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STATUTORY INSTRUMENTS

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**1997 No. 1968**

**The Education (Assisted Places) Regulations 1997**

**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(1).

(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—

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

- (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—

- (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(2) providing for the payment of awards to students attending specified courses of further or higher education(3);
- (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(4) providing for the payment of allowances to students(5); 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(6) and regulations from time to time in force thereunder(7), being an award for the purpose of enabling

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(2) 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).

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

(4) 1980 c. 44.

(5) 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.

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

(7) 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).

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
  - (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.