
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for support for students taking designated higher education courses in respect of the academic year beginning on or after 1st September 2005.

These Regulations revoke the Education (Grants for Disabled Postgraduate Students) Regulations 2000, the Education (Grants for Disabled Postgraduate Students) Regulations 2000 (Amendment) Regulations 2000, the Education (Grants for Disabled Postgraduate Students) (Amendment) Regulations 2001, the Education (Grants for Disabled Postgraduate Students) (Amendment) Regulations 2002, the Education (Student Support) (No. 2) Regulations 2002, the Education (Student Support) (No. 2) Regulations 2002 (Amendment) Regulations 2003, the Education (Grants for Disabled Postgraduate Students) (Amendment) Regulations 2003, the Education (Student Support) (No. 2) Regulations 2002 (Amendment) Regulations 2004, the Education (Student Support) (No. 2) Regulations 2002 (Amendment) (No. 2) Regulations 2004, the Education (Grants for Disabled Postgraduate Students) (Amendment) Regulations 2004, the Education (Student Support) (No. 2) Regulations 2002 (Amendment) (No. 3) Regulations 2004, the Education (Student Support) (No. 2) Regulations 2002 (Amendment) (No. 4) Regulations 2004 and the Education (Student Support) (No. 2) Regulations 2002 (Amendment) Regulations 2005. Regulation 3 sets out the extent of the revocation.

These Regulations are based on the Education (Student Support) (No. 2) Regulations 2002 (as amended) (the “2002 Regulations”) to which they make a number of minor and drafting amendments. They also incorporate provisions relating to the award of grants to disabled postgraduate students derived from the Education (Grants for Disabled Postgraduate Students) Regulations 2000 (as amended), subject to minor and drafting amendments. Changes of substance made in these Regulations other than rates of grants and loans are described below.

Under the Regulations, a student is regarded as meeting the residence requirements on which student support is contingent if he would have done so but for the fact that one of the persons listed in regulation 2(3) was temporarily employed outside the area in which the student is required to show residence in order to qualify for support. To take account of the creation of the status of civil partnership, the list of persons in regulation 2(3) is amended to include the civil partner of a student effective from the time that section 1 of the Civil Partnership Act 2004 comes into force in England and Wales (the “effective date”).

Regulation 4(6) provides that where a student taking a course designated under regulation 5 (a “designated full-time course”) is simultaneously taking another course which is designated under the Regulations, he may only receive support for one of the courses at a time. Regulations 34(16) and 46(8) make corresponding provision in relation to a student taking a designated part-time course and a student taking a designated postgraduate course, respectively.

Regulation 5(2) and regulation 35(2) exclude higher education courses provided to pupils of maintained schools from being designated full-time courses and designated part-time courses, respectively.

Where a student fails to provide information required under the Regulations or provides information which is inaccurate in a material particular, regulation 6(7)(c) extends, in relation to a designated full-time course, the types of action which the Secretary of State may take by permitting her to treat the support paid as an overpayment. Regulations 36(6)(c) and 48(6)(c) make corresponding provision in relation to a student taking a designated part-time course and a student taking a designated postgraduate course, respectively.

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Under the 2002 Regulations, a grant in respect of disabled students' living costs was available to disabled students who attended a designated course. Regulation 14 provides for that grant to be available to disabled students who undertake a designated course.

In assessing entitlement to dependants' grants under regulations 16 to 21, the income of a student's civil partner is to be taken into account. This provision applies from the effective date. The income of a student's same-sex partner (other than a civil partner) is taken into account in assessing entitlement to dependants' grants where the student begins a designated full-time course on or after 1st September 2005 and is aged 25 or more. The adult dependants' grant is made available under regulation 17(2) (a) in respect of the civil partner of a student (from the effective date) and the same-sex partner of a student who begins a designated full-time course on or after 1st September 2005 and who is aged 25 or more.

These Regulations omit the provision in the 2002 Regulations which allowed an eligible student who began his course before 1st September 2001 to continue to elect to receive the lone parents' grant in relation to a designated full-time course.

The provisions on payment of support are amended so that, under regulation 32(3), the Secretary of State may make the payment of an instalment of a loan for living costs conditional on the student providing his national insurance number.

Regulation 33 deals with the recovery of overpayments of support in relation to a designated full-time course. Where a student has received more support than he is entitled to under these Regulations, regulation 33 enables the Secretary of State to deduct an amount equal to the overpayment from any grant or loan payable by the Secretary of State to the student in respect of any designated course. Regulations 45 and 54 make corresponding provision in relation to a student taking a designated part-time course and a student taking a designated postgraduate course, respectively.

Part 9 of the Regulations provides for support for designated part-time courses. Under regulation 34(9), a student is not eligible for support for a designated part-time course (other than disabled students' allowance) if he has previously received grants or loans in connection with undertaking eight academic years of part-time study. In this context, support paid by the Secretary of State, the Scottish Executive and the Department for Employment and Learning (Northern Ireland) is taken into account.

A new method for calculating the amount of the grant in respect of fees for a part-time course is set out in regulation 37. The maximum amount of support available depends on the length of time it takes to complete the part-time course in comparison with the length of time it would take to complete the full-time equivalent.

The amount of support payable in respect of a designated part-time course depends on a part-time student's resources. The calculation of a part-time student's resources under regulation 37 is amended to take into account the income of his civil partner. This provision applies from the effective date. For part-time students beginning a course on or after 1st September 2005, the calculation of a student's resources will take into account the income of the student's partner regardless of the sex of the partner and regardless of the age of the student.

Part 10 provides for grants to disabled postgraduate students to assist with additional expenditure incurred in undertaking their courses by reason of their disability. It is based on the Education (Grants for Disabled Postgraduate Students) Regulations 2000 (as amended).

Part 11 sets out modifications to these Regulations which apply while section 1 of the Civil Partnership Act 2004 is not in force in England and Wales.

To qualify for student support, a student must fall into one of the categories listed in Schedule 2 to these Regulations. Under the 2002 Regulations, it was possible in certain circumstances for a student to qualify for student support by virtue of the status of his spouse. These Regulations make corresponding provision in relation to civil partners and such provision applies from the effective date.

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The amount of support in respect of a designated full-time course is reduced where a contribution is payable in respect of the student. A student's contribution is assessed in accordance with Schedule 5 to the Regulations and the amount of the contribution is linked to his household income. The provisions of Schedule 5 take into account the creation of the status of civil partnership and the provisions of the Schedule apply from the effective date in relation to the civil partner of a student and the civil partner of the student's parent in the same way as they apply to the spouse of a student and the spouse of the student's parent. Accordingly, the income of the student's civil partner and, where the student is not an independent student, the income of the student's parent's civil partner is to be taken into account in calculating the household income for the purpose of assessing the contribution due from the student. For a student who begins a course on or after 1st September 2005, there will be included in the household income the income of the student's same-sex partner (other than a civil partner) where the student is aged 25 or over and the income of the same-sex partner of the student's parent where the student is not an independent student. Just as a student who is married at the beginning of the academic year is treated as an independent student for the purposes of assessing the contribution, from the effective date a corresponding provision will apply to a student in a civil partnership.

In calculating the student's income under Schedule 5, payments made by a student for the maintenance of his child, former spouse or former partner by virtue of an agreement, instrument or enactment which were taken into account under the 2002 Regulations are no longer taken into account. In addition, income applied by virtue of an instrument or legislation for the benefit of a student or a person dependent on the student's parent, spouse or partner or on the student's parent's spouse or partner is no longer taken into account in assessing household income.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.