
STATUTORY INSTRUMENTS

1997 No. 1968

EDUCATION, ENGLAND AND WALES

The Education (Assisted Places) Regulations 1997

Made - - - - *7th August 1997*
Laid before Parliament *11th August 1997*
Coming into force - - *1st September 1997*

In exercise of the powers conferred on the Secretary of State by section 3(1), (2), (5) and (9) of the Education (Schools) Act 1997⁽¹⁾ and after consulting, in accordance with section 3(7), such bodies as appear to them to be appropriate and representative of schools that will provide assisted places under section 2(1) of that Act, 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:—

PART I

General

Citation and commencement

1. These Regulations may be cited as the Education (Assisted Places) Regulations 1997 and shall come into force on 1st September 1997.

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—

“the 1995 Regulations” means the Education (Assisted Places) Regulations 1995⁽²⁾ (as amended by the Education (Assisted Places) (Amendment) Regulations 1996⁽³⁾);

“the 1997 Act” means the Education (Schools) Act 1997;

“assisted place” means an assisted place provided under section 2(1) of the 1997 Act;

“assisted pupil” means a child provided with an assisted place;

(1) 1997 c. 59.
(2) S.I.1995/2016.
(3) S.I. 1996/2113.

“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;

“fees” means—

- (a) tuition and other fees the payment of which is a condition of attendance at a school, but does not include sums to be paid into a bursary (or similar fund) or boarding fees, 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 by regulation 9;

“income”, “relevant income” and “total income” have the meanings assigned by regulation 10;

“participation agreement” in relation to a school means the participation agreement made by the Secretary of State and that school as it had effect immediately before the commencement of section 1 of the 1997 Act;

“remission questions” has the meaning assigned by regulation 8; and

“school” means a former participating school within the meaning of section 4(1) of the 1997 Act and references to a school include references to the proprietors thereof and persons acting with the proprietors' authority.

- (2) 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.

References to parents

3.—(1) Subject to paragraphs (3) and (4) and except where the context otherwise requires, any reference in these Regulations to the parents of an assisted pupil is a reference to—

- (a) the pupil’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 pupil normally resides with both of them in the same household; or
- (b) where sub-paragraph (a) above does not apply, the parent, being either the father or mother of the pupil, with whom the pupil normally resides and the spouse (if any) of that parent where the spouse normally resides with that parent and the pupil in the same household;
- (c) where neither sub-paragraph (a) nor (b) above applies, the pupil’s guardian appointed in accordance with section 5 of the Children Act 1989(4) (or any earlier enactment) and the spouse (if any) of that guardian where the spouse normally resides with that guardian and the pupil in the same household; or
- (d) where none of sub-paragraphs (a), (b) and (c) above applies, the person with whom the pupil resides in accordance with either—
 - (i) a subsisting residence order made under section 8 of the Children Act 1989; or

(4) 1989 c. 41.

- (ii) any subsisting court order (other than a residence order) which specifies who is to have actual custody or care and control of the pupil, and the spouse (if any) of that person where the spouse normally resides with that person and the pupil in the same household; or
 - (e) where none of sub-paragraphs (a) to (d) above applies and where the pupil 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 pupil 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 pupil in the same household.
- (2) Where an assisted pupil—
- (a) either has no parents as defined in paragraph (1) 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 pupil 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.

(3) Where an assisted pupil has been adopted pursuant to an order of a court of competent jurisdiction, references in paragraph (1)(a) and (b) to “father” and “mother” shall be construed as references to the adoptive parents of the pupil and not his natural parents.

PART II

Fees for assisted pupils

Fee levels

4. Subject to regulations 5, 6 and 19(7), the fees charged by a school for an assisted pupil in any school year shall not exceed such maximum annual amount as, apart from section 1 of the 1997 Act, the school would have been entitled to charge for him in the 1997—98 school year—

- (a) under the participation agreement, or
- (b) by virtue of regulation 21 of the 1995 Regulations⁽⁵⁾ where, before the commencement of that section, the school gave notice to the Secretary of State under that regulation of their intention to increase fees in that year.

Increase in fees

5.—(1) A school may increase the annual amount of the fees for an assisted pupil to an amount which exceeds the maximum amount that is chargeable by virtue of regulation 4 but shall not do so without first giving the Secretary of State at least one month's written notice of their intention so to do.

(2) If within one month 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 he may then or subsequently require.

(5) S.I. 1995/2016. Regulation 21 of those Regulations was amended by regulation 6 of S.I. 1996/2113.

Power of the Secretary of State to vary fee levels

6.—(1) The Secretary of State may give a direction to—

- (a) schools of any class or description, or
- (b) any individual school,

specifying a maximum level of fees applying to assisted pupils at any such school which is different from that which would otherwise apply by virtue of regulation 4 or 5.

(2) A direction under this regulation may specify different maximum levels of fees in relation to different age groups of assisted pupils.

(3) Before giving a direction under paragraph (1)(a), the Secretary of State shall consult such bodies as appear to him to be appropriate and representative of the schools to which it is intended the direction should apply.

(4) Before giving a direction to an individual school under paragraph (1)(b), the Secretary of State shall consult that school.

(5) Where the Secretary of State has given a direction to a school under this regulation, the fees charged by the school for an assisted pupil in any school year shall not, for so long as that direction remain in force, exceed the figure specified in the direction as the maximum level of fees applying to that pupil or, as the case may be, pupils in the age group in which he falls.

Payment of fees

7.—(1) The fees for an assisted pupil for any school year (other than in respect of entrance fees for public examinations) shall be payable in respect of each term and, subject to any variation 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.

(2) Subject to paragraphs (3) and (4), a school shall not make it a condition of the attendance of any assisted pupil that any payment be made to the school otherwise than in respect of fees, or into a fund (including a bursary or similar fund) specified by the school.

(3) Where—

- (a) an offer of assistance with boarding fees was made by the school (or in pursuance of arrangements to which the school is a party) in respect of an assisted pupil at the time when he was offered an assisted place at the school for the purposes of the assisted places scheme, and
- (b) that offer was conditional on his taking up a boarding place,

the school may make it a condition of his attendance that boarding fees be paid.

(4) Where paragraph (3) does not apply, the school may at any time offer a boarding place in respect of an assisted pupil, and if the offer is accepted and, for as long as the pupil remains a boarder at the school, make it a condition of his attendance that boarding fees be paid.

PART III

Remission of fees

References to remission questions

8. 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

9.—(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 an assisted 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 these Regulations 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 ending in the calendar year which includes the beginning of the school year.

References to income

10.—(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(6).

(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—

(a) the assisted pupil himself, and

(b) 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 (4) or (6) applies, the sum there mentioned.

(3) In paragraph (2) “unearned income” means income other than such as arises from gainful employment.

(4) Subject to paragraph (6), the relevant income, calculated as aforesaid, shall be reduced by £1,230 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 one or both of the parents or on payments made to him or for his benefit as mentioned in paragraph (5) below;

(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.

(5) The payments referred to in paragraph (4)(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.

(6) Where—

(6) 1988 c. 1. Section 1(2)(b) was amended by section 24(2)(a) of the Finance Act 1988 (c. 39).

- (a) 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 to which paragraph (7) applies, and
- (b) there has been deducted, in calculating the amount of that award, a sum exceeding £1,230 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 £1,230 prescribed in respect of that child by paragraph (4).

(7) This paragraph applies to—

- (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(7) providing for the payment of awards to students attending specified courses of further or higher education(8);
- (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(9) providing for the payment of allowances to students(10); or
- (c) an award made by an education and library board in Northern Ireland pursuant to article 50(1) of the Education and Libraries (Northern Ireland) Order 1986(11) and regulations from time to time in force thereunder(12), being an award for the purpose of enabling or encouraging the holder to take advantage of educational facilities specified in or designated under such regulations.

(8) 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 3) at the time that the relevant income is calculated.

Periods for which fees may be remitted

11.—(1) The parents of an assisted pupil shall be entitled under these Regulations to remission of fees for which they are liable only in respect of a period in which he is—

- (a) a registered pupil at the school, and
- (b) provided with an assisted place there under section 2(1) of the 1997 Act.

(2) The parents of an assisted pupil shall not be entitled under these Regulations to remission of fees for which they are liable in respect of a period—

- (a) after the end of the school year in which he attains the specified age; or, if earlier,
- (b) after the end of—
 - (i) the last school year in which the age in years attained by the majority of pupils in his year group is no greater than the designated year group age, or

(7) 1962 c. 12. Section 1 was substituted by 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 substituted section 1 (as amended) is continued in force by paragraph 4 of Schedule 37 to the Education Act 1996 (c. 56).

(8) The applicable Regulations with effect from 1st September 1997 will be the Education (Mandatory Awards) Regulations 1997 (S.I. 1997/431).

(9) 1980 c. 44.

(10) The regulations in force at the date on which these Regulations are made are the Students' Allowances (Scotland) Regulations 1996 (S.I. 1996/1754), as amended by the Education Authority Bursaries and Students' Allowances (Scotland) (Amendment) Regulations 1997 (S.I. 1997/1049). The administrative arrangements for assessing assumed parental contributions are set out in the "Guide to Undergraduate Allowances 1997—98" (Form AB2) published in April 1997 by the Students Awards Agency for Scotland, copies of which are obtainable from Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH.

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

(12) The applicable Regulations with effect from 1st September 1997 will be the Students Awards Regulations (Northern Ireland) 1997 (S.R. (N.I.) 1997 No. 361).

(ii) where paragraph (3) applies, such later school year as may be determined by the Secretary of State, having regard to any particular circumstances relating to the pupil concerned.

(3) This paragraph applies where the school, at any time after the end of the 1996—97 school year, starts to provide, as education ordinarily provided by the school, education suitable to the requirements of pupils who have attained an age which exceeds the designated year group age.

(4) In this regulation—

“designated year group age” means the age in years attained by the majority of pupils in the most senior year group for which the school ordinarily provided education in the 1996—97 school year; and

“specified age”—

(a) in relation to a pupil who is for the time being provided with education suitable to the requirements of pupils taking advanced level examinations for the General Certificate of Education or other comparable examinations, means 20 years, and

(b) in relation to any other pupil, means 17 years.

(5) This regulation and regulations 12 and 13 shall have effect notwithstanding anything in regulation 14 or any other provision of these Regulations.

Restrictions on remission of fees

12.—(1) Where the fees for an assisted pupil or any part of them are required to be paid pursuant to—

- (a) an order of a court,
- (b) a separation agreement, or
- (c) a qualifying agreement (as defined in paragraph (2)),

his parents shall not be entitled under these Regulations to remission of those fees or (as the case may be) that part of them.

(2) In paragraph 1(c) “qualifying agreement” means a legally enforceable agreement under which a person (being either a body corporate, or an individual who is not a parent of the assisted pupil) is required to pay school fees for the assisted pupil, including a deed of covenant made by such a person for the benefit of the assisted pupil.

(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 15(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.

Counter-fraud provisions

13.—(1) This regulation applies where the Secretary of State is satisfied that the parents of an assisted pupil have knowingly or recklessly furnished information required for determining remission questions which is false in a material particular.

(2) Where this regulation applies, the Secretary of State may, subject to paragraph (3), direct that those parents shall not be entitled to any remission of fees in the case of—

- (a) that pupil, and
- (b) any other of their children who are assisted pupils,

as respects a specified school year and, if he so directs, any subsequent school year.

- (3) The Secretary of State shall not give a direction pursuant to paragraph (2) without—
 - (a) affording the parents concerned an opportunity to make representations, and
 - (b) considering any such representations.
- (4) The Secretary of State may vary or revoke a direction made pursuant to paragraph (2).

Determination of remission questions

14.—(1) Subject to paragraph (2), in the case of every assisted pupil, remission questions shall be determined by the school, in accordance with this Part, for each school year, whether or not his 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, that is to say the proportion which the fees for the part (or parts) bear to the fees for the whole school year.

Calculation of remission

15.—(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—

- (a) the reference to the preceding financial year were a reference to the current financial year, and
 - (b) the reference to the pupils' parents in regulation 10(2) included a reference to the deceased parent (notwithstanding paragraph (8) 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

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

PART IV

Reimbursement of remitted fees

Reimbursement claims

17.—(1) A school may submit to the Secretary of State a claim for the reimbursement of fees remitted pursuant to these Regulations (“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”).

(2) 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.

(3) Subject to paragraphs (1) and (2), 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.

Payments by the Secretary of State

18.—(1) As soon as is reasonably practicable after he is satisfied that a reimbursement claim is in order, the Secretary of State shall, subject to paragraph (3), reimburse the school in respect of the claim; but, where he considers it expedient to do so, he may make earlier payments on account of that claim or in respect of a provisional claim relating to the same period.

(2) 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.

(3) The Secretary of State shall not be liable to reimburse the school in respect of any fees remitted in the 1997—98 or any subsequent school year in the case of any pupil to whom paragraph (4) applies.

(4) This paragraph applies to a pupil selected for an assisted place by the school for the purposes of the assisted place scheme—

- (a) who, at the time of his selection, was not eligible for such a place by virtue of the provisions contained in Part II of the 1995 Regulations; or
 - (b) whose selection contravened a requirement specified in—
 - (i) the participation agreement, or
 - (ii) regulation 19 of the 1995 Regulations.
- (5) Despite the coming into force of section 1 of the 1997 Act—
- (a) the provisions of the 1995 Regulations mentioned in paragraph (4),
 - (b) regulation 2 of those Regulations (so far as is necessary for the purpose of construing those provisions), and
 - (c) the participation agreement,

shall continue to have effect for the purposes of determining whether paragraph (4) applies in any particular case; and for those purposes the power conferred by regulation 19(4) of the 1995 Regulations shall continue to be exercisable by the Secretary of State in cases where a school has contravened the requirement specified in paragraph (1) of that regulation.

PART V

Miscellaneous provisions

Transfer of assisted places

19.—(1) This regulation applies where a former participating school—

- (a) merges with another independent school (including a school which was not also a former participating school);
- (b) closes (whether wholly or in part), or
- (c) notifies the Secretary of State that it no longer wishes to provide assisted places under section 2(1) of the 1997 Act.

(2) Where this regulation applies, the Secretary of State may authorise the new school or (as the case may be) any other former participating school to provide under section 2(1) of the 1997 Act any assisted places which the old school was authorised to provide.

(3) Where the Secretary of State decides to authorise a replacement school pursuant to paragraph (2), he shall give written notice of his decision to that school; and that notice shall specify in respect of every transferred assisted pupil—

- (a) his name, address and date of birth;
- (b) the period for which he may be provided with an assisted place by the replacement school (which shall correspond to the remainder of the period for which his assisted place at the old school would have been available); and
- (c) the maximum annual amount of fees which may be charged for him by the replacement school.

(4) Where the Secretary of State has authorised a new school pursuant to paragraph (2), references in these Regulations to “school” shall, where the context permits, include that school.

(5) A transferred assisted pupil shall cease to hold an assisted place at the replacement school at the end of the period specified in the notice.

(6) Before making a decision under paragraph (3), the Secretary of State shall consult the replacement school as to the level of fees he proposes to specify in the notice.

(7) Without prejudice to regulations 5 and 6, the fees charged by a replacement school for a transferred assisted pupil shall not exceed the maximum annual amount specified in the notice.

(8) In this Regulation—

“new school” means a school formed by the merger of the old school and another school;

“notice” means a notice given by the Secretary of State to a replacement school under paragraph (3);

“old school” means a former participating school referred to in paragraph (1);

“replacement school” means a school authorised to provide assisted places under paragraph (2); and

“transferred assisted pupil” means a child who held an assisted place at the old school and for whom the replacement school is authorised to provide an assisted place under paragraph (2).

Provisionally selected pupils

20.—(1) In this regulation “provisionally selected pupil” means a child who—

- (a) is an existing assisted pupil within the meaning of section 2(5) of the 1997 Act;
- (b) did not hold an assisted place provided for the purposes of the assisted places scheme at any time during the 1996—97 school year; and
- (c) was provisionally selected, in accordance with regulation 3(2) of the 1995 Regulations, for an assisted place under that scheme to be taken up in the 1997—98 school year.

(2) A school shall, as soon after the beginning of the 1997—98 school year as is reasonably practicable, ascertain whether each of the relevant conditions (as defined in paragraph (4)) is fulfilled in the case of a provisionally selected pupil; and where they are satisfied that each relevant condition is fulfilled in the case of any such pupil, they shall finally select him for an assisted place.

(3) Where a school ascertain that any relevant condition is not fulfilled in the case of a provisionally selected pupil, they shall withdraw his assisted place forthwith, and his parents shall be liable for any fees provisionally remitted by the school in his case.

(4) In paragraphs (2) and (3) the references to “relevant condition” mean a condition mentioned in the provisions of Part II of the 1995 Regulations as those provisions have continued effect in accordance with paragraph (5).

(5) Despite the coming into force of section 1 of the 1997 Act, the provisions contained in the 1995 Regulations referred to in the first column of the following table shall continue to have effect for the purposes and to the extent referred to in the second column of that table.

Table

<i>Provisions of the 1995 Regulations</i>	<i>Purpose and extent</i>
Regulation 2.	For the purposes of construing the provisions of the 1995 Regulations referred to in this Table, save that regulation 2(1) shall have effect as if: (a) there were inserted before the definition of “assisted pupil” the following definition—

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<i>Provisions of the 1995 Regulations</i>	<i>Purpose and extent</i>
	<p>““assisted place” means an assisted place provided under section 2(1) of the Education (Schools) Act 1997;”; and</p> <p>(b) there were inserted before the definition of “refugee” the following definition— ““participation agreement” in relation to a school means the participation agreement made by the Secretary of State and the school as it had effect immediately before the commencement of section 1 of the Education (Schools) Act 1997;”.</p>
Part II, except for regulation 3(1) to (3).	<p>For the purposes of determining whether the relevant conditions are satisfied in the case of a provisionally selected pupil, save that—</p> <p>(a) regulation 3(4) shall have effect as if for “specified by the Secretary of State pursuant to regulation 16” there were substituted “most recently specified by the Secretary of State pursuant to regulation 16(a) before the commencement of section 1 of the Education (Schools) Act 1997”; and</p> <p>(b) regulation 7(2)(a) shall have effect as if the reference to Part III were a reference to Part III of these Regulations.</p>

Time limits, forms etc.

21. The Secretary of State may specify for the purposes of these Regulations—
- (a) the time by which, and the manner and form in which, 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, and the documentary or other evidence to be provided in support thereof; and
 - (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.

Returns, etc., required by the Secretary of State

22. A school shall furnish the Secretary of State with such periodic returns and information as he may require relating to the school or assisted pupils attending there including, in particular—
- (a) in respect of every child holding an assisted place at the school at the beginning of the 1997—98 school year and each subsequent school year—
 - (i) his name and date of birth, and
 - (ii) the kind of education provided for him at the school; and
 - (b) information relevant to an intended increase in fees under Regulation 5.

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 him; and
- (b) be audited by an independent person who is eligible under section 25 of the Companies Act 1989⁽¹³⁾ for appointment as a company auditor.

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

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SCHEDULE 1

Regulation 10

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**(14)**.

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 deduction 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 I of Part VII of the Act of 1988, other than in section 265 thereof (relief for blind persons)**(15)**;
- (b) pursuant to Chapters I, II and III of Part XIV of the Act of 1988**(16)** 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**(17)** 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**(18)** (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 sections 574, 575 and 576 of the Act of 1988**(19)** (relief for losses on unquoted shares in trading companies);

(14) 1988 c. 1.

(15) Chapter I of Part VII has been extensively amended by several Finance Acts since 1988.

(16) Chapters I, II and III of Part XIV have been extensively amended by several Finance Acts since 1988.

(17) 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.

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

(19) Section 574 was amended by section 210 of the Finance Act 1994 (c. 9) and by section 119 of the Finance Act 1995 (c. 4). Section 575 was amended by section 290(1) of the Taxation of Chargeable Gains Act 1992. Section 576 was amended by

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- (i) 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**(20)**;
 - (j) pursuant to section 202(1) to (7) and (11) of the Act of 1988**(21)** (relief for donations under payroll deduction scheme);
 - (k) pursuant to regulations made under section 333 of the Act of 1988**(22)** (relief for investments under personal equity plans);
 - (l) pursuant to section 54 of the Finance Act 1989**(23)** (relief for medical insurance);
 - (m) pursuant to section 25 of the Finance Act 1990**(24)** (relief for donations to charity by individuals);
 - (n) pursuant to sections 32 and 33 of the Finance Act 1991**(25)** (relief for vocational training); or
 - (o) pursuant to section 59 of and Schedule 10 to the Finance (No. 2) Act 1992**(26)** (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—
- (a) any allowance paid to him by an adoption agency pursuant to Regulations made under section 57A of the Adoption Act 1976**(27)**;
 - (b) any contributions paid to him by a local authority under paragraph 15 of Schedule 1 to the Children Act 1989**(28)**;
 - (c) any assistance given by a local authority in cash under paragraph 5 of Schedule 2 to that Act; and
 - (d) 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-paragraphs (1) and (2) of this paragraph, “maintenance payment” means a periodical payment (not including an instalment of a lump sum) which—

section 107 of the Finance Act 1989 (c. 26), section 290(1) of the Taxation of Chargeable Gains Act 1992, section 146 of the Finance Act 1994 and section 199 of the Finance Act 1996 (c. 8).

(20) 1994 c. 9.

(21) Section 202(7) was amended by section 109 of the Finance Act 1996 (c. 8).

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

(23) 1989 c. 26, as amended by paragraphs 1 and 2 of Schedule 10 to the Finance Act 1994 and by section 129(2) of the Finance Act 1996 (c. 8).

(24) 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); section 67(2) of the Finance Act 1993 (c. 34); and paragraph 26 of Schedule 17 to the Finance Act 1995 (c. 4).

(25) 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); and by section 129(4) of, and paragraph 14 of Schedule 18 to, the Finance Act 1996 (c. 8). Section 33 of the 1991 Act was amended by Part VII(1) of Schedule 18 to the Finance (No. 2) Act 1992 (c. 48).

(26) 1992 c. 48.

(27) 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.

(28) 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(29) 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 16

SCALES OF REMISSION

1. Where the relevant income for the appropriate financial year does not exceed £10,135 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) <i>Part of relevant income to which specified percentage applies</i>	(2) <i>Only assisted pupil</i>	(3) <i>Each of two assisted pupils</i>	(4) <i>Each of three assisted pupils</i>
	(%)	(%)	(%)
That part (if any) which exceeds £9,969	9	6.75	5.25

(29) 1991 c. 48.

(1) <i>Part of relevant income to which specified percentage applies</i>	(2) <i>Only assisted pupil</i>	(3) <i>Each of two assisted pupils</i>	(4) <i>Each of three assisted pupils</i>
	(%)	(%)	(%)
but does not exceed £10,840			
That part (if any) which exceeds £10,840 but does not exceed £11,725	12	9	7
That part (if any) which exceeds £11,725 but does not exceed £13,481	15	11.25	8.75
That part (if any) which exceeds £13,481 but does not exceed £16,186	21	15.75	12.25
That part (if any) which exceeds £16,186 but does not exceed £19,712	24	18	14
That part (if any) which exceeds £19,712	33	24.75	19.25

(2) Where more than three 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 485 of the Education Act 1996⁽³⁰⁾ to a school of music or ballet, 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 an assisted pupil, the amount of any such bursary or scholarship shall be ignored for the purpose of calculating the parents' residual liability.

(2) However that residual liability shall be reduced or extinguished by that amount.

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

⁽³⁰⁾ 1996 c. 56. The Regulations applicable as at the date of these Regulations are the Education (Grants) (Music and Ballet Schools) Regulations 1995 (S.I. 1995/2018), as amended by S.I. 1996/2036 and (with effect from 1st September 1997) S.I. 1997/1967.

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4th August 1997

Stephen Byers
Minister of State,
Department for Education and Employment

7th August 1997

Peter Hain
Parliamentary Under Secretary of State, Welsh
Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe arrangements for pupils who are eligible to continue to hold assisted places at independent schools in England and Wales by virtue of section 2 of the Education (Schools) Act 1997, notwithstanding the abolition of the assisted places scheme by section 1 of that Act.

Part II of the Regulations provides for—

- (a) the maximum level of fees that may be charged for existing assisted pupils, and the manner in which fees may be varied (*regulations 4 to 6*), and
- (b) conditions to be complied with by such schools with regard to the charging and payment of fees (*regulation 7*).

Part III deals with the extent to which, and conditions subject to which, fees are to be remitted in respect of an assisted pupil. In particular Part III provides—

- (a) that the extent of remission is to be determined by reference to “relevant income” (defined in *regulation 10*, and computed in accordance with *Schedule 1*);
- (b) for the periods in which parents of assisted pupils are entitled to remission of fees (*regulation 11*);
- (c) for restrictions on parents' entitlement to remission of fees where all or part of the fees are required to be paid under a court order or certain types of agreement, or where parents fail to provide the appropriate information to the school (*regulation 12*);
- (d) for counter-fraud measures (*regulation 13*);
- (e) for the manner in which remission questions are to be determined (*regulations 14 and 15*); and
- (f) the scales of fee remission—for example, where relevant income does not exceed £10,135 the entire fees are to be remitted (*regulation 16 and Schedule 2*).

Part IV prescribes the manner in which, and the conditions subject to which, the Secretary of State is to reimburse schools for fees remitted in accordance with the Regulations. In particular it provides that the Secretary of State is not liable to reimburse a school for fees remitted in respect of a pupil who was not eligible to be selected for an assisted place under the Regulations and participation agreement which applied immediately before the commencement of section 1 of the 1997 Act (*regulation 18*).

Part V contains miscellaneous provisions. In particular it provides for—

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- (a) the Secretary of State to authorise a replacement school to provide an assisted place for a child whose existing school merges, closes or ceases to provide assisted places (*regulation 19*);
- (b) arrangements in relation to children provisionally selected for assisted places to be taken up in the 1997—98 school year (*regulation 20*);
- (c) administrative requirements to be complied with by schools providing assisted places and parents of assisted pupils, such as—
 - (i) the time, manner and form in which parents are to make declarations of income (*regulation 21*), and
 - (ii) the provision by schools of returns and accounts to the Secretary of State (*regulations 22 and 23*).