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STATUTORY RULES OF NORTHERN IRELAND

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**1998 No. 273**

**Students Awards Regulations (Northern Ireland) 1998**

**Part II**

**Awards**

**Specified persons**

6.—(1) Persons described in Part I of Schedule 1, with the exception of persons described in Part II of that Schedule, are, subject to paragraph (2), specified by the Department for the purposes of Article 50(1).

(2) The board which shall be under a duty to make an award to a person entitled to the payment of an award by virtue of Article 7(2), (3) or 12 of the Council Regulation shall be—

- (a) the board in the area of which the person was last resident during the period of two years preceding the relevant day;
- (b) if sub-paragraph (a) does not apply, the board in the area of which the institution providing the person's course is situate.

(3) A board shall not be under a duty to make a transitional award in respect of a person's attendance at a course if it is satisfied that no amount would be payable in pursuance of the award if it was made.

**Ordinarily resident**

7.—(1) If a board is satisfied that a person was not ordinarily resident in the British Islands, or in the European Economic Area, throughout the three years immediately preceding the first year of the specified course or was not resident in a board's area on the relevant day only because that person, his spouse, parent, guardian, any other person having parental responsibility for him, or any person having care of him while he is a child, is, or was, employed temporarily outside the British Islands or, as the case may be, outside the European Economic Area, then, for the purposes of paragraph 1(b) of Schedule 1, that person shall not be regarded as having ceased to be so resident only because of his absence from the British Islands or the European Economic Area or the Board's area in consequence of such employment and paragraph (2) shall not apply in the case of such a person.

(2) For the purposes of paragraph 1(b) of Schedule 1, a person shall not be regarded as ordinarily resident in the British Islands or the European Economic Area if that person was so resident and had taken up that residence wholly or mainly for the purpose of attending a full-time course of education.

(3) For the purposes of paragraph 1(b) of Schedule 1, a person shall not be regarded as ordinarily resident in the British Islands if that person is personally ineligible for a full award.

(4) For the purposes of regulation 6(1) the ordinary residence requirements of paragraph 1(b) of Schedule 1 shall not apply in the case of a refugee, ordinarily resident in the British Islands who has not ceased to be so ordinarily resident since he was recognised as a refugee; or in the case of the spouse or child of such a refugee, and paragraph 2(a) of that Schedule shall not apply in the case of 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 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 British Islands throughout the period since he was granted leave to enter or remain

or in the case of the spouse or child of such a person.

(5) The person referred to in paragraph 1(b)(iii) of Schedule 1 is:

- (a) a European student;
- (b) an EEA migrant worker who is entitled to the payment of an award by virtue of Article 7(2) or (3) of the Council Regulation, 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) of the Council Regulation;
- (c) the spouse of an EEA migrant worker who is installed in the United Kingdom with his spouse;
- (d) the child of an EEA migrant worker who is entitled to the payment of an award by virtue of Article 12 of the Council Regulation, 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 of the Council Regulation.

(6) In paragraph (5) “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.

### **Transitional provisions**

**8.—(1)** Without prejudice to section 29(3)(a) of the Interpretation Act (Northern Ireland) 1954(1) and to the definition of “award”, an award made in pursuance of the Regulations revoked by regulation 2 before the coming into operation of these Regulations, insofar as it could have been made in pursuance of these Regulations, shall for the purposes thereof, be treated as having been so made.

(2) Where an award was made to a student under Article 50(3) (“the discretionary award”) in respect of a course to which Article 50(1) and (2) did not then apply but the course becomes or has become a specified course and an award within the meaning of these Regulations is or has been made to the student in respect of that course, then if the discretionary award continues to be payable it shall be disregarded in calculating the student’s income for the purposes of regulations 13(1)(b) and 17: but payments on account of the mandatory award in respect of fees and in respect of maintenance for any period shall be respectively reduced or extinguished by those on account of the corresponding element of the discretionary award.

(3) Where—

- (a) an award was made to a person pursuant to previous awards regulations in respect of his attendance at a course during an academic year beginning before the 1st September 1997; and
- (b) the person immediately after ceasing to attend that course (disregarding any intervening vacation) begins to attend another course,

a board shall not be excepted from the duty to make an award in respect of the persons attendance at the second course by the application of the exception relating to settlement in the United Kingdom found in paragraph 2(a) of Schedule 1.

(4) Where an award is made to a person in respect of his attendance at a course the first year of which begins on or after 1st September 1998 the award shall be treated as an old award if—

- (a) the person had on or before 1st August 1997 received an offer of a place on that course, or on a similar specified course which is no longer offered, in either case for a year which begins on or after 1st September 1998 and before 1st September 1999, and whether conditional on obtaining specified qualifications or not; or
- (b) the person had received an offer of a place on a specified course for a year which begins before 1st September 1998, and—
  - (i) he was not able to take up the offer because a specified qualification or grade was not awarded to him;
  - (ii) he appealed against the decision not to award the qualification or grade to him;
  - (iii) the appeal was allowed after the last date when he could have taken up the offer; and
  - (iv) as a result he was offered a place on the course for a year which begins on or after 1st September 1998 and before 1st September 1999;
- (c) the course is a first degree course specified in Schedule 2, and—
  - (i) he begins to attend the course immediately after ceasing to attend a course for the DipHE or a course for the HND (disregarding any intervening vacation); and
  - (ii) an award was made to him in respect of his attendance at a course for the DipHE or a course for the HND which is an old award other than by virtue of this sub-paragraph or sub-paragraph (d); or
- (d) the course is a postgraduate course for the initial training of teachers, and—
  - (i) he begins to attend the course immediately after ceasing to attend a first degree course (disregarding any intervening vacation); and
  - (ii) an award was made to him in respect of his attendance at the first degree course which is an old award other than by virtue of sub-paragraph (c) or this sub-paragraph;
- (e) a payment is being made to him in respect of a grant in pursuance of Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972(2) in nursing, midwifery, physiotherapy, occupational therapy, radiography, orthoptics, speech and language therapy, podiatry, dietetics, prosthetics and orthotics at the Queen's University of Belfast or the University of Ulster.

(5) For the purposes of paragraph (4)(a) a course is similar to another course, whether or not it is at the same institution, if—

- (a) it leads to a degree or other qualification which is the same as the degree or other qualification which the other course leads to; and
- (b) the board is satisfied that the subject matter of the course is for the most part the same as the subject matter of the other course.

### **Previous attendance at a course**

9.—(1) For the purposes of regulation 19(2) and (4) and paragraphs 1(d), 2(c) and (d) and 3 of Schedule 1—

- (a) a person shall not be regarded as having previously attended a course—

- (i) unless he has previously both attended and held a statutory award in respect of either more than one course or one course for a period longer than 20 weeks;
  - (ii) by reason only of his having attended from its beginning the course to which his application for an award relates;
- (b) any reference to a person having attended a course shall be construed as a reference to his having done so before or after 1st September 1998;
- (c) where an award has been transferred under Schedule 3, the student to whom the award has been made shall be treated as having attended only the new course, and the duration of that course shall be treated as the aggregate of the period spent following the previous course and the period which the student in question would ordinarily require for the completion of the new course in the case of either course being a sandwich course ignoring any periods of experience.
- (2) Nothing in paragraph (1) shall effect the duty of the board to make an award to a person in respect of his attendance at—
- (a) a postgraduate course for the initial training of teachers, unless he has—
    - (i) previously attended such a course; or
    - (ii) successfully completed a course for the degree of Bachelor of Education (or a comparable first degree or award of an institution or the Council for National Academic Awards) which is referred to in paragraph (3);
  - (b) a course for the degree of Bachelor of Education (or a comparable first degree or academic award of an institution or the Council for National Academic Awards) the duration of which does not exceed two years and which is referred to in paragraph (3) unless he has previously attended—
    - (i) such a course whether or not its duration exceeded two years; or
    - (ii) a postgraduate course for the initial training of teachers.
  - (c) a full-time course of initial training as a teacher of one year's duration, or a comparable part-time course, not within sub-paragraph (a) or (b), unless he has far more than three years held in statutory award in respect of his attendance at a full-time course of higher education or comparable course outside Northern Ireland;
- (3) A course is referred to in this paragraph if the successful completion of it resulted or results in the person completing it being a qualified teacher within the meaning of section 218(2)(a) of the Education Reform Act 1988(3) or eligible to be employed as a teacher under Article 70(1)(4).
- (4) Any reference to the duration of a course is a reference to the period ordinarily required for its completion by a student who is not excused part of the course on account of his having attended a previous course, in the case of a sandwich course ignoring any periods of experience.

### **Specified educational facilities**

**10.** The courses listed in Schedule 2 are specified as educational facilities for the purposes of Article 50(1)

### **Terms and conditions**

**11.—(1)** Awards to be made by boards shall be subject to the terms and conditions set out in Schedule 3.

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(3) 1988 c. 40

(4) As amended by S.I. 1993/2810 (N.I. 12) Article 42(2)

- (2) Awards to be made by boards shall be either—
- (a) a full award in respect of a persons attendance at a specified course during an academic year beginning after 31st August 1998—
    - (i) if the person concerned is ordinarily resident in the boards area or is a person described in paragraph (1)(b)(ii) of Schedule 1; and
    - (ii) the duty is not owed to the person only because he is a European student;
  - (b) where sub-paragraph (a) does not apply, a fees only award in respect of a persons attendance at a specified course at an institution in Northern Ireland during an academic year beginning after 31st August 1998 if the person is a European student.
- (3) Where paragraph (2)(a) applies a person shall not be regarded as ordinarily resident in the area of the board as a result of having moved from England, Scotland, Wales, the Channel Islands or the Isle of Man to become ordinarily resident in the area of a board for the purpose of attending his current course or a previous course and shall be treated as being ordinarily resident in the place from which he has moved.
- (4) Where paragraph (2)(b) applies the fees only award shall be made by the board in whose area the main facility of the institution is situated.
- (5) The reference in paragraph (3) to a previous course is a reference to a course of further education or higher education which, disregarding an intervening vacation, the student was attending immediately before commencing his current course.