
STATUTORY INSTRUMENTS

1998 No. 3237 (C. 81)

**EDUCATION, ENGLAND AND WALES
EDUCATION, SCOTLAND**

**The Teaching and Higher Education Act 1998 (Commencement
No. 4 and Transitional Provisions) Order 1998**

Made - - - - 21st December 1998

In exercise of the powers conferred by sections 42(6) and 46(4) of the Teaching and Higher Education Act 1998(1), the Secretary of State for Education and Employment hereby makes the following Order:—

Citation and interpretation

1.—(1) This Order may be cited as the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order 1998.

(2) In this Order—

“the 1962 Act” means the Education Act 1962(2);

“the 1998 Act” means the Teaching and Higher Education Act 1998;

“award” means an award under the 1962 Act;

“DipHE course”, “first degree course”, “HND course” and “postgraduate course for the initial training of teachers” have the same meanings as in the Education (Mandatory Awards) Regulations 1998(3);

“first year” in relation to a course means the first of the twelve month periods beginning on 1st January, 1st April, 1st July or 1st September according as the academic years of the course in question begin in the winter, the spring, the summer or the autumn respectively; but if students are required to begin attending the course during August or September and to continue attending through the autumn the first year of the course shall be considered to begin in the autumn rather than the summer;

“old award” means an award under section 1(1) of the 1962 Act which is an old award within the meaning of the Education (Mandatory Awards) Regulations 1998 or an award under

(1) 1998 c. 30.

(2) 1962 c. 12.

(3) S.I. 1998/1116, amended by the Education (Mandatory Awards) Regulations 1998 (Amendment) Regulations 1998 (S.I. 1998/1972).

section 1(6) of that Act which is an old award for the purposes of those Regulations as applied to such awards by virtue of section 1(7) of that Act.

Provisions coming into force

2.—(1) Subject to articles 3 and 4 section 44(2) of the 1998 Act shall come into force on 1st January 1999 for the purpose of bringing into force the repeal in Schedule 4 to that Act of—

- (a) the 1962 Act;
- (b) section 3 of the Education Act 1973(4);
- (c) section 19 of and Schedule 5 to the Education Act 1980(5);
- (d) in section 2(3) of the Education (Fees and Awards) Act 1983(6), paragraph (a) and in paragraph (b) the word “other”;
- (e) section 209 of the Education Reform Act 1988(7); and
- (f) in section 578 of the Education Act 1996(8) the entries relating to the 1962 Act and the Education (Student Loans) Acts of 1990, 1996 and 1998.

(2) Section 44(2) of the 1998 Act shall also come into force on 1st January 1999 for the purpose of bringing into force the repeal in Schedule 4 to that Act of paragraphs (h) and (j) of Schedule 2 to the Charities Act 1993(9).

(3) Sections 37 and 38 of the 1998 Act shall come into force on 1st January 1999.

(4) Section 39 of the 1998 Act shall come into force on 1st February 1999.

(5) Section 36 of the 1998 Act shall come into force on 1st April 1999.

Transitional and saving provisions

3.—(1) The repeal of the provisions of the Acts mentioned in article 2(1) shall not affect the continued operation of those provisions or of any subordinate legislation made or to be made under them with respect to, or otherwise in connection with—

- (a) awards bestowed before the coming in force of the repeal of the provisions;
- (b) the bestowing of awards on any student who attends any course referred to in article 4;
- (c) awards bestowed on any such student.

(2) Without prejudice to the generality of paragraph (1), the repeal of the 1962 Act shall not affect the continued operation of the provisions of that Act relating to the making of subordinate legislation.

4. The courses referred to in article 3(1)(b) are:

- (a) a course the first year of which begins before 1st September 1999;
- (b) a first degree course where—
 - (i) the student begins to attend the course immediately after ceasing to attend a DipHE course or an HND course (disregarding any intervening vacation), and
 - (ii) an award bestowed on him in respect of his attendance at the DipHE or HND course was an old award, or where no award was bestowed an award would have been an old award if it had been bestowed;
- (c) a postgraduate course for the initial training of teachers where—

(4) 1973 c. 16.
 (5) 1980 c. 20.
 (6) 1983 c. 40.
 (7) 1988 c. 40.
 (8) 1996 c. 56.
 (9) 1993 c. 10.

- (i) the student begins to attend the course immediately after ceasing to attend a first degree course (disregarding any intervening vacation), and
- (ii) an award bestowed on him in respect of his attendance at the first degree course was an old award, or where no award was bestowed an award would have been an old award if it had been bestowed.

21st December 1998

Tessa Blackstone
Minister of State,
Department for Education and Employment

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions of the Teaching and Higher Education Act 1998 specified in article 2 on the days specified in that article. Article 2(1) brings into force the repeal of the Education Act 1962 on 1st January 1999, and other minor and consequential repeals. This will facilitate the change from local education authority mandatory and discretionary awards under the 1962 Act to financial support for students under section 22 of the 1998 Act, in the form of means tested grants for fees and loans for maintenance provided by the Secretary of State.

Articles 3 and 4 contain transitional and saving provisions, ensuring that payments will continue to be made pursuant to awards bestowed under the 1962 Act before its repeal. They also ensure that awards may be bestowed after its repeal in respect of courses beginning before 1st September 1999, and in respect of certain first degree and postgraduate courses for the initial training of teachers beginning after that date. In particular the power to make or amend regulations under the 1962 Act is preserved in relation to awards made under it.

Article 2(2) brings into force repeals of two entries in Schedule 2 to the Charities Act 1993, concerning the charitable status of further and higher education corporations. This follows the coming into force on 1st October 1998 of section 41 of the 1998 Act, which deals with the same issue.

Article 2(3) brings into force section 37 and 38 of the 1998 Act on 1st January 1999. Section 37 introduces a new section into the Further and Higher Education (Scotland) Act 1992, which provides for the joint exercise of functions by the Scottish Higher Education Funding Council and the Scottish Further Education Funding Council. Section 38 inserts a new paragraph in section 19(6) of the Disability Discrimination Act 1995, providing that the Scottish Further Education Funding Council is a relevant body for the purposes of section 19(5) of that Act. Education funded or secured by it or provided at an establishment funded by it will not be subject to the provisions of the 1995 Act concerning discrimination in the provision of services to disabled persons.

Article 2(4) brings into force section 39 of the 1998 Act on 1st February 1999. This section regulates the use of the word “university” by institutions in England and Wales.

Article 2(5) brings into force section 36 of the 1998 Act on 1st April 1999. This section substitutes a new paragraph (3) in section 3 of the Further and Higher Education Act 1992. A further education funding council may secure the provision of facilities for part-time education suitable to the requirements of persons over compulsory school age and for full-time education suitable to the requirements of persons over the age of 19 where they are not required to do so. The councils are not required to secure provision of facilities for education by means of a course of a description not mentioned in Schedule 2 to the Act, and accordingly this provisions ensures that they have the power to do so.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Teaching and Higher Education Act 1998 have been brought into force by commencement orders made before the date of this Order.

<i>Provision</i>	<i>Date of commencement</i>	<i>S.I. No.</i>
section 44(1) (partially) and Schedule 3 (partially)	17th July 1998	1998/1729 (S.93)
section 44(2) (partially) and Schedule 4 (partially)	13th August 1998	1998/2004
sections 1(2) to (10), 8, 16, 17, 19(1) to (8) and (10) (b) and (c), 20, 21, 34, 35, 40, 41, 44(1) (partially) and (2) (partially), Schedule 1, Schedule 3 (partially), Schedule 4 (partially)	1st October 1998	1998/2215
section 19(9) and (10)(a)	1st April 1999	1998/2215