
STATUTORY INSTRUMENTS

1997 No. 431

The Education (Mandatory Awards) Regulations 1997

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Education (Mandatory Awards) Regulations 1997 and shall come into operation on 1st September 1997.

Definitions

2. In these Regulations, unless the context otherwise requires—

“academic authority” means, in relation to an institution, the governing body, or other body having the functions of a governing body and includes a person acting with the authority of that body;

“authority” means a local education authority;

“award” includes either a fees only award or a full award bestowed under these Regulations and any award bestowed under previous Awards Regulations;

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

“Certificate in Education” includes a Teacher’s Certificate;

“course”, “designated course”, “sandwich course” and other qualified references to courses have the meanings respectively assigned to them by regulation 4;

“degree” means a degree awarded by a university, institution of higher education in the United Kingdom or the Council for National Academic Awards;

“dependent” means wholly or mainly financially dependent;

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

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(1) as adjusted by the Protocol signed at Brussels on 17th March 1993(2);

“EEA migrant worker” **has the meaning assigned to it in regulation 5;**

“European Community” means the area comprised by the member states of the European Community (including the United Kingdom) as constituted from time to time;

(1) Cmnd. 2073.

(2) Cmnd. 2183.

“European Economic Area” means the European Community and subject to the conditions laid down in the EEA Agreement the area comprised by the Republic of Iceland, the Kingdom of Norway, and the Principality of Liechtenstein;

“European student” means a person who is a national of a member state of the European Community or the child of such a national to **whom one or more of the exceptions relating to residence in the British Islands or settlement in the United Kingdom found in regulation 13(1) applies;**

“fees only award” means an award bestowed only in respect of fees described in Schedule 1;

“full award” means an award bestowed in respect of both fees described in Schedule 1 and a maintenance grant;

“highest-cost country” means Denmark, Finland, Iceland, Japan, Norway, Sweden, Switzerland and Taiwan;

“higher-cost country” means Austria, Belgium, France (**excluding Départements d’Outre Mer**), the Federal Republic of Germany, Hong Kong, Israel, the Republic of Korea, Luxembourg, the Netherlands **and countries of the former Soviet Union;**

“high-cost country” means Australia, Canada, Greece, Indonesia, the Republic of Ireland, Italy, New Zealand, Spain and the United States of America;

“independent student” has the meaning assigned to it by regulation 3;

“institution” means an educational institution in the United Kingdom providing further or higher education or both, or providing a course which qualifies for funding under Part I of the Education Act 1994⁽³⁾;

“maintenance grant” has the meaning assigned to it by regulation 17;

“overseas institution” means an educational institution in a country outside the United Kingdom providing further or higher education or both;

“periods of experience”, “prescribed proportion” and “sandwich year”, in relation to a sandwich course, have the meanings respectively assigned to them by paragraph 1 of Schedule 5;

“previous Awards Regulations” means Regulations made under section 1 of the Education Act 1962 and revoked either by regulation 6 or before the coming into force of these Regulations;

“refugee” means a person who is recognised by Her Majesty’s Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951⁽⁴⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽⁵⁾ and any reference to the child of a refugee includes a reference to a person adopted in pursuance of adoption proceedings and a step-child;

“statutory award” means any award bestowed or grant paid by virtue of the Education Act 1962 or any comparable award, grant or other payment made in respect of attendance at a course which is paid out of moneys provided by Parliament;

“student” means a person upon whom an award has been bestowed under these Regulations or previous Awards Regulations;

“university” means a university in the United Kingdom and includes a university college and a constituent college, school or hall of a university;

“year”, in relation to a course, means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according as the academic year of the course in question

(3) 1994 c. 30.

(4) Cmnd. 9171.

(5) Cmnd. 3906 (Out of print: photocopies are available, free of charge, from Student Support Division, Room 1A10, the Department for Education and Employment, Sanctuary Buildings, Great Smith Street, London SW1P 3BT).

begins in the winter, the spring, the summer or the autumn respectively; and references to the first or the final year of a designated course shall be construed accordingly.

References to independent students

3.—(1) In these Regulations “independent student” means a student who—

- (a) has attained the age of 25 years before the beginning of the year for which payments in pursuance of his award fall to be made; or
- (b) has supported himself out of his earnings for periods before the first year of his course aggregating not less than three years; or
- (c) has been married for at least two years before the beginning of the year for which payments in pursuance of his award fall to be made whether or not the marriage is still subsisting; or
- (d) has no parent living; **or**
- (e) **is irreconcilably estranged from his parents.**

(2) For the purposes of paragraph (1)(b) a student shall be treated as having supported himself out of his earnings for any period or periods for which—

- (a) he was participating in arrangements for training under section 2 of the Employment and Training Act 1973⁽⁶⁾, under the Training Opportunities Programme, the Youth Opportunities Programme, the Youth Training Scheme of the Manpower Services Commission or the Training Commission as the case may be or any scheme run by the Training and Enterprise Councils or the Local Enterprise Companies; or
- (b) the student was in receipt of unemployment benefit under section 25(1) of the Social Security Contributions and Benefits Act 1992⁽⁷⁾ or of a jobseeker’s allowance under Part I of the Jobseekers Act 1995⁽⁸⁾; or
- (c) the student was available for employment and, if under the age of 18 years, registered for employment; or
- (d) the student held a State Studentship or comparable award; or
- (e) the student received incapacity benefit under section 30A, sickness benefit under section 31(1), maternity allowance under section 35(1), severe disablement allowance under section 68(1), invalidity pension under section 33(1)(b), 40(3) or 41(2), statutory sick pay under Part XI, or statutory maternity pay under Part XII, of the Social Security Contributions and Benefits Act 1992⁽⁹⁾; or
- (f) the student could not reasonably have been expected to support himself out of his earnings because he had the care of a person under the age of 18 years who was dependent upon him.

(3) **For the purposes of paragraph (1)(e) a student shall be regarded as irreconcilably estranged from his parents if, but not only if, he has not communicated with either one of them for the period of one year before the beginning of the year for which payments in pursuance of his award fall to be made.**

(4) In this regulation—

- (a) any reference to a person registered or available for employment is a reference to his being so registered or available for the purposes of section 124 of the Social Security Contributions and Benefits Act 1992; and
- (b) “parent” shall have the same meaning as in Part II of Schedule 3 to these Regulations.

(6) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19), section 25(1).

(7) 1992 c. 4.

(8) 1995 c. 18.

(9) 1992 c. 4; section 30A is inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 1; sections 31 to 34 are repealed by Schedule 2 to that Act; section 40 and 41 are substituted by paragraphs 8 and 9 of Schedule 1 to that Act.

References to courses

4.—(1) In these Regulations any reference to a designated course shall be construed as a reference to a course designated by or under regulation 10 and, in relation to any person, any reference to such a course (otherwise unqualified) shall, as the context requires, be construed as a reference to a designated course which the person in question attends or has applied to attend; and, in relation to any designated course except one designated under regulation 10(1)(d)(ii) or (iii), any reference to a course shall be construed as a reference to either a course of full-time study or a sandwich course.

(2) In these Regulations any reference to a first degree course, a Dip HE course, a course of initial training for teachers, or a course comparable to a first degree course shall be construed in accordance with regulation 10.

(3) In these Regulations any reference to a sandwich course shall be construed as a reference to such a course within the meaning of paragraph 1 of Schedule 5.

- (a) (4) (a) in the case of a student who began his course before 1st April 1989 any reference to a course of higher education is a reference to a course listed in paragraph 2 of Schedule 2 to the Education (Schools and Further Education) Regulations 1981⁽¹⁰⁾ as in force on 31st March 1989;
- (b) in the case of a student who began his course on or after 1st April 1989, any reference in these Regulations to a course of higher education shall be construed in accordance with section 120(1) of the Education Reform Act 1988⁽¹¹⁾.

General construction and interpretation

5.—(1) In these Regulations, references to payments made to a student include references to payments made to the academic authority or to a third party in respect of the student by virtue of regulation 24(7).

(2) In calculating a person's income for any year any reduction for income tax is to be made by calculating the tax payable on the income received in that year as if the year were a year of assessment within the meaning of the Income Tax Acts (the necessary apportionment being made in any case where the relevant provisions of those Acts change during the year).

(3) For the purposes of these Regulations a person's marriage is to be treated as having been terminated, not only by the death of the other spouse or the annulment or dissolution of the marriage by an order of a court of competent jurisdiction, but also by virtue of the parties to the marriage ceasing ordinarily to live together, whether or not an order for their separation has been made by any court.

(4) A person shall be treated for the purposes of regulation 13 as ordinarily resident in England and Wales, in the British Islands or in the European Economic Area, if the authority are satisfied that he would have been so resident at the relevant time but for the fact that he, his spouse, his parent, guardian, any other person having parental responsibility for him, or any person having care of him while he is a child, is, or was, temporarily employed outside England and Wales, outside the British Islands or, as the case may be, outside the European Economic Area and paragraph (1)(b) of regulation 13 shall not apply in the case of such a person.

(5) For the purposes of these Regulations an area which—

- (a) was previously not part of the European Community or the European Economic Area, but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of those areas

⁽¹⁰⁾ S.I. 1981/1086, to which there were amendments not relevant to these Regulations. Schedule 2 to the Regulations was revoked by the Education (Schools and Further and Higher Education) Regulations 1989 (S.I. 1989/351).

⁽¹¹⁾ 1988 c. 40.

shall be considered to have always been part of the European Economic Area.

(6) In these Regulations a reference to an EEA migrant worker is a reference to a person who is a national of a member State of the European Economic Area who has taken up an activity as an employed person in the United Kingdom—

- (a) **under Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, as extended by the EEA Agreement(12); or**
- (b) **in circumstances where as a national of the United Kingdom he has an enforceable Community right to be treated no less favourably than a national of another member State in relation to matters which are the subject of the above mentioned Council Regulation.**

(7) Except where the context otherwise requires, in these Regulations any reference to a regulation or a Schedule is a reference to a regulation contained herein or a Schedule hereto and a reference in a regulation or a Schedule to a paragraph is a reference to a paragraph of that regulation or Schedule, and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph thereof.

Revocations and transitional provisions

6.—(1) The Education (Mandatory Awards) Regulations 1995(13) and The Education (Mandatory Awards) (Amendment) Regulations 1996(14) are hereby revoked.

(2) Without prejudice to section 17(2)(b) of the Interpretation Act 1978(15) and the definition of “award” in regulation 2, an award bestowed in pursuance of previous Awards Regulations before the coming into force of these Regulations, in so far as it could have been bestowed in pursuance of these Regulations, shall, for the purposes thereof, be treated as having been so bestowed.

(3) Subject to paragraph (4), where the current academic year of a student’s course began in the winter or spring of 1997 then, notwithstanding anything in these Regulations, payments in pursuance of his award in respect of the year beginning on 1st January or, as the case may be, 1st April 1997 shall be the aggregate of—

- (a) two-thirds or, as the case may be, one-third of the payments which would have fallen to be made in respect of that year under the Education (Mandatory Awards) Regulations 1995 had they not been revoked, and
- (b) one-third or, as the case may be, two-thirds of the payments which would have fallen to be made in respect of the year beginning on 1st September 1997 under these Regulations had the academic year of his course begun in the autumn of 1997.

(4) In the case of a course at the University of Buckingham beginning in the winter, spring or summer of 1997 then, notwithstanding anything in these Regulations, payments in pursuance of an award in respect of the year beginning on 1st January, 1st April or 1st July (as the case may be) shall be the aggregate of—

- (a) three-quarters, one-half or one-quarter (as the case may be) of the payments which would have fallen to be made in respect of that year under the Education (Mandatory Awards) Regulations 1995 had they not been revoked, and
- (b) one-quarter, one-half or three-quarters (as the case may be) of the payments which would have fallen to be made in respect of the year beginning on 1st September 1997 under these Regulations had the academic year of the course begun in the autumn of 1997.

(12) OJ No. L257, 19.10.68, p.2 (OJ/SE 1968 (II) p.457).

(13) S.I. 1995/3321.

(14) S.I. 1996/2088.

(15) 1978 c. 30.

(5) Where an award was bestowed on a student under section 2 of the Education Act 1962 (“the discretionary award”) in respect of a course to which section 1 of that Act did not then apply but the course becomes or has become a designated course and an award within the meaning of these Regulations is or has been bestowed on the student in respect of that course (“the mandatory award”) then, if the discretionary award continues to be payable it shall be disregarded in calculating the student’s income for the purposes of regulation 18(1)(b) and for the purposes of regulation 23; but payments on account of the mandatory award in respect of fees and in respect of maintenance for any period shall be respectively reduced or extinguished by those on account of the corresponding element of the discretionary award.

(6) Where an award has been bestowed pursuant to previous Awards Regulations—

- (a) before 1st September 1995 in respect of a person’s attendance at a course referred to in regulation 25(3) of the Education (Mandatory Awards) (No 2) Regulations 1993(16) (“the 1993 regulation”), or
- (b) on or after 1st September 1995 but before 1st September 1996 in respect of a person’s attendance at a course referred to in regulation 25(3) of the Education (Mandatory Awards) Regulations 1994 (“the 1994 regulation”)

regulation 25(3) of these Regulations shall have effect in relation to that course as if for the subjects referred to therein there were substituted the subjects referred to in the 1993 regulation or the 1994 regulation respectively.

(7) **Where—**

- (a) **an award was bestowed on a person pursuant to previous Awards Regulations in respect of his attendance at a course during an academic year beginning before 1st September 1997, and**
- (b) **the person immediately after ceasing to attend that course (disregarding any intervening vacation) begins to attend another course**

an authority shall not be excepted from the duty to bestow an award in respect of the person’s attendance at the second course by the application of the exception relating to settlement in the United Kingdom found in regulation 13(1)(c).