

2006 No. 483

EDUCATION, ENGLAND AND WALES

**The Education (Fees and Awards) (Amendment) Regulations
2006**

<i>Made</i> - - - -	<i>26th February 2006</i>
<i>Laid before Parliament</i>	<i>7th March 2006</i>
<i>Coming into force</i> - -	<i>31st March 2006</i>

The Secretary of State for Education and Skills makes the following Regulations, in exercise of the powers conferred by sections 1 and 2 of the Education (Fees and Awards) Act 1983(a).

Citation and Commencement

1. These Regulations may be cited as the Education (Fees and Awards) (Amendment) Regulations 2006 and come into force on 31st March 2006.

Amendments to the Education (Fees and Awards) Regulations 1997

2. The Education (Fees and Awards) Regulations 1997(b) shall be amended as follows.

3. In regulation 2(1)—

(a) insert in the relevant place—

““the 2005 Act” means the Education Act 2005(c);

““academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1st January and before 1st April, on or after 1st April and before 1st July, on or after 1st July and before 1st August or on or after 1st August and on or before 31st December, respectively;” and

““training provider” means a person who provides training for members of the school workforce under Part 3 of the 2005 Act”.

(b) omit the definition of “EEA migrant worker”; and

(c) omit “4”, “6A” and “6B” from the definition of “relevant date”.

(a) 1983 c. 40; relevant amendments were made by the Education Reform Act 1988 (c.40), Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c.13), Schedule 8, paragraph 19; the Education Act 1994 (c.30), Schedule 2, paragraph 7; the Education Act 1996 (c.56), Schedule 37, paragraph 57 and by the Education Act 2005 (c. 18), Schedule 14, paragraph 9. The functions of the Secretary of State under the 1983 Act (except for those under section 1), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by SI 1999/672 with effect from 1 July 1999.

(b) S.I. 1997/1972 as amended by S.I. 1998/1965, S.I. 1999/229, S.I. 2000/2192, S.I. 2000/2945, S.I. 2003/3280 and S.I. 2005/2114.

(c) 2005 c.18

4. After regulation 2(1) insert—

“(1A) In the schedule in relation to England and in relation to Wales for the purposes of regulation 4 only—

“child” in paragraph 2 includes a step-child;

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004^(a) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EC national” means a national of a Member State of the European Community;

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“EEA State” means a Member State of the European Economic Area;

“employed person” means an employed person within the meaning of Annex 1 to the Switzerland Agreement;

“European Community” means the territory comprised by the Member States of the European Community as constituted from time to time

“family member” means—

- (a) in relation to a national of the United Kingdom who has exercised a right of free movement under article 39 or 43 of the Treaty establishing the European Community or an equivalent right under the EEA Agreement or the Switzerland Agreement and is entitled, by virtue of an enforceable Community right, to be treated no less favourably in relation to matters which are the subject of these Regulations than he would have been had he not exercised that right, an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) his spouse or civil partner;
 - (ii) his child or the child of his spouse or civil partner; or
 - (iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) his spouse or civil partner; or
 - (ii) his child or the child of his spouse or civil partner;
- (c) in relation to an EC national who is not self sufficient—

(a) OJ L158, 30.04.2004, p77-123.

- (i) his spouse or civil partner; or
- (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner;
- (d) in relation to an EC national who is self-sufficient—
 - (i) his spouse or civil partner;
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse; or
 - (iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;

“person with leave to enter or remain” means a person who—

- (a) has been informed by a person acting under the authority of the Secretary of the State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom;
- (b) has been granted leave to enter or to remain accordingly; and
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain;

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of article 7 of Directive 2004/38; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement;

“self-sufficient” means self-sufficient within the meaning of Article 7(1) (b) of Directive 2004/38;

“settled” has the meaning given by section 33(2A) of the Immigration Act 1971(a);

“Swiss employed person” means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“worker” means a worker within the meaning of article 7 of Directive 2004/38.

(a) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(1B) For the purposes of the Schedule in relation to England and in relation to Wales for the purposes of its application to regulation 4 only, “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly.”

5. In regulation 2(4)—

- (a) after “For the purposes of these Regulations” insert “in relation to Wales except for the purposes of regulation 4”;
- (b) omit “in Switzerland”.
- (c) After paragraph (4) insert—

“(4B) (a) In relation to England and in relation to Wales for the purposes of regulation 4 only, a person is to be treated as ordinarily resident in England, England and Wales, Great Britain, the United Kingdom and Islands or in the territory comprising the European Economic Area and Switzerland if he would have been so resident but for the fact that—

- (i) he;
- (ii) his spouse or civil partner;
- (iii) his parent; or
- (iv) in the case of a dependent direct relative in the ascending line, his child or child’s spouse or civil partner,

is or was temporarily employed outside the area in question.

- (b) For the purposes of sub-paragraph (a), temporary employment includes—

- (i) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
- (ii) in the case of members of the regular armed forces of a Member State of the European Economic Area or Switzerland, any period which they serve outside of the territory comprising the European Economic Area and Switzerland as members of such forces.”

6. In regulation 2(5) —

- (a) At the beginning of the paragraph insert “In relation to Wales”.
- (b) At the end of paragraph (5) insert —

“(5B) In relation to England for the purposes of Regulation 6, 6A, 6B and 7 a person is to be treated as ordinarily resident in England, England and Wales, Great Britain, the United Kingdom and Islands or in the territory comprising the European Economic Area and Switzerland if he would have been so resident but for the fact that —

- (i) he;
- (ii) his spouse or civil partner;
- (iii) his parent; or
- (iv) in the case of a dependent direct relative in the ascending line, his child or child’s spouse or civil partner,

was temporarily receiving full-time education outside the area in question”.

7. In regulation 2(6)—

- (a) after “In these Regulations” insert “in relation to Wales except for the purposes of regulation 4”;
- (b) omit “or Switzerland” and “, or the Switzerland Agreement”.

8.—(1) After regulation 4(1) insert—

“(1A) For the purposes of this regulation a person is mentioned in the Schedule if they are mentioned in it on the first day of an academic year of the course”.

- (2) After regulation 4(2)(c) “and” is omitted.
- (3) After regulation 4(2)(c) to the end of paragraph (6) substitute—
- “(d) which are training providers and are receiving financial support under section 78 of the 2005 Act from the Training and Development Agency for Schools(a); or
- (e) eligible for funding by the Higher Education Funding Council for Wales under Part 3 of the 2005 Act.
- (3) The fees referred to in paragraph (1) are any fees in respect of, or otherwise in connection with, undertaking the course, including admission, registration, tuition and graduation fees.
- (4) This regulation does not make lawful the charging of a fee which is unlawful by reason of a condition imposed under section 26 of the Teaching and Higher Education Act 1998(b) or sections 24 and 28 of the Higher Education Act 2004(c).”

9. Substitute the following for Regulation 6A—

“Payments by the Training and Development Agency for Schools in Relation to England

6A.—(1) In relation to England it shall be lawful for the Training and Development Agency for Schools to adopt rules of eligibility for awards (however described) by any training provider to which it makes grants, loans or other payments under section 78 of the 2005 Act which confine eligibility to the persons mentioned in paragraphs 1, 2, 5, 6, 7 and 8 of the Schedule.

(2) In relation to England it shall be lawful for a training provider who is receiving financial support under section 78 of the 2005 Act to adopt rules of eligibility for awards (however described) which confine eligibility to the persons mentioned in paragraphs 1, 2, 5, 6, 7 and 8 of the Schedule.”

10. In regulation 6B omit paragraph (3).

11.—(1) In regulation 8 insert “in relation to Wales” at the beginning of paragraph (2).

(2) Omit paragraphs (2)(b) to (5).

12. Substitute the following for the Schedule—

“SCHEDULE

Persons who are settled in the United Kingdom

1.—(1) In relation to Wales except for the purposes of regulation 4 a person who on the relevant date—

- (a) is settled in the United Kingdom within the meaning of the Immigration Act 1971, and
- (b) meets the residence conditions referred to in paragraph 9.

(2) In relation to England and in relation to Wales for the purposes of regulation 4 only, a person who on the first day of the first academic year of the course—

(a) the Training and Development Agency for Schools is the name given to the body corporate previously known as the Teacher Training Agency under section 74 of the Education Act 2005 c.18.

(b) 1998 c.30; section 26 was amended by Education Act 2005 (c. 18) Schedule 14, paragraph 19. The functions of the Secretary of State under section 26, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672. Section 26 was repealed in relation to England by S.I. 2006/51 on 14 January 2006.

(c) 2004 c. 8; section 24 was amended by the Education Act 2005 (c.18), Schedule 14, paragraph 26.

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom and Islands;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (3), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(3) Paragraph (d) of sub-paragraph (2) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with regulation 2(4B).

(4) In relation to England and in relation to Wales for the purposes of regulation 4 only, a person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence on the first day of an academic year of the course;
- (b) is or was ordinarily resident in the United Kingdom and Islands on the first day of the first academic year of the course;
- (c) has been or was ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where his residence leading to the acquisition of the right of permanent residence was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

Refugees

2. A person who is a refugee, ordinarily resident in the United Kingdom and Islands, who has not ceased to be so ordinarily resident since he was recognised as a refugee, or is the spouse, civil partner or child of such a refugee.

Persons with leave to enter and remain

3.—(1) A person who—

- (a) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom,
- (b) has been granted leave to enter or remain accordingly, and
- (c) has been ordinarily resident in the United Kingdom and Islands since he has been granted leave to enter or remain

or who is the spouse, civil partner or child of such a person.

(2) For the purposes of this paragraph “child” includes a person adopted in pursuance of adoption proceedings and a step-child.

Exchange Students

4. A person who is admitted to his course in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.

EC Nationals

5.—(1) In relation to Wales except for the purposes of regulation 4 a person who is a national of a member state of the European Community, or who is the child of such a national, who meets the residence conditions referred to in paragraph 9.

(2) In relation to England and in relation to Wales for the purposes of regulation 4 only, a person who—

- (a) is an EC national or a family member of such a national on the first day of an academic year of the course;
- (b) has been or was ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (c) subject to sub-paragraph (3), whose ordinary residence in the territory comprising the European Economic Area and Switzerland has not or was not during any part of the period referred to in paragraph (b) been wholly or mainly for the purpose of receiving full-time education.

(3) Paragraph (c) of sub-paragraph (2) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European Economic Area and Switzerland in accordance with regulation (2)(4B).

Workers, employed persons, self-employed persons and their family members

6.—(1) In relation to Wales except for the purposes of regulation 4 a person who is an EEA migrant worker who—

- (a) may not be required to pay higher fees, or who may not be made ineligible for an award under rules of eligibility, by virtue of Article 7(2) or (3) of Council Regulation (EEC) No 1612/68 on freedom of movement of workers^(a) within the Community, as extended by the EEA Agreement, or, where he is a national of the United Kingdom, by virtue of 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 Article 7(2) and (3) and
- (b) meets the residence conditions referred to in paragraph 9.

(2) In relation to England and in relation to Wales for the purposes of regulation 4 only, a person who is mentioned in sub-paragraphs (3) to (10) below.

(3) A person who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in paragraph (i) or (ii);
 - (iv) an EEA frontier worker or an EEA frontier self-employed person;
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
 - (vi) a family member of a person mentioned in paragraph (iv) or (v);
- (b) subject to sub-paragraph (4), is ordinarily resident in the United Kingdom and Islands on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(4) Paragraph (b) of sub-paragraph (3) does not apply where the person falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (3).

^(a) OJ No. L257, 19.10.1968, p2 (OJ/SE 1968 (II) p475).

- (5) A person who—
- (a) is ordinarily resident in the United Kingdom and Islands on the first day of the first academic year of the course;
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
 - (c) is entitled to support by virtue of Article 12 of the Council Regulation mentioned in paragraph 6(1)(a).
- (6) A person who—
- (a) is—
 - (i) a national of the United Kingdom who has exercised a right of free movement within the territory comprising the European Economic Area and Switzerland and is entitled, by virtue of an enforceable Community right, to be treated no less favourably than he would have been treated had he not exercised that right of free movement; or
 - (ii) a family member of a person mentioned in paragraph (i);
 - (b) subject to sub-paragraph (7), is ordinarily resident in the United Kingdom and Islands on the first day of the first academic year of the course; and
 - (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.
- (7) A person who is not ordinarily resident in the United Kingdom and Islands on the first day of the first academic year of the course may be treated as satisfying paragraph (b) of sub-paragraph (6) if the institution charging the fee or the body or institution making the award is satisfied that the person—
- (a) is not so resident for a reason connected with the exercise of the right of free movement referred to in paragraph (a)(i) of sub-paragraph (6); but
 - (b) is ordinarily resident in the United Kingdom and Islands on the day on which the first term of the first academic year of the course actually begins.
- (8) For the purposes of sub-paragraphs (6) and (7) “right of free movement” means a right of free movement under Article 39 or 43 of the Treaty establishing the European Community or an equivalent right under the EEA Agreement or the Switzerland Agreement.
- (9) A person who on the first day of the first academic year of the course—
- (a) is an EC national;
 - (b) is ordinarily resident in the United Kingdom and Islands;
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course;
 - (d) where he is a national of the United Kingdom, has a right to be treated no less favourably than a national of another Member State by virtue of having exercised a Community right of free movement or an equivalent right under the EEA Agreement or Switzerland Agreement; and
 - (e) in a case where his ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).
- (10) A person who—

- (a) is the child of a Swiss national on the first day of an academic year of the course that is entitled to support in the United Kingdom by virtue of article 3(6) of Annex 1 to the Switzerland Agreement;
- (b) is or was ordinarily resident in the United Kingdom and Islands on the first day of the first academic year of the course;
- (c) has been or was ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where his ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).

7. In relation to Wales except for the purposes of regulation 4 a person who is the spouse or civil partner of an EEA migrant worker and who—

- (a) is installed in the United Kingdom with his spouse or civil partner, and
- (b) meets the residence conditions referred to in paragraph 9.

8.—(1) In relation to Wales except for the purposes of regulation 4 a person who is the child of an EEA migrant worker and who

- (a) may not be required to pay higher fees, or may not be made ineligible for an award under rules of eligibility, by virtue of Article 12 of the Council Regulation mentioned in paragraph 6(1)(a), or, where his migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member State in relation to matters which are the subject of Article 12, and
- (b) meets the residence conditions referred to in paragraph 9.

(2) For the purpose of this paragraph “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child, and “child” shall be construed accordingly.

9. The residence conditions referred to above are that—

- (a) the person had been ordinarily resident throughout the three year period preceding the relevant date, in the case of a person mentioned in paragraph 1, in the United Kingdom and Islands or, in the case of a person mentioned in paragraphs 5 to 8 in the European Economic Area; and
- (b) his residence in the United Kingdom and Islands, or in the European Economic Area, as the case may be, has not during any part of the period referred to in sub-paragraph (a) been wholly or mainly for the purpose of receiving full time education.”

26th February 2006

Bill Rammell
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Education (Fees and Awards) Regulations 1997 (“the 1997 Regulations”). They reflect the renaming of the Teacher Training Agency to the Training and Development Agency for Schools and the functions conferred on that Agency by Part 3 of the Education Act 2005 (c.18). In regulation 4 these Regulations make changes in relation to England and Wales and they substitute a new regulation 6A in relation to England only. These Regulations also make amendments to the schedule which apply to England and Wales in respect of the charging of fees and to England only as regards discretionary awards.

The 1997 Regulations provided that in specified cases it is lawful to differentiate between the persons mentioned in the Schedule and persons not referred to in that Schedule in respect of the charging of fees and the making of awards. By virtue of section 26 of the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”) and section 29 of the Higher Education Act 2004 (c. 8) (“the 2004 Act”), no condition imposed to limit tuition fee amounts under those Acts applies in relation to any fees which are payable by students other than those who fall within the prescribed class of persons who have a specified connection with the United Kingdom under regulations made under section 1 of the Fees and Awards Act 1983. The Schedule as amended sets out the class of persons who have that specified connection with the United Kingdom.

The amendments to the Schedule implement the provisions of Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 (OJ L158, 30.04.2004, p77-123) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member states. So far as the Directive relates to the charging of fees the Schedule implements the provisions in relation to England and Wales. So far as the Directive relates to discretionary awards the Schedule implements the provisions only in relation to England. Certain categories of person who were not formerly entitled to equal treatment with nationals of the United Kingdom in relation to tuition fees and maintenance support will be eligible as a result of the Directive. A copy of the Transposition Note in relation to the implementation of the Directive so far as it relates to these regulations is available from the Department for Education and Skills, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT or on the website of the Office of Public Sector Information at www.opsi.gov.uk. A copy has also been placed in the library of each House of Parliament.

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