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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 222**

**The Education (Assisted Places) (Scotland) Regulations 2001**

**PART III**

**REMISSION OF FEES**

**References to remission questions**

7. For the purposes of this Part “remission questions” mean the questions whether or not the parents of an assisted pupil are entitled to any remission of fees payable in respect of the assisted pupil and the extent of such remission.

**References to financial years**

8.—(1) For the purposes of this Part “financial year” means, subject to paragraph (2), a year ending with 5th April and, in relation to a particular school year, “preceding financial year” means the financial year preceding that school year and “current financial year” means the financial year which includes the first day of that school year.

(2) Where the parents of a pupil satisfy the school that their income is wholly or mainly derived from the profits of a business, profession or vocation carried on by either or both of them then, if the parents and the school so agree, any reference in this Part to a financial year shall be construed as a reference to a year ending with such date as appears to the school expedient, having regard to any accounts kept in respect of that business, profession or vocation and the periods covered thereby:

Provided that, where that year ends with a date after 5th April but before the beginning of a school year then, in relation to that school year, “preceding financial year” shall mean the year last so ending before 6th April in the calendar year in which the school year begins and “current financial year” shall mean the year so ending on or after that 6th April and before the beginning of the school year.

**References to income**

9.—(1) For the purposes of this Part the income of any person for a financial year shall, subject to the provisions of Schedule 1, be taken to be their total income for that year; and, in this paragraph and that Schedule, “total income” has the same meaning as in section 835 of the Income and Corporation Taxes Act 1988(1).

(2) For the purposes of this Part “relevant income” as respects parents of an assisted pupil means, in relation to any financial year, their income for that year aggregated with the unearned income for that year, if any, of the pupil and of any other of the parents' children who are wholly or mainly dependent on them at the time the relevant income is calculated less, where paragraph (3)

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(1) 1988 c. 1. Section 835 was amended by the Finance Act 1988 (c. 39) section 35 and Schedule 3, paragraph 22 and section 148 and Schedule 14, Part IV; the Capital Allowances Act 1990 (c. 1) section 164 and Schedule 1, paragraph 8(38); the Finance Act 1996 (c. 8) section 73 and Schedule 6, paragraph 24; and the Finance Act 1998 (c. 36) section 31 and Schedule 3, paragraph 40 and section 44 and Schedule 6, paragraph 16.

or (5) applies, the sum there mentioned; and in this paragraph the reference to unearned income is a reference to income other than such as arises from gainful employment.

(3) Subject to paragraph (5), the relevant income, calculated as aforesaid, shall be reduced by £1,430 in respect of each person other than the assisted pupil who—

- (a) at the time the relevant income is calculated, is wholly or mainly dependent on the parents or on payments made to that person or for their benefit as mentioned in paragraph (4);
- (b) is a child or other relative of one or both of the parents; and
- (c) normally resides in the same household as the parents and the assisted pupil.

(4) The payments referred to in paragraph (3)(a) are ones made by one or both of the parents, including sums paid as mentioned in paragraph 3(2)(f) of Schedule 1, but excluding any other payments which fall to be deducted in ascertaining total income for the purposes of these Regulations.

(5) Where a child (other than the assisted pupil) who is wholly or mainly dependent on the parents or on payments made to the child or for the child's benefit by one or both of them is the holder of an award of a kind described in paragraph (6) and there has been deducted, in calculating the amount of that award, a sum exceeding £1,430 in respect of the parental contribution which is assumed to be available as part of the resources of that child, that sum shall be deducted from the relevant income in lieu of the £1,430 prescribed in respect of that child by paragraph (3).

(6) The awards referred to in paragraph (5) are—

- (a) an allowance granted by the Scottish Ministers pursuant to regulations from time to time in force and having effect under sections 73 and 74 of the Act(2) providing for the payment of allowances to students(3);
- (b) a bursary granted by an education authority pursuant to regulations from time to time in force and having effect under section 49 of the Act(4) providing for the payment of bursaries to persons undertaking courses of full-time education which are not courses of school education(5);
- (c) a mandatory award paid by a local education authority in England or Wales pursuant to regulations from time to time in force under section 1 of the Education Act 1962(6) providing for the payment of awards to students attending specified courses of further or higher education(7);
- (d) an award made by—

- (i) the Northern Ireland Executive's Higher and Further Education, Training and Employment Department pursuant to article 50 of the Education and Libraries

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(2) Sections 73 and 74 were amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), section 73 and section 82 and Schedule 10, paragraph 8(17) respectively and section 73 was amended by the Teaching and Higher Education Act 1998 (c. 30) section 29.

(3) The Regulations in force at the date on which these Regulations were made are the Students' Allowances (Scotland) Regulations 1999 (S.I.1999/1131). The administrative arrangements for assessing assumed parental contributions are set out in the booklet "Student Support in Scotland" published in April 2001 by the Student Awards Agency, copies of which are obtainable from the Student Awards Agency for Scotland, Awards Branch, Gyleview House, 3 Redheughs Rigg, Edinburgh, EH12 9HH.

(4) Section 49 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), section 82 and Schedule 10, paragraph 8(9).

(5) The Regulations in force at the date on which Regulations were made are the Education Authority Bursaries (Scotland) Regulations 1995 (S.I. 1995/1739, as amended by S.I. 1997/1049).

(6) 1962 c. 12; section 1 was substituted by section 19 of and Schedule 5 to the Education Act 1980 (c. 20) and amended by section 4 of the Education (Grants and Awards) Act 1984 (c. 11); the entire Act was repealed by the Teaching and Higher Education Act 1998 (c. 30), section 44(2) and Schedule 4, subject to the saving and transitional provisions set out in the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order 1998 (S.I. 1998/3237 (c.81)), article 4.

(7) The Regulations in force at the date on which these Regulations were made were the Education (Mandatory Awards) Regulations 1999 (S.I. 1999/1494 as amended by S.I. 2000/1425).

(Northern Ireland) Order 1986<sup>(8)</sup> and regulations from time to time in force thereunder<sup>(9)</sup>, being an award in respect of attendance at a course which commenced before 1st September 1999, a first degree course or a postgraduate course for the training of teachers; or

- (ii) the Northern Ireland Executive's Higher and Further Education, Training and Employment Department pursuant to article 51 of the said Order<sup>(10)</sup>, being an award in respect of attendance at an approved postgraduate course at universities, colleges or other institutions, or other approved courses, or for the purpose of enabling or encouraging the holder to take advantage of educational facilities available to them.

(7) In this regulation, any reference to the parents of an assisted pupil is a reference to the persons who are the parents of the assisted pupil at the time the relevant income is calculated.

### **General provisions relating to remission**

**10.**—(1) The parents of an assisted pupil shall not be entitled to any remission of fees for which they are liable in respect of a period before the pupil took up the assisted place or (in lieu of notice or otherwise) after the pupil has left the school or, if they remain at the school, after the end of the school year in which they attain the age of 20 years.

(2) The parents of an assisted pupil shall be under no obligation to apply for remission of fees as respects a particular school year if they consider themselves not entitled thereto but if, as respects such a year, they do not—

- (a) duly apply to the school for remission of fees payable for that year; or  
(b) subject to regulation 12(4), duly furnish the school with the information and supporting evidence requisite for determining remission questions,

they shall not be entitled to any remission of fees for that year.

(3) If the Scottish Ministers are satisfied that the parents of an assisted pupil have furnished information required for determining remission questions which they know to be false in a material particular, they may direct that those parents shall not be entitled to any remission of fees in the case of that pupil and, if they so direct, in the case of any other of their children who are assisted pupils, as respects a specified school year and, if they so direct, any subsequent school year.

Provided that—

- (a) the Scottish Ministers shall not give a direction hereunder without affording the parents concerned an opportunity to make representations or without considering such representations;  
(b) the giving of a direction hereunder shall be without prejudice to its variation or revocation by a subsequent direction.

(4) This regulation shall have effect notwithstanding anything in regulation 11 or any other provision of these Regulations.

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<sup>(8)</sup> S.I. 1986/594 (N.I. 3). Article 50(1) and (2) was repealed by the Education (Student Support) (Northern Ireland) Order 1998, article 9 and the Schedule (S.I. 1998/1760) (N.I. 14), subject to the transitional and saving provisions in Part II of the Education (Student Support) (Northern Ireland) Order 1998 (Commencement No. 2 and Transitional Provisions) Order 1998, S.R. 1998 No. 460 (c.22).

<sup>(9)</sup> The Regulations in force at the date on which these Regulations were made are the Student Awards Regulations (Northern Ireland) 2000 (S.R. 2000 No. 311).

<sup>(10)</sup> Article 51 was substituted by article 43 of and Part II of Schedule 5 to S.I. 1996/274 (N.I. 1).

### **Determination of remission questions**

**11.**—(1) Subject to paragraph (2), in the case of each assisted pupil remission questions shall be determined by the school, in accordance with this Part, for each school year, whether or not the parents have been entitled to any remission as respects a previous school year.

(2) Where either—

- (a) the pupil holds an assisted place at the school for part only of a school year or leaves the school part way through the school year; or
- (b) the number of children of the parents who hold assisted places differs for different parts of a school year,

the said questions shall be determined by the school for that part, or separately for those parts, and the extent to which fees in respect of part of a school year are to be remitted shall be that proportion of the amount by which the fees for the whole school year would fall to be remitted which is the proportion which the fees for the part bear to the fees for the whole school year; and for the purposes of this paragraph the duration of the school year and such part shall be calculated with reference to the total number of school days occurring therein respectively.

### **Calculation of remission**

**12.**—(1) Subject to paragraphs (2), (3) and (4), remission questions shall be determined by reference to relevant income in the preceding financial year.

(2) Where one of the pupil's parents has died after remission questions have been determined but before the end of the current financial year and the school are satisfied that the income of the surviving parent in that year, when aggregated with that of the deceased parent, is likely to be less than their aggregated income in the preceding financial year, the remission questions shall be redetermined by reference to the current financial year, and in such a case paragraph (1) shall have effect as if the reference therein to the preceding financial year were a reference to the current financial year and the reference to the pupil's parents in paragraph (2) of regulation 9 included a reference to the deceased parent (notwithstanding the provision of paragraph (7) of that regulation).

(3) This paragraph shall apply in a case not falling within paragraph (2) if—

- (a) the participating school concerned are satisfied that the relevant income in the current financial year is, as a result of some event beyond the control of the pupil's parents, likely to be not more than 85% of the relevant income in the preceding financial year; or
- (b) the school, though not satisfied as aforesaid, are satisfied that the relevant income in the current financial year is likely to be so much less than the relevant income in the preceding financial year that financial hardship would result from remission questions being determined by reference to that year, and the Scottish Ministers approve the application of this sub-paragraph,

and, in a case to which this paragraph applies, remission questions shall be determined in relation to the school year in question and, unless and until the Scottish Ministers otherwise direct, any subsequent school year by reference to the current financial year and, in such case, paragraph (1) shall have effect as if the reference therein to the preceding financial year were a reference to the current financial year.

(4) Where it is not reasonably practicable for the parents to furnish, before the beginning of the school year, the requisite information as to relevant income for the appropriate financial year then, in relation to that school year, remission questions may be determined provisionally, by reference to relevant income for earlier financial years as the school thinks fit but—

- (a) no such provisional determination shall be more favourable to the parents than one arrived at by reference to an estimate furnished by the parents of relevant income for the appropriate financial year;

- (b) a provisional determination shall cease to have effect when the parents have furnished the requisite information or if the school is satisfied that it has become reasonably practicable for them to do so but they have failed to furnish it; and
- (c) within three months of the determination of the remission question any over remission or under remission of fees shall be adjusted by payments between the parents and the school.

### **Scales of remission**

**13.**—(1) In this regulation—

- (a) “assisted pupil” means any child who holds an assisted place and, for the purposes of paragraphs (5), (6) and (7) of this regulation, an assisted pupil who is aided by virtue of the St Mary’s Music School (Aided Places) (Scotland) Regulations 2001(11), or the Education (Grants) (Music and Ballet Schools) Regulations 1995(12); and
- (b) a reference to a relevant assisted place, in relation to an assisted pupil, is a reference to the assisted place held by them,

and for the purposes of this regulation, column (1) of Schedule 2 specifies bands of relevant income and column (2) of that Schedule specifies percentages of relevant income to be used in calculating parental contributions.

(2) Where the relevant income of parents of an assisted pupil in a preceding financial year does not exceed £11,116, fees for the school year to which that preceding year relates as respects any relevant assisted place shall be remitted in full by the participating school or schools concerned.

(3) Where—

- (a) parents receive assistance in respect of only one child; and
- (b) the relevant income of such parents in a preceding financial year falls within a band, or bands, of income specified in column (1) of Schedule 2,

the parents shall contribute from that income an amount (rounded down to the nearest multiple of £3) equal to the aggregate of the percentages (specified in column (2) of that Schedule) of those parts of the relevant income referred to in column (1) of that Schedule.

(4) Subject to paragraph (5)—

- (a) fees for the school year in relation to which the preceding financial year referred to in paragraph (3)(b) relates as respects any relevant assisted place shall be remitted by the participating school or schools concerned to the extent of the amount by which the aggregate fees of such school or schools exceed the sum of parental contribution computed in accordance with paragraph (3); and
- (b) that sum of parental contribution shall be recoverable by such school or schools from those parents in accordance with paragraphs (6) and (7) below.

(5) Where the number of assisted pupils in the same family is, for the time being, two or more, the sum of parental contribution mentioned in paragraph (3) shall be increased in accordance with the following scale:—

- (a) where the number of such pupils is 2, by the factor of 1.5; and
- (b) where the number of such pupils is 3 or more, by the factor of 1.75.

(6) Where assisted pupils from the same family attend two or more different participating schools, each participating school concerned shall be entitled to recover such amount of the parental contributions, relating to those pupils, as bears to that contribution the same proportion as the number

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(11) S.S.I. 2001/223.

(12) S.I. 1995/2018, as amended by S.I. 1997/1967, 1998/1583 and 1999/1503.

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of those pupils attending that school bears to the total number of assisted pupils for the time being in the family.

(7) Where a pupil does not hold an assisted place at a participating school for the full duration of the school year, that part of the parental contribution which is attributable in relation to that pupil shall be reduced by the same proportion as the part of the school year during which the pupil held the assisted place bears to the whole school year; and, for the purposes of this paragraph, the duration of the school year and such part shall be calculated with reference to the total number of school days occurring therein respectively.