date specified in the provision, it should not be assumed that there will be no change in or affecting the matters covered by the provision—

- (a) before the commencement or during the course of the school year in question; or
- (b) in relation to subsequent school years.

#### **Fees, etc. payable**

**29.**—(1) In the case of an assisted pupil—

- (a) the fees charged by a participating school shall not include a sum paid into a bursary or similar fund; and
- (b) the school shall not make it a condition of an assisted pupils' attendance that any payment otherwise than in respect of fees be made to the school or into a fund specified by the school.

(2) This regulation shall have effect subject to any provisions relating to fees in a determination.

#### **Increase in fees**

**30.** A school shall not increase the fees for assisted pupils unless it has given the Scottish Ministers at least one month's written notice of its intention so to do and, if within fourteen days of receiving such notice the Scottish Ministers so direct, shall refrain from making, postpone or restrict the amount of the increase as they may then or subsequently require.

### **Information to Scottish Ministers**

- 31.** Each participating school shall furnish the Scottish Ministers with—
- (a) information required to be supplied under regulation 27 revised as necessary in accordance with regulation 28 not later than the end of the school year in which revision is made;
  - (b) such periodical returns and other information as they may require relating to the school or pupils thereat including in particular information relevant to an intended increase in fees for pupils at the school;
  - (c) such information as they may require relating to any reimbursement claim or provisional claim submitted in accordance with these Regulations.

### **School accounts**

**32.** A participating school shall keep proper accounts and shall, at the request of the Scottish Ministers, furnish them with copies of accounts for such period or periods as they may require duly audited by an independent auditor together with copies of the auditor's certificate relating thereto.

### **Revocations**

- 33.** The Regulations specified in Schedule 4 are hereby revoked.

St Andrew's House,  
Edinburgh  
8th June 2001

*JACK McCONNELL*  
A member of the Scottish Executive