

EXPLANATORY MEMORANDUM

THE EDUCATION (MANDATORY AWARDS) (AMENDMENT) REGULATIONS 2006

2006 No. 930

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. These Regulations amend the Education (Mandatory Awards) Regulations 2003 (S.I.2003/1994) (“the 2003 Regulations”), as amended. The 2003 Regulations provide support for students attending higher education courses who began their courses before 1st September 1998, as well as certain students who started their courses after that date.

2.2. These Regulations 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 2006/07 academic year. The Regulations also amend the eligibility criteria for mandatory awards.

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 The whole of the 1962 Act was repealed by section 44(2) of and Schedule 4 to the Teaching and Higher Education Act 1998, with effect from 1st January 1999.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. These Regulations increase the maximum amounts of fee support and grants for maintenance for the academic year 2006/07 in line with inflation.

4.3. The Regulations also make amendments to the criteria that students must satisfy in order to be eligible for a mandatory award. This is being done, in part, to implement Directive 2004/38/EEC of the European Parliament and of the Council of 29th April 2004.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. These Regulations increase 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 2006. The increases to all maximum amounts are in line with inflation.

7.2. Students must satisfy certain eligibility criteria to potentially be eligible for a mandatory award towards their tuition fees only or their tuition fees and maintenance. These criteria have been revised and include changes made in implementation of EU Directive 2004/38/EC on the rights of EC nationals and their families to move and reside in other Member States (see Annex A for the Transposition Note). These new eligibility criteria are set out in regulation 13 of, as amended by these Regulations, and the new Schedule 5A, as inserted by these Regulations, to the 2003 Regulations.

7.3. The changes introduce new categories of students who may potentially be eligible for mandatory awards. These include:

- EC nationals and their family members who acquire the right of permanent residence in the UK (after a continuous period of five years residence in the UK) (full award);
- Family members of economically inactive EC nationals (fees only award);
- European Economic Area (EEA) or Swiss self-employed persons and their family members (full award);
- Dependent direct relatives in the ascending line of EEA or Swiss migrant workers (full award);
- “frontier” workers and “frontier” self-employed persons (full award);
- Children of Swiss nationals (full award).

7.4. Changes also enable the payment of awards to students who acquire the right of permanent residence; become an EEA or Swiss worker or self-employed person or the family member of such a person; become the family member of an EC national; or become the child of a Swiss national, during the course of an academic year.

7.5. The changes made by these Regulations enable students who have become eligible for an award as a consequence of the Directive to potentially be eligible for an award for the remainder of the current academic year (i.e. an academic year starting on or after 1 September 2005 but before 1 September 2006), as well as future academic years of their current course or an end-on course. Certain other students who are not currently eligible for support are potentially eligible for an award in connection with their attendance on an end-on course during the current academic year.

7.6. Students in these new categories who wish to apply for an award in respect of the current academic year must do so by 30th August 2006.

Scrutiny history for Directive 2004/38/EC

7.7. The Commission's draft of the Directive (reference 11807/05 (24795)) was deposited in Parliament on 1st August 2003. The Parliamentary Under-Secretary of State at the Home Office sent the Scrutiny Committees an Explanatory Memorandum on 28th August 2003. The Commons Scrutiny Committee regarded the document as politically important and cleared it from scrutiny (see HC 63-xxxii (2002-03) paragraph 30 (17 September 2003)).

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

Janet Coatsworth at the Department for Education and Skills in Darlington Tel: 01325 391231 or e-mail janet.coatsworth@dfes.gsi.gov.uk can answer queries regarding Directive 2004/38/EC. **Cliff Woods** at the Department of Education and Skills in London Tel: 020-7925-5353 or e-mail: cliff.woods@dfes.gsi.gov.uk can answer any queries regarding the uprating of the maximum amounts of grant for fees and maintenance.

TRANSPOSITION NOTE

DIRECTIVE 2004/38/EC OF 29 APRIL 2004 ON THE RIGHT OF CITIZENS OF THE UNION AND THEIR FAMILY MEMBERS TO MOVE AND RESIDE FREELY WITHIN THE TERRITORY OF THE MEMBER STATES

Directive 2004/38/EC lays down the conditions governing the exercise of the right of free movement within the territory of the Member States by Union citizens and their family members, the right of permanent residence in the territory of the Member States for Union citizens and their family members and the limits placed on these rights on grounds of public policy, public security or public health.

The Home Office has lead responsibility for implementation of Directive 2004/38/EC. The Department for Education and Skills has made the necessary transposition arrangements in respect of mandatory awards. This is confined to Article 24 of the Directive.

The Education (Mandatory Awards) (Amendment) Regulations 2006 do what is necessary to implement Article 24 of the Directive in the area of mandatory awards for which the Department for Education and Skills has responsibility, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

The following table sets out the main objectives of Article 24 of the Directive in the area of mandatory awards for which the Department for Education and Skills has responsibility and how these have been implemented in the Education (Mandatory Awards) (Amendment) Regulations 2006.

Article	Objectives	Implementation	Responsibility
Article 24(1) and (2)	Derogation from Article 24(1). A Member State is not obliged to grant maintenance aid for studies prior to the acquisition of the right of permanent residence to persons other than workers, self-employed persons, persons who retain such status and members of their families.	<p>As part of the Education (Mandatory Awards) (Amendment) Regulations 2006 (“2006 Regulations”) which amend the Education (Mandatory Awards) Regulations 2003 as amended (“2003 Regulations”).</p> <p>The new Schedule 5A to the 2003 Regulations sets out the categories of students who are potentially eligible for mandatory awards.</p> <p>The main body of the 2003 Regulations, as amended by the 2006 Regulations, then sets out the particular types of grants available under those awards and the conditions that a student must fulfil in order to qualify for those grants.</p> <p>The following categories of person have been added to Schedule 5A to the 2003 Regulations:</p> <p>(a) persons with a permanent right of</p>	Secretary of State

		<p>residence in the United Kingdom (paragraph 3);</p> <p>(b) workers, self-employed persons, persons who have retained their status as such and their family members (paragraph 6); and</p> <p>(c) EC nationals and their family members (paragraph 9).</p> <p>Persons mentioned in paragraph 9 qualify for a fees only award in accordance with the provisions of the 2003 Regulations.</p> <p>Persons mentioned in paragraphs 3 and 6 qualify for a full award (comprising a fee award and maintenance grant) in accordance with the provisions of the 2003 Regulations.</p>	
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