

**EXPLANATORY MEMORANDUM TO THE
EDUCATION (MANDATORY AWARDS) (AMENDMENT) REGULATIONS 2005**

2005 No. 2083

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This Statutory Instrument amends the Education (Mandatory Awards) Regulations 2003 (S.I.2003/1994) (“the 2003 Regulations”), as amended. Those Regulations provide support for students who began their courses before 1st September 1998, as well as certain students who started their courses after that date.

2.2. The effect of the amendments is to increase the maximum amounts of fee support and grants for maintenance available to students who will continue to receive support payments under the 2003 Regulations during the 2005/06 academic year, as well as to remove the Lone Parent Grant.

2.3. This instrument also modifies the residence eligibility criteria for EU nationals for maintenance grant support towards living costs from 1 September 2004 onwards, following the European Court of Justice Judgment in the case of Bidar (case C-209/03). EU national in this context includes a UK national.

2.4. The amendments will also enable students who form civil partnerships to be treated in the same manner as married students with effect from the date on which section 1 of the Civil Partnership Act 2004 (2004 c.33) comes into force in England and Wales in relation to mandatory awards. They also make provision for references to the Education (No. 2) Act 1986 and the Education Act 1994 to be replaced by references to the Education Act 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1. The 2003 Regulations were made under sections 1 and 4(2) of, and paragraphs 3 and 4 of Schedule 1 to, the Education Act 1962 and section 3(1) and (3) of the Education Act 1973. Section 1 of the 1962 Act provides that it is the duty of local education authorities (‘LEAs’) to bestow awards on students who are ordinarily resident in their areas and attending higher education courses. Section 4(2) of the 1962 Act provides that the Secretary of State can make regulations in relation to section 1. The whole of the 1962 Act was repealed by section 44(2) of and Schedule 4 to the Teaching and Higher Education Act 1998, with effect from 1st January 1999. However, the repeal was subject to transitional and saving provisions which enabled the continued payment of LEA awards made before the repeal and LEA awards made after the repeal, in respect of students attending certain courses which began before 1st September 1999. Section 3 of the 1973 Act enables the Secretary of State to make

regulations allowing LEAs to pay allowances in respect of the families of students who have received LEA awards under the 1962 Act.

4.2. This instrument is being made to increase the maximum amounts of fee support and grants for maintenance for the academic year 2005/06 to take account of inflation. It is also being made in order to take into account the coming into force, in England and Wales, of section 1 of the Civil Partnership Act 2004 and the Education Act 2005.

4.3. This instrument is also being made to ensure that the policy regarding assistance to EU nationals who have satisfied a residential requirement in the British Islands implements the rulings made by the ECJ Judgement in the case of Bidar, and reflects them correctly in the Regulations.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1. This instrument increases the maximum amounts of grant for fees and for living costs, including the maintenance of dependants, available to students who will remain eligible for payments under the 2003 Regulations in respect of the academic year beginning on or after 1st September 2005. This includes an increase to the amount of childcare grant that is payable following an increase to the childcare element of the Working Tax Credit in April 2005. The increases to all other maximum amounts are in line with inflation.

7.2. This instrument creates a new category of European student who from the 2004/05 academic year onwards may be eligible to receive maintenance grants for living costs. The Regulations provide that students who fall within this new category and who now wish to apply for maintenance grant for living costs in respect of their attendance on a course that started in the 2004/05 academic year must do so by 1st January 2006. Students falling within this category who wish to apply for support in respect of courses which start on or after 1st September 2005 must do so within 4 months of the start of the relevant course.

7.3. This instrument ensures that maintenance grant support is available to EU nationals who have satisfied a residence requirement in the British Islands throughout the three year period preceding the first day of the first academic year of the course. Such students are not required to be “settled” in the UK under the terms of the Immigration Act 1971.

7.4. In the case of UK nationals falling within this new category, this instrument limits eligibility to those who have exercised a Community right of free movement within the European Economic Area (EEA).

7.5. Where the three-year period of ordinary residence in the British Islands has been wholly or mainly for the purpose of receiving full-time education, eligibility is limited to those who were ordinarily resident in the EEA immediately prior to the period in 7.3 above.

7.6. This instrument will also enable students who have formed civil partnerships to be treated, in relation to mandatory awards, in the same manner as married students from the date on which section 1 of the Civil Partnership Act 2004 comes into force. Section 1 establishes civil partnership as a legal relationship between two people of the same sex.

7.7. The Education Act 2005 repeals and replaces various sections of the Education Act (No. 2) 1986 and the Education Act 1994. The Regulations replace references to relevant provisions of the two earlier Acts with references to the appropriate sections of the 2005 Act.

7.8. The Regulations also remove the Lone Parent's Grant that was available under the 2003 Regulations. Single parent students who were eligible for this grant under the 2003 Regulations began their courses in an academic year starting before 1st September 1998 and the vast majority of those students have now completed their courses. Those who have not will be eligible in 2005/06 for a higher level of support via the Childcare Grant, which is an income-assessed grant available to students who have dependent children in respect of whom they incur childcare costs, and the Parents' Learning Allowance, which covers some of the additional costs incurred by students with dependent children, such as the cost of travel, and the costs of books and equipment required for the course.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal.

9. Contact

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