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STATUTORY INSTRUMENTS

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**2006 No. 930**

**The Education (Mandatory Awards)  
(Amendment) Regulations 2006**

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Education (Mandatory Awards) (Amendment) Regulations 2006.

2.—(1) Except as provided for by paragraph (2) these Regulations shall come into force on 30th April 2006.

(2) Regulations 4(b), (e), (g) and (h), 6(7) to (9), 12 and 15 shall come into force on 1st September 2006.

3. In these Regulations, “the Principal Regulations” means the Education (Mandatory Awards) Regulations 2003(1).

**Revocation**

4. The following provisions of the Education (Mandatory Awards) (Amendment) Regulations 2005(2) are revoked—

- (a) regulation 6(3) and (4);
- (b) regulation 6(6) to (8);
- (c) regulation 7;
- (d) regulation 10;
- (e) regulation 11;
- (f) regulation 13(2)(b);
- (g) regulation 16; and
- (h) Schedule 1 to the Regulations.

**Amendment of the Principal Regulations**

5. The Principal Regulations are amended in accordance with these Regulations.

6.—(1) Regulation 2 is amended as follows.

(2) For the definition of “category 2 European Student”, substitute—

““category 2 European student” means a person who falls within paragraph 10 of Part 2 of Schedule 5A;”.

(3) After the definition of “Certificate in Education”, insert—

““Community Right student” means—

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(1) S.I.2003/1994, as amended by S.I. 2004/1038, S.I. 2004/1792 and S.I. 2005/2083.

(2) S.I. 2005/2083.

- (a) a person who falls within paragraph 6 of Part 2 of Schedule 5A by virtue of being—
    - (i) an EEA self-employed person, an EEA frontier worker or an EEA frontier self-employed person;
    - (ii) a family member of a person mentioned in paragraph (i);
    - (iii) a dependent relative in the ascending line of an EEA migrant worker or the spouse or civil partner of such a worker;
    - (iv) a Swiss self-employed person, a Swiss frontier employed person or a Swiss frontier self-employed person; or
    - (v) a family member of a person mentioned in paragraph (iv);
  - (b) a person who falls within paragraph 11 of Part 2 of Schedule 5A; or
  - (c) a person who falls within paragraph 8 of Part 2 of Schedule 5A;”.
- (4) After the definition of “dependent”, insert—
- ““Directive student” means—
- (a) a person who falls within paragraph 3 of Part 2 of Schedule 5A; or
  - (b) a person who is a European student by virtue of being a family member of an EC national;”.
- (5) Omit the definition of “EEA migrant worker”.
- (6) For the definition of “European student”, substitute—
- ““European student” means a person who falls within paragraph 9 of Part 2 of Schedule 5A and not within any other paragraph of that Part of Schedule 5A;”.
- (7) In the definition of “new academic term” for “2005”, substitute “2006”.
- (8) For the definition of “new payment”, substitute—
- ““new payment” means a payment made under these Regulations as amended by the Education (Mandatory Awards) (Amendment) Regulations 2004, the Education (Mandatory Awards) (Amendment) Regulations 2005 and the Education (Mandatory Awards) (Amendment) Regulations 2006;”.
- (9) For the definition of “old payment”, substitute—
- ““old payment” means a payment which would have been made under these Regulations, as amended by the Education (Mandatory Awards) (Amendment) Regulations 2004, the Education (Mandatory Awards) (Amendment) (No. 2) Regulations 2004 and the Education (Mandatory Awards) (Amendment) Regulations 2005, if they had not been amended by the Education (Mandatory Awards) (Amendment) Regulations 2006;”.
- (10) In the definition of “refugee”, omit the words from “and any reference” to “a step-child”.
- 7.—**(1) Regulation 5 is amended as follows.
- (2) Omit paragraphs (4), (5) and (6).
- 8.—**(1) Regulation 7 is amended as follows.
- (2) In paragraph (1)(a) and (b) for “2004”, wherever it occurs, substitute “2005”.
- 9.—**(1) Regulation 11 is amended as follows.
- (2) After paragraph (2)(dd), insert—
    - “(de) in the case of a Directive student who—
      - (i) started a designated course on or before 30th April 2006; and

- (ii) is applying for an award in respect of that course,  
where the application reaches the authority by 30th August 2006;
- (df) in the case of a Community Right Student who—
  - (i) started a designated course on or after 1st September 2005 but on or before 30th April 2006; and
  - (ii) is applying for an award in respect of that course,  
where the application reaches the authority by 30th August 2006;
- (dg) in the case of a person who—
  - (i) acquires the right of permanent residence as defined in Part 1 of Schedule 5A;
  - (ii) becomes a person described in paragraph 6(1)(a) of Part 2 of Schedule 5A;
  - (iii) becomes a family member of an EC national; or
  - (iv) becomes the child of a Swiss national,where the application reaches the authority not later than four months after the date on which he acquired that right or status;”.

**10.** For regulation 13, substitute—

“**13.** An authority is not under a duty to bestow an award in respect of a person’s attendance at a course if in the opinion of the authority—

- (a) that person does not fall within one of the categories in Part 2 of Schedule 5A; or
- (b) that person has shown himself by his conduct to be unfitted to receive an award.”.

**11.—(1)** Regulation 25 is amended as follows.

**(2)** For paragraph (6), substitute—

“(6) Where the authority has come under a duty to bestow an award on a person during an academic year because—

- (a) he has become—
  - (i) a European student as a result of—
    - (aa) the accession of the State of which he is a national, or as the case may be, of which his family member (within the meaning of Part 1 of Schedule 5A) is a national, to the European Community; or
    - (bb) becoming the family member (within the meaning of Part 1 of Schedule 5A) of an EC national;
  - (ii) a refugee or the spouse, civil partner, child of a refugee;
  - (iii) a person described in paragraph 6(1)(a) of Part 2 of Schedule 5A;
  - (iv) the child of a Swiss national; or
- (b) he has acquired the right of permanent residence within the meaning of Part 1 of Schedule 5A,

they shall deduct from the sums and grant payable in respect of that year in pursuance of the award under regulation 17 the amounts referred to in paragraph (8).”

**(3)** For paragraph (8)(a), substitute—

- “(a) from the sum payable in respect of fees under regulation 17 any amount payable before the date on which—
  - (i) the student became a European student;

- (ii) the relevant person was recognised as a refugee;
- (iii) the student acquired the right of permanent residence;
- (iv) the student became a person described in paragraph 6(1)(a) of Part 2 of Schedule 5A; or
- (v) the student became the child of a Swiss national;”.

**12.**—(1) Schedule 1 is amended as follows.

(2) For paragraph (iii), substitute—

“(iii) in the case of a course at the University of Buckingham, £2,840 payable in four equal instalments of £710; in the case of a course at the Guildhall School of Music, £4,355 payable in three instalments of £1,452, £1,452 and £1,451; and in the case of a course at Heythrop College, £2,415 payable in three equal instalments of £715;”.

**13.**—(1) Schedule 3 is amended as follows.

(2) In paragraph 1(3) of Part 1 for “or a category 2 European student”, substitute “, a category 2 European student, a Community right student or a Directive student”.

(3) In paragraph 4(4) of Part 2 for “the Education (Student Support) Regulations 2005”, substitute “the Education (Student Support) Regulations 2006(3)”.

**14.** After Schedule 5, insert—

“SCHEDULE 5A

Regulation 13

## ELIGIBLE STUDENTS

### PART 1

#### Interpretation

**1.**—(1) For the purposes of this Schedule—

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council of 29th April 2004(4) 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 self-employed 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;

(3) S.I. 2006/119.

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

“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;

“family member” means—

- (a) in relation to 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—
  - (i) his spouse or civil partner; or
  - (ii) direct descendants of his or his spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of his or of 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 his spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of his or of his spouse or civil partner;
  - (iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
  - (i) his spouse or civil partner; or
  - (ii) direct descendants of his or his spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of his or 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 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 British 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(5);

“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, other than a Swiss frontier self-employed person, in the United Kingdom;

“United Kingdom national” means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties;

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

(2) For the purposes of this Schedule, “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.

(3) For the purposes of this Schedule, a person is to be treated as ordinarily resident in the British Islands or in the territory comprising the European Economic Area and Switzerland if he would have been so resident but for the fact that—

(a) he;

(b) his spouse or civil partner;

(c) his parent; or

(d) 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 British Islands or, as the case may be, outside the territory comprising the European Economic Area and Switzerland.

(5) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(4) For the purposes of sub-paragraph (3), temporary employment outside of the British Islands or the territory comprising the European Economic Area and Switzerland includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the British Islands as members of such forces; and
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside of the territory comprising the European Economic Area and Switzerland as members of such forces.

(5) For the purposes of this Schedule 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 these areas,

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

## PART 2

### Categories

#### **Persons with settled status**

2.—(1) A person who—

- (a) at the beginning of the first year of the course, is settled in the United Kingdom other than by reason of having acquired a right of permanent residence;
- (b) has been ordinarily resident throughout the three years preceding the first year of the course in the British Islands; and
- (c) subject to sub-paragraph (2), whose residence in the British Islands has not during any part of the period referred to in paragraph (b) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (c) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the British Islands in accordance with paragraph 1(3).

3. A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
- (b) has been ordinarily resident throughout the three years preceding the first year of the course in the British Islands; and
- (c) in a case where his ordinary residence referred to in paragraph (b) 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 before the period of ordinary residence referred to in paragraph (b).

#### **Refugees and persons with leave to enter or remain**

4. A person who is either—

- (a) a refugee ordinarily resident in the British Islands who has not ceased to be so resident since he was recognised as a refugee; or
- (b) the spouse, civil partner, child or step-child of a person mentioned in sub-paragraph (a).

5. A person who—
- (a) is either—
    - (i) a person with leave to enter or remain; or
    - (ii) the spouse, civil partner, child or step-child of a person with leave to enter or remain; and
  - (b) has been ordinarily resident throughout the three years preceding the first year of the course in the British Islands.

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

- 6.—(1) 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); and
  - (b) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland.
7. A person who—
- (a) has been ordinarily resident throughout the three years preceding the start of the course in the territory comprising the European Economic Area and Switzerland; and
  - (b) is entitled to support by virtue of article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(6)</sup>, as extended by the EEA Agreement.

**Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere**

- 8.—(1) A person who—
- (a) is settled in the United Kingdom;
  - (b) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;
  - (c) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland; and
  - (d) in a case where his ordinary residence referred to in paragraph (c) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).
- (2) For the purposes of this paragraph, a person has exercised a right of residence if he is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Switzerland Agreement) or a person who has the right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA

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



Agreement or Switzerland Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if he goes to the state within the territory comprising the European Economic Area and Switzerland of which he is a national or of which the person in relation to whom he is a family member is a national.

### **EC nationals**

**9.**—(1) A person who—

- (a) is either
  - (i) an EC national at the beginning of the first year of the course; or
  - (ii) a family member of such a person;
- (b) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland; and
- (c) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland was not wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (c) of sub-paragraph (1) 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 paragraph 1(3).

(3) Where a state accedes to the European Community after the beginning of the first year of the course and a person is a national of that state or the family member of a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EC national at the beginning of the first year of the course does not apply.

**10.** A person who—

- (a) is an EC national other than a United Kingdom national;
- (b) has been ordinarily resident throughout the three years preceding the first of the course in the British Islands; and
- (c) in a case where his ordinary residence referred to in paragraph (b) 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 before the period of ordinary residence referred to in paragraph (b).

### **Children of Swiss nationals**

**11.** A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of article 3(6) of Annex 1 to the Switzerland Agreement;
- (b) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland; and
- (c) in a case where his ordinary residence referred to in paragraph (b) 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 (b).”.

**15.** The figures in the third column of the table in the Schedule to these Regulations are substituted for the figures in the second column where they appear in the provisions of the Principal Regulations set out in the first column of the table.

27th March 2006

*Bill Rammell*  
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Department for Education and Skills