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STATUTORY INSTRUMENTS

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**1995 No. 2016**

**EDUCATION, ENGLAND AND WALES**

**The Education (Assisted Places) Regulations 1995**

*Made* - - - - - *31st July 1995*

*Coming into force* - - - - - *25th August 1995*

In exercise of the powers conferred on the Secretary of State by sections 17(6) and (7) and 35(4) of the Education Act 1980(1) and after consulting, in accordance with section 17(8) of that Act, such bodies as appear to them to be appropriate and to be representative of schools eligible to participate in the assisted places scheme, the Secretary of State for Education and Employment, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations, a draft of which has been laid before Parliament and has been approved by resolution of each House of Parliament:

**PART I**

*General*

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Education (Assisted Places) Regulations 1995 and shall come into force on 25th August 1995.

(2) These Regulations shall apply in relation to a school year beginning on or after the date mentioned in paragraph (1).

**Interpretation**

2.—(1) In these Regulations, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say

“assisted pupil” means a child selected or put forward for selection for an assisted place;

“child” includes a step-child, a child adopted in pursuance of adoption proceedings and a person who is over compulsory school age;

“employment” includes the holding of any office and any occupation for gain (including self-employment in any trade, profession or vocation) and “employed” shall be construed accordingly;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(2)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(3)</sup>;

“EEA national” means a person who is a national of a State of which is a Contracting Party to the EEA Agreement (including the United Kingdom);

“European Economic Area” means the area comprised by the States which are Contracting Parties to the EEA Agreement;

“fees” means

- (a) tuition and other fees the payment of which is a condition of attendance at a school but excludes sums to be paid into a bursary or similar fund, boarding fees and such other fees, if any, as may be excluded by the participation agreement, and
- (b) entrance fees for public examinations paid by a school in respect of candidates from the school;

“financial year” and “preceding financial year” have the meanings assigned thereto by regulation 10;

“first assisted year” has the meaning assigned thereto by regulation 3(5);

“income”, “relevant income” and “total income” have the meanings assigned thereto by regulation 11;

“refugee” means a person who:

- (a) is recognised by Her Majesty’s Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(4)</sup> as extended by the protocol thereto which entered into force on 4th October 1967<sup>(5)</sup>, or
- (b) 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, and has been granted leave to enter or remain accordingly;

“relevant date” means 1st January in the calendar year in which an assisted pupil’s first assisted year begins;

“remission questions” has the meaning assigned thereto by regulation 9;

“school” means a participating school within the meaning of section 17(2) of the Education Act 1980 and references to a school include references to the proprietors thereof and persons acting with the proprietors’ authority.

(2) Subject to regulation 24(2) and to paragraphs (3) and (4) and except where the context otherwise requires, any reference in these Regulations to the parents of a child or assisted pupil is a reference to:

- (a) the child’s father and mother where
  - (i) they live together as husband and wife (whether or not they are married to each other), and
  - (ii) the child normally resides with both of them in the same household; or

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(2) Cm. 2073.

(3) Cm. 2183.

(4) Cmnd. 9171.

(5) Cmnd. 3906 (Out of print: photocopies of the English text are available, free of charge, from Higher Education Branch, Room 1A3, Department for Education and Employment, Sanctuary Buildings, Great Smith Street, London SW1P 3BT).

- (b) where sub-paragraph (a) above does not apply, the parent, being either the father or mother of the child, with whom the child normally resides and the spouse (if any) of that parent where the spouse normally resides with that parent and the child in the same household; or
  - (c) where neither sub-paragraph (a) nor (b) above applies, the child's guardian appointed in accordance with section 5 of the Children Act 1989<sup>(6)</sup> (or any earlier enactment) and the spouse (if any) of that guardian where the spouse normally resides with that guardian and the child in the same household; or
  - (d) where none of sub-paragraphs (a), (b) and (c) above applies, the person with whom the child resides in accordance with either:
    - (i) a subsisting residence order made under section 8 of the Children Act 1989; or
    - (ii) any subsisting court order (other than a residence order) which specifies who is to have actual custody or care and control of the child,and the spouse (if any) of that person where the spouse normally resides with that person and the child in the same household; or
  - (e) where none of sub-paragraphs (a) to (d) above applies and where the child is not looked after by a local authority for the purposes of section 22(1) of the Children Act 1989, the person with whom the child normally resides in accordance with any informal care or fostering arrangement, and that person's spouse (if any) where the spouse normally resides with that person and the child in the same household.
- (3) Where a child or assisted pupil
- (a) either has no parents as defined in paragraph (2) or the school is satisfied that no such parents can be found, and
  - (b) is either looked after by a local authority or provided with accommodation within the meaning of section 105(1) of the Children Act 1989,
- he shall be treated as a child whose parents have no income for the purposes of these Regulations, and any reference to his parents shall be construed as a reference to the authority or organisation which looks after him or provides him with accommodation.
- (4) Where a child has been adopted pursuant to an order of a court of competent jurisdiction, references in paragraph (2)(a) and (b) to "father" and "mother" shall be construed as references to the adoptive parents of the child and not his natural parents.
- (5) Except where the context otherwise requires, any reference in these Regulations to
- (a) a numbered Part, regulation or Schedule is a reference to the Part, regulation or Schedule in these Regulations so numbered; and
  - (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

## PART II

### *Eligibility for assisted places*

#### **General**

**3.—(1)** A school may select a child for an assisted place if, and only if, the school is satisfied that all the conditions mentioned in this Part are, so far as relevant, fulfilled in his case.

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(6) 1989 c. 41.

(2) Nothing in this regulation shall prevent a child from being provisionally selected for an assisted place subject to the condition that the child will not be finally selected for that place until it is ascertained that all such conditions are fulfilled.

(3) If a school shall ascertain that any relevant condition specified in this Part is not satisfied in respect of a child provisionally selected for an assisted place, the school shall withdraw that assisted place forthwith, and the parents shall be liable to repay any remission of fees provisionally allowed by the school.

(4) It shall be a condition that parents seeking an assisted place for their child at a school shall have applied for an assisted place by the time and in the manner and form specified by the Secretary of State pursuant to regulation 16.

(5) In this Part “first assisted year” means the school year in which the child would take up an assisted place if selected therefor.

### **Conditions as to residence**

4.—(1) Subject to paragraphs (3) and (4), it shall be a condition that the child shall—

- (a) have been ordinarily resident in the British Islands throughout the period of two years preceding the relevant date, or
- (b) be an EEA national—
  - (i) who has been ordinarily resident in the European Economic Area throughout the period of two years preceding the relevant date, and
  - (ii) to whom paragraph (2) applies, or
- (c) be a refugee or the child of a refugee who has not been ordinarily resident outside the British Islands since he or, as the case may be, his parent, was recognised as a refugee or granted leave to enter or remain in the British Islands as a refugee.

(2) The child referred to in paragraph (1)(b) is one who is, or whose parents are, entitled to equality of treatment as regards selection for an assisted place by virtue of Article 7(2) or (3) or Article 12 of Council Regulation (EEC) No. 1612/68 on Freedom of Movement for Workers within the European Community(7), as extended by the EEA Agreement.

(3) A child shall be treated for the purposes of paragraph (1)(a) and (b) as having been ordinarily resident in the British Islands or in the European Economic Area if the school is satisfied that he would have been so resident but for the fact that his parent is or was temporarily employed outside the British Islands or the European Economic Area during any part of the period mentioned in those sub-paragraphs.

(4) For the purposes of paragraph (1)(b), a child who is resident in a State which became a Contracting Party to the EEA Agreement on a date later than the beginning of the two year period mentioned in that sub-paragraph, shall be treated as having been ordinarily resident in the European Economic Area for that period if he has been so resident in the said state or elsewhere in the European Economic Area throughout the period of two years preceding the relevant date.

### **Conditions as to age**

5.—(1) It shall be a condition that the child—

- (a) either shall have attained the age of 11 years by the beginning of his first assisted year or in the case of a child who, if selected for an assisted place, would be provided with education with pupils the generality of whom would have attained that age by that date,

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(7) OJ No. L257, 19.10.68, p.2 (OJ/SE 1968 (II) p.475).

shall be of such age that he will have attained the age of 11 years before 1st September next following the beginning of his first assisted year, and

- (b) subject to paragraph (2), shall be of such age that he will, on 1st September in the calendar year in which his first assisted year begins, be of an age specified in the participation agreement as a normal age of entry to the school to which it is intended that the child should be admitted, or will attain that age before 1st September next following the beginning of his first assisted year.

(2) Paragraph (1)(b) shall not apply in the case of a child selected for education in the sixth form of a school in accordance with regulation 6 or in the case of a child who, if selected for an assisted place, will be provided with education in the same class as assisted pupils who were admitted to the school in an earlier school year.

#### **Conditions as to selection at sixth form level**

6. A child shall be eligible for selection for an assisted place in the sixth form of a school, that is to say in a form where he would be provided with education appropriate to pupils taking advanced level examinations for the General Certificate of Education or other comparable examinations, if—

- (a) the participation agreement expressly provides for the selection of pupils who will be provided with education in the sixth form of the school and the child satisfies any relevant conditions specified in that agreement, or
- (b) the child is already attending the school when being considered for an assisted place and, if selected, would be provided with education in the sixth form of the school along with assisted pupils of a similar age who were admitted in an earlier school year.

#### **Conditions as to income**

7.—(1) It shall be a condition that the parents of the child, when applying to the school for an assisted place, shall have furnished the school with—

- (a) a declaration of relevant income for the preceding financial year or, if they have not the necessary information:
    - (i) a declaration of estimated relevant income for that year; and
    - (ii) a declaration of relevant income for the financial year before that year; and
  - (b) such other information as may be specified for the purposes hereof by the Secretary of State.
- (2) A school shall not select for an assisted place—
- (a) a child whose fees for his first assisted year would not fall to be remitted in whole or in part pursuant to Part III; or
  - (b) a child the whole of whose fees for his first assisted year are required to be paid pursuant to an order of a court or a separation agreement.

#### **Academic conditions**

8.—(1) A school shall not select a child for an assisted place unless the school are satisfied that he is likely to benefit from the education provided at the school.

(2) The selection of children for assisted places at a school shall, subject to paragraph (1) and any relevant provisions in the participation agreement, be made by the school in accordance with such methods and procedures as appear appropriate to the school.

## PART III

### *Remission of Fees*

#### **References to remission questions**

9. For the purposes of these Regulations “remission questions” means questions as to whether or not the parents of an assisted pupil are entitled to any remission of fees payable by the parents to the school in respect of that pupil, and the extent of such remission.

#### **References to financial years**

10.—(1) Subject to paragraph (2), in these Regulations “financial year” means, a year ending on 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 trade, 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 on such date as appears to the school expedient having regard to the accounts kept in respect of that trade, profession or vocation and the periods covered thereby (“the Parents' Accounting Year”):

Provided that where the Parents' Accounting 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 latest Parents' Accounting Year ending before 6th April in the calendar year in which the school year begins and “current financial year” shall mean the parents' Accounting Year which includes the first day of the school year.

#### **References to income**

11.—(1) For the purposes of these Regulations, the income of any person for a financial year shall be taken to be his total income for that year; and, subject to the provisions of Schedule 1, in this paragraph and that Schedule “total income” has the same meaning as in section 1(2)(b) of the Income and Corporation Taxes Act 1988<sup>(8)</sup>

(2) For the purposes of these Regulations “relevant income” as regards an assisted pupil means, in relation to any financial year, the income of the assisted pupil's parents aggregated with the unearned income of—

- (i) the assisted pupil himself, and
- (ii) any children (apart from the assisted pupil) of the parents who are wholly or mainly dependent on one or both of them at the time the relevant income is calculated

less, where paragraph (3) or(5) applies, the sum there mentioned.

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 £1,165 in respect of each person other than the assisted pupil who—

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(8) 1988 c. 1. Section 1(2)(b) was amended by section 24(2)(a) of the Finance Act 1988 (c. 39).

- (a) at the time the relevant income is calculated, is wholly or mainly dependent on one or both of the parents or on payments made to him or for his benefit as mentioned in paragraph (4), and
  - (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 payments 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 purpose of these Regulations.
- (5) Where a child (other than the assisted pupil) who is wholly or mainly dependent on one or both of the parents or on payments made to him or for his 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 £1,165 in respect of the parental contribution which is assumed to be available as part of the resources of that child, that higher sum shall be deducted from the relevant income in lieu of the £1,165 prescribed in respect of that child by paragraph (3).
- (6) An award referred to in paragraph (5) is—
- (a) 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(9) providing for the payments of awards to students attending specified courses of further or higher education(10); or
  - (b) an allowance granted by the Secretary of State for Scotland pursuant to regulations from time to time in force or having effect under sections 73 and 74 of the Education (Scotland) Act 1980(11) providing for the payment of allowances to students(12); or
  - (c) an award made by
    - (i) an education and library board in Northern Ireland pursuant to article 50 of the Education and Libraries (Northern Ireland) Order 1986(13) and regulations from time to time in force thereunder(14), being an award for the purposes of enabling or encouraging the holder to take advantage of educational facilities specified in or designated under such regulations; or
    - (ii) an education and library board in Northern Ireland pursuant to article 51 of the said Order and regulations from time to time in force thereunder(15) being an award in respect of attendance at a course for the training of teachers.
- (7) In this Regulation any reference to the parents of an assisted pupil is a reference to the persons who are his parents (as defined in regulation 2(2)) at the time that the relevant income is calculated.

(9) 1962 c. 12; section 1 was substituted by section 19 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).

(10) The Regulations in force at the date on which these Regulations are made are the Education (Mandatory Awards) (No. 2) Regulations 1993 (S.I. 1993/2914) and the Education (Mandatory Awards) (Amendment) Regulations 1994 (S.I. 1994/1606). Both of the said regulations are to be revoked on 1st September 1995 and replaced by the Education (Mandatory Awards) Regulations 1994 (S.I. 1994/3044).

(11) 1980 c. 44.

(12) The Regulations in force at the date on which these Regulations are made are the Students' Allowances (Scotland) Regulations 1991 (S.I. 1991/1552), as amended by S.I. 1993/3184 and S.I. 1994/3148. The administrative arrangements for assessing assumed parental contributions were set out in the "Guide to Undergraduate Allowances 1994/95" (Form AB2) published in April 1994 by the Students Awards Agency for Scotland, copies of which are obtainable from Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH.

(13) S.I. 1986/594 (N.I.3).

(14) The Regulations in force at the date on which these Regulations are made are the Students Awards Regulations (Northern Ireland) 1995 (S.R. (N.I.) 1995 No. 1).

(15) The Regulations in force at the date on which these Regulations are made are the Students Awards Regulations (Northern Ireland) 1995 (S.R. (N.I.) 1995 No. 1).

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

**12.**—(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 his assisted place or (in lieu of notice or otherwise) after he has left the school or, if he so remains at the school, after the end of the school year in which he attains the age of 20 years.

(2) The parents of an assisted pupil shall not be entitled to any remission of fees which are required to be paid in pursuance of an order of a court or a separation agreement.

(3) If the parents of an assisted pupil do not

- (a) duly apply to the school for remission of fees payable for a particular school year, or
- (b) subject to regulation 14(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.

(4) If the Secretary of State is satisfied that, in the case of a particular assisted pupil, his parents have knowingly or recklessly furnished information required for determining remission questions which is false in a material particular, subject to paragraph (5), she may direct that those parents shall not be entitled to any remission of fees in the case of that pupil and, if she so directs, in the case of any other of their children who are assisted pupils, as respects a specified school year and, if she so directs, any subsequent school year.

(5) The Secretary of State shall not give a direction pursuant to paragraph (4) without—

- (i) affording the parents concerned an opportunity to make representations, and
- (ii) considering any such representations.

(6) The Secretary of State may vary or revoke a direction made pursuant to paragraph (4).

(7) This regulation shall have effect notwithstanding anything in regulation 13 or any other provision of these Regulations.

### **Determination of remission questions**

**13.**—(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 of fees as respects a previous school year.

(2) Where—

- (a) a child holds an assisted place at the school for part only of the school year, or
- (b) the parents have two or more children who are assisted pupils but the number of those children holding assisted places differs for different parts of the school year,

the school shall determine remission questions for that part, or separately for those parts, and the extent to which fees payable in respect of the part (or parts) of the 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 (or parts) bear to the fees for the whole school year.

### **Calculation of remission**

**14.**—(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 and the school is satisfied that the income of the surviving parent in the current financial year, when aggregated with that of the deceased parent, is likely to be less than their aggregated income in



the preceding financial year, 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 pupils' parents in paragraph (2) of regulation 11 included a reference to the deceased parent (notwithstanding paragraph (7) of that regulation).

(3) If, in a case not falling within paragraph (2),—

- (a) the school are satisfied that the relevant income in the current financial year is, as a result of some event beyond the control of the pupils' parents, likely to be not more than 85 per cent of the relevant income in the preceding financial year, or
- (b) (i) 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  
(ii) the Secretary of State agrees that this paragraph should operate in respect of the assisted pupil concerned,

remission questions shall be determined as regards the school year in question and, unless and until the Secretary of State otherwise directs, any subsequent school year, 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.

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

- (a) no such provisional determination shall be more favourable to the parents than a determination computed 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 for the appropriate financial year or the school are satisfied that it has become reasonably practicable for them to furnish it but they have not done so, and
- (c) within three months of the final determination of the remission questions any over-remission or under-remission of fees shall be adjusted by payments between the parents and the school.

(5) For the purposes of paragraph (4) the expression “appropriate financial year” means the preceding financial year except where paragraph (2) or (3) applies in which case it means the current financial year.

### **Scales of remission**

15. Fees shall be remitted in accordance with the provisions of Schedule 2.

## **PART IV**

### *Administrative Arrangements*

### **Time limits, forms etc.**

16. The Secretary of State may specify for the purposes of these Regulations

- (a) the time by which, and the manner and form in which, applications, declarations of relevant income or estimated income and other information requisite for the purposes of these Regulations are to be made or furnished to a school by the parents of an assisted pupil, or by parents applying for an assisted place, and the documentary or other evidence to be provided in support thereof;
- (b) the time by which, and the manner and form in which, a school are to notify the parents of an assisted pupil as to whether they are entitled to any remission of fees for a particular school year and, if so, the extent of remission.

### **Reimbursement claims**

**17.**—(1) A school may submit to the Secretary of State a claim for the reimbursement of fees remitted in pursuance of these Regulations or regulations revoked by regulation 24(1) (“a reimbursement claim”) in respect of such periods, not being less than a term, as appear to the school to be appropriate and, with the consent of the Secretary of State, a school may submit a claim on the basis of an estimate of fees so remitted (“a provisional claim”); but, where a provisional claim is submitted, the school shall, as soon as is reasonably practicable, submit a reimbursement claim in respect of the period in question which is not based on such an estimate and that claim shall supersede the provisional claim.

(2) As soon as is reasonably practicable after she is satisfied that a reimbursement claim is in order, the Secretary of State shall reimburse the school in respect of the claim, although she may, where she considers it expedient to do so, make earlier payments on account of that claim or in respect of a provisional claim relating to the same period.

(3) Any over-payment or under-payment by way of reimbursement which appears to the Secretary of State to have occurred shall be adjusted as soon as is reasonably practicable by payments between the Secretary of State and the school concerned.

(4) Subject to the preceding provisions of this regulation, a reimbursement claim shall be made at such times, in such manner and form and be supported by such declarations and other information, as the Secretary of State may require.

## **PART V**

### *Miscellaneous Requirements*

#### **Publication of information**

**18.**—(1) Each school shall publish—

- (a) particulars of the assisted places scheme;
- (b) for each school year the number of assisted places likely to be offered in that year, information concerning the procedure for the making of applications for assisted places, and details of the arrangements for selection, admission and fee remission;
- (c) the information as to the public examinations for which pupils at the school are entered and as to the results obtained by such pupils which the school would be required to publish pursuant to section 8(5) of the Education Act 1980<sup>(16)</sup> and regulations from time to time in force thereunder<sup>(17)</sup> if it were a school maintained by a local education authority; and

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<sup>(16)</sup> Subsection (5) was substituted by section 21(7) and Schedule 4, paragraph 4 of the Education (Schools) Act 1992 (c. 38).

<sup>(17)</sup> The Regulations in force at the date on which these Regulations are made are, as regards England, the Education (School Information) (England) Regulations 1994 (S.I. 1994/1421) (as amended by S.I. 1994/2103 and S.I. 1994/2387) and, as regards Wales, the Education (School Information) (Wales) Regulations 1994 (S.I. 1994/2330).

(d) such other information as may be specified for the purposes of this regulation by the Secretary of State.

(2) Subject to any directions given by the Secretary of State for the purposes of this regulation, either generally or in the case of a particular school, anything required to be published under paragraph (1) shall be published in such manner, and at such time or times, as appears to the school appropriate for the purpose of bringing the matter to the attention of parents likely to be interested therein.

### **Proportion of pupils from publicly maintained schools**

**19.**—(1) Subject to paragraph (4), in selecting pupils to take up assisted places in any school year, a school shall ensure that at least 60 per cent of the total number of assisted pupils at the school in that school year will be pupils from publicly maintained schools.

(2) For the purposes of paragraph (1), a pupil is from a publicly maintained school if, at the time of his selection (or consideration for selection) for a place (whether assisted or not) at the participating school, he is attending a publicly maintained school as defined in paragraph (3) and has attended a publicly maintained school for a continuous period including at least the whole of the previous school year, provided that a child who has so attended a school of the type maintained in paragraph (3)(e) is not to be regarded as a pupil from a publicly maintained school if fees were payable in respect of his attendance there.

(3) A “publicly maintained school” for the purposes of paragraph (2) means—

- (a) a school maintained by a local education authority,
- (b) a grant-maintained, or a grant-maintained special, school,
- (c) a school under the management of an education authority in Scotland,
- (d) a self-governing school in Scotland within the meaning of the Self-Governing Schools etc. (Scotland) Act 1989<sup>(18)</sup>,
- (e) a grant-aided school in Northern Ireland within the meaning of the Education and Libraries (Northern Ireland) Order 1986<sup>(19)</sup>, or
- (f) a school maintained by the Secretary of State for Defence.

(4) On application made by a school, the Secretary of State may modify or dispense with the requirement in paragraph (1) as respects a year specified by her but she may attach such conditions as she thinks fit to any such modification or dispensation.

### **Fees, etc., payable**

**20.**—(1) In the case of an assisted pupil the school shall not make it a condition of his attendance that any payment otherwise than in respect of fees be made to the school, or into a fund (including a bursary or similar fund) specified by the school.

(2) The fees for assisted pupils for any school year (other than entrance fees for public examinations) shall be payable in respect of each term and, subject to any increase in fees in the course of the school year, the fees payable in respect of each term shall be a third of those payable for the whole of that year.

(3) This regulation shall have effect subject to any provisions relating to fees in the participation agreement.

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<sup>(18)</sup> 1989 c. 39.

<sup>(19)</sup> S.I. 1986/594 (N.I. 3).

### **Increase in fees**

**21.** A school shall not increase the fees for an assisted pupil unless the school have given the Secretary of State at least one month's written notice of their intention so to do and, if within fourteen days of receiving such notice the Secretary of State so directs, a school shall refrain from making the increase or shall postpone or restrict the amount of the increase as she may then or subsequently require.

### **Returns, etc., required by the Secretary of State**

**22.** A school shall furnish the Secretary of State with such periodic returns and information as she may require relating to the school or assisted pupils attending there including, in particular, information relevant to an intended increase in fees for assisted pupils.

### **School accounts**

**23.—**(1) The accounts of a school shall

- (a) if the Secretary of State so requires, be kept in a form specified by her;
- (b) be audited by an independent person who is eligible under section 25 of the Companies Act 1989<sup>(20)</sup> for appointment as a company auditor.

(2) At the request of the Secretary of State, a school shall furnish her with copies of their accounts for such periods as she may specify together with copies of the auditor's certificate relating thereto.

## **PART VI**

### *Revocation and transitional provisions*

#### **Revocation and transitional provisions**

**24.—**(1) Subject to paragraphs (2) and (3), the Regulations specified in Schedule 3 ("the old Regulations") are hereby revoked.

(2) In the case of a child who held an assisted place in the most recent school year beginning before 25th August 1995, any reference in these Regulations to the parents of that child shall be construed, for the purposes of the application of these Regulations in relation to a school year immediately following one in which the child held an assisted place (whether under these Regulations or the old Regulations), as a reference to the persons who are his parents within the meaning of regulation 2(2) to (5) of the Education (Assisted Places) Regulations 1989<sup>(21)</sup>, as amended by the Education (Assisted Places) (Amendment) Regulations 1991<sup>(22)</sup>.

(3) The old Regulations shall continue to apply for the purposes of the reimbursement of any fees remitted by a school in accordance with the old Regulations.

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<sup>(20)</sup> 1989 c. 28.

<sup>(21)</sup> S.I. 1989/1235.

<sup>(22)</sup> S.I. 1991/1767.

## SCHEDULE 1

Regulation 11

### COMPUTATION OF INCOME

1.—(1) This Schedule shall have effect for the purposes of determining a person's income for the purposes of these Regulations by reference to his total income.

(2) In this Schedule any reference to the Act of 1988 is a reference to the Income and Corporation Taxes Act 1988(23).

2. Where any income of a person is not part of his total income by reason only that—

- (a) he is not resident, ordinarily resident or domiciled in the United Kingdom, or
- (b) the income does not arise in the United Kingdom, or
- (c) the income arises from an office or employment, income from which is exempt from tax in pursuance of any enactment,

his income for the purposes of these Regulations shall be computed as though the income first mentioned in this paragraph were part of his total income.

3.—(1) For the purposes of these Regulations, a person's total income shall be computed as though there did not fall to be made any of the deductions or reliefs mentioned in sub-paragraph (2) below.

(2) The deductions or reliefs referred to in sub-paragraph (1) above are any which fall to be made—

- (a) by way of personal reliefs provided for in Chapter 1 of Part VII of the Act of 1988, other than in section 265 thereof (relief for blind persons);
- (b) pursuant to Chapters I, II and III of Part XIV of the Act of 1988 so far as applicable in respect of superannuation or other payments made by a person, or in respect of deductions made from his salary, for the purpose of securing the payment to or in respect of him of pensions, annuities or other future benefits;
- (c) pursuant to section 639(1) of the Act of 1988 (relief for contributions to personal pension schemes);
- (d) in respect of payments by way of relevant loan interest within the meaning of section 370 of the Act of 1988;
- (e) pursuant to section 353(1) and (1A) to (1H) of the Act of 1988(24) in respect of interest payments eligible for relief or deduction by virtue of section 354 of that Act (loan for purchase or improvement of land) or by virtue of section 365 of that Act(25) (loan to buy life annuity);
- (f) in respect of any sums paid under a deed of covenant otherwise than to a child of the person concerned who is wholly or mainly dependent upon him;
- (g) pursuant to section 193(1) of the Act of 1988 in respect of earnings from work done abroad;
- (h) pursuant to section 617(5) of the Act of 1988(26) (relief for Class 4 contributions);

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(23) 1988 c. 1.

(24) Section 353(1) was amended by section 81(1) of the Finance Act 1994 (c. 9). Subsections (1A) to (1H) were inserted by section 81(2) of the Finance Act 1994. Section 353(1B) was amended by section 42(2)(a) of the Finance Act 1995 (c. 4). Further, minor amendments were made to section 353 by Schedule 29 to the Finance Act 1995.

(25) Section 365 was amended by section 57(3) of the Finance Act 1993 (c. 34).

(26) Section 617(5) was amended by the Social Security (Consequential Provisions) Act 1992 (c. 6) and by section 4 of the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9).

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- (i) pursuant to sections 574, 575 and 576 of the Act of 1988**(27)** (relief for losses on unquoted shares in trading companies);
- (j) pursuant to Chapter III of Part VII of the Act of 1988 (relief for investment in corporate trades) but, in relation to shares issued before 1st January 1994, disregarding the amendments made thereto by section 137 of and Schedule 15 to the Finance Act 1994**(28)**;
- (k) pursuant to section 202(1) to (7) and (11) of the Act of 1988**(29)** (relief for donations under payroll deduction scheme);
- (l) pursuant to regulations made under section 333 of the Act of 1988**(30)** (relief for investments under personal equity plans);
- (m) pursuant to section 54 of the Finance Act 1989**(31)** (Relief for medical insurance);
- (n) pursuant to section 25 of the Finance Act 1990**(32)** (relief for donations to charity by individuals);
- (o) pursuant to sections 32 and 33 of the Finance Act 1991**(33)** (relief for vocational training);  
or
- (p) pursuant to section 59 of and Schedule 10 to the Finance (No. 2) Act 1992**(34)** (relief for letting furnished accommodation in owner occupied homes).

4. There shall be left out of account, in computing a person's total income for the purpose of these Regulations, any allowance paid to him by an adoption agency pursuant to regulations made under section 57A of the Adoption Act 1976**(35)** and any contributions paid to him by a local authority under paragraph 15 of Schedule 1 to the Children Act 1989**(36)**, any assistance given by a local authority in cash under paragraph 5 of Schedule 2 to that Act and any payment made by a local authority under paragraph 16 of that Schedule.

5.—(1) Where any income of a person includes a maintenance payment, his income for the purposes of these Regulations shall be computed as though such payment were part of his total income, whether or not such payment or any part of it would be included in his total income for tax purposes.

(2) Where a person makes a maintenance payment, his income for the purposes of these Regulations shall be computed as though such payment were not part of his total income, whether or not such payment or any part of it would be deductible for tax purposes.

(3) For the purposes of sub-paragraph (1) and (2) of this paragraph, "maintenance payment" means a periodical payment (not including an instalment of a lump sum) which—

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(27) Section 574 was amended by section 148 of the Finance Act 1988 (c. 39) and by section 290(1) of the Taxation of Chargeable Gains Act 1992 (c. 12). Section 575 was amended by section 290(1) of the Taxation of Chargeable Gains Act 1992. Section 576 was amended by section 107 of the Finance Act 1989 (c. 26) and by section 290(1) of the Taxation of Chargeable Gains Act 1992.

(28) 1994 c. 9.

(29) Section 202(7) was amended by section 68 of the Finance Act 1993 (c. 34).

(30) Section 333 was amended by section 70 of the Finance Act 1991 (c. 31).

(31) 1989 c. 26, as amended by paragraphs 1 and 2 of Schedule 10 to the Finance Act 1994.

(32) 1990 c. 29. Section 25 of the Finance Act 1990 was amended by section 71(5) of, and Part V of Schedule 19 to, the Finance Act 1991 (c. 31), and by section 67(2) of the Finance Act 1993 (c. 34).

(33) 1991 c. 31. Section 32 of the Finance Act 1991 was amended by section 84 of, and Part V(4) of Schedule 26 to the Finance Act 1994 (c. 9). Section 33 of the 1991 Act was amended by Part VII(1) of Schedule 18 to the Finance (No. 2) Act 1992 (c. 48).

(34) 1992 c. 48.

(35) 1976 c. 36; section 57A was inserted by section 88(1) of and Schedule 10, Part I, paragraph 25 to the Children Act 1989 (c. 41); the Regulations in force at the date on which these Regulations are made are the Adoption Allowance Regulations 1991 (S.I. 1991/2030) as amended by S.I. 1991/2130 and S.I. 1991/2742.

(36) 1989 c. 41.

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- (a) is made pursuant to an order made by a court (whether in the United Kingdom or elsewhere) or under any arrangement made by the Child Support Agency pursuant to the Child Support Act 1991(37) or under a separation agreement, and
- (b) is made by:
  - (i) one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit and for the maintenance of the other party; or
  - (ii) one or both of the parents of an assisted pupil to or for the benefit, and for the maintenance or education, of any child of one or both of the parents; or
  - (iii) by another person to or for the benefit, and for the maintenance or education, of a child (including the assisted pupil) of one or both of the parents of an assisted pupil; and
- (c) is due at a time when—
  - (i) as regards a maintenance payment of the nature described in sub-paragraph (b)(i), the said parties are not living together as husband and wife; or
  - (ii) as regards a maintenance payment of the nature described in sub-paragraph (b)(ii) or (iii), the person making the payment does not reside in the same household as the child to whom or for whose benefit the payment is made.

SCHEDULE 2

Regulation 15

SCALES OF REMISSION

1. Where the relevant income for the appropriate financial year does not exceed 9,572 the fees shall be wholly remitted.

2.—(1) In any other case, but subject to paragraph 4 and to sub-paragraph (2) below, the fees for a school year in respect of each assisted pupil shall be remitted to the extent (if any) necessary to secure that the parents' residual liability for that pupil's fees corresponds to an amount (rounded down to the nearest multiple of £3) equal to the aggregate of the specified percentages of those parts of the relevant income referred to in column (1) of the following table, being the percentages—

- (a) specified opposite the parts of the relevant income in column (2), where only one child of the parents is an assisted pupil; or
- (b) so specified in column (3) or (4) where two or three children of the parents (as the case may be) are assisted pupils (whether at the same or different schools).

TABLE

(1) Part of relevant income to which specified percentage applies	(2) Only assisted pupil (%)	(3) Each of two assisted pupils (%)	(4) Each of three assisted pupils (%)
That part which exceeds £9,406 but does not exceed £10,228	9	6.75	5.25

(37) 1991 c. 48.

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(1) Part of relevant income to which specified percentage applies	(2) Only assisted pupil (%)	(3) Each of two assisted pupils (%)	(4) Each of three assisted pupils (%)
That part (if any) which exceeds £10,228 but does not exceed £11,063	12	9	7
That part (if any) which exceeds £11,063 but does not exceed £12,720	15	11.25	8.75
That part (if any) which exceeds £12,720 but does not exceed £15,271	21	15.75	12.25
That part (if any) which exceeds £15,271 but does not exceed £18,599	24	18	14
That part (if any) which exceeds £18,599	33	24.75	19.25

(2) Where more than 3 children of the parents are assisted pupils, the fees for a school year in respect of the fourth and each subsequent child to be selected for an assisted place shall be wholly remitted and those in respect of each of the remaining children shall be remitted in accordance with sub-paragraph (1) above.

3. Where the parents of an assisted pupil also have a child who is an aided pupil by virtue of a grant paid pursuant to regulations from time to time in force under section 100 of the Education Act 1944<sup>(38)</sup> to a school of music or ballet<sup>(39)</sup>, the parents' residual liability for the fees of the assisted pupil shall be calculated pursuant to paragraph 2 above as if their child who is an aided pupil were an assisted pupil for the purposes of that paragraph.

4.—(1) Where the school or any registered charity has awarded a bursary or scholarship in respect of the assisted pupil, the amount of the bursary or scholarship shall be ignored for the purpose of calculating the parent's residual liability.

(2) That residual liability shall be reduced or extinguished by the bursary or scholarship.

(3) Where the amount of any such bursary or scholarship exceeds the parents' residual liability, the excess shall be deducted from the relevant reimbursement claim in respect of the assisted pupil.

<sup>(38)</sup> 1944 c. 31; section 100(1)(b) was amended by section 213(3) of the Education Reform Act 1988 (c. 40).

<sup>(39)</sup> The Regulations applicable at the date when these Regulations are made are the Education (Grants) (Music, Ballet and Choir Schools) Regulations 1995 (S.I. 1995/2018).



SCHEDULE 3

Regulation 24(1)

REVOCATION

Regulations revoked	References
The Education (Assisted Places) Regulations 1989	<a href="#">S.I. 1989/1235</a>
The Education (Assisted Places) (Amendment) Regulations 1990	<a href="#">S.I. 1990/1546</a>
The Education (Assisted Places) (Amendment) Regulations 1991	<a href="#">S.I. 1991/1767</a>
The Education (Assisted Places) (Amendment) Regulations 1992	<a href="#">S.I. 1992/1798</a>
The Education (Assisted Places) (Amendment) Regulations 1993	<a href="#">S.I. 1993/1936</a>
The Education (Assisted Places) (Amendment) Regulations 1994	<a href="#">S.I. 1994/2034</a>

27th July 1995

*Cheryl Gillan*  
Parliamentary Under Secretary of State,  
Department for Education and Employment

31st July 1995

*William Hague*  
Secretary of State for Wales

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations consolidate, with amendments, the Education (Assisted Places) Regulations 1989 which, with the Regulations amending them, are revoked by regulation 24(1). They come into force on 25th August 1995 and apply in relation to a school year beginning on or after that date (regulation 1).

The Regulations relate to the scheme for assisted places at independent schools established pursuant to section 17 of the Education Act 1980.

Apart from minor drafting amendments, the main changes made are set out below.

1. In Part I, the definition of “parents” in regulation 2(2) has been revised to take account of the provisions of the Children Act 1989 and to limit the definition to the person(s) with whom the child resides in the same household. In relation to a child selected for an assisted place under the 1989 Regulations (as amended) in the school year 1994/95, the previous definition of “parents” will

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continue to apply for the school year 199596 and other school years immediately following ones in which the child holds an assisted place (regulation 24(2)).

2. In Part II (which deals with eligibility for assisted places), the condition relating to residence (regulation 4) has been revised to:

- (i) remove the requirement that a child who is a national of a member state of the European Community be resident in the British Islands on the relevant date; and
- (ii) take account of the European Economic Area agreement.

3. In Part III, dealing with remission of fees, the reduction to be made in relevant income in respect of dependent relatives pursuant to regulation 11(3) and (5) has been increased to £1,165 (from £1,140 in the previous Regulations).

4. In Part V, the requirement in regulation 23(1) for the accounts of schools to be audited is amended to require the auditor to be a person who is eligible to audit company accounts.

5. In Schedule 1, paragraph 5(3):

- (i) certain maintenance payments made to or for the benefit of an assisted pupil by an absent parent, are to be taken into account in assessing “total income” for the purposes of the Regulations; and
- (ii) such payments made by a parent with whom the pupil resides, to or for the benefit of another child not in the same household, are to be left out of account in making that assessment.

Under the previous Regulations, such payments were only taken into or left out of account where they were made by a party to a marriage or former marriage.

6. In Schedule 2, the means test for the remission of fees is relaxed: the level of income at or below which fees are to be wholly remitted is set at £9,572 instead of £9,352, with corresponding increases in the extent of remission where relevant income exceeds that sum.