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STATUTORY INSTRUMENTS

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**2005 No. 52**

**The Education (Student Support) Regulations 2005**

**PART 1**

**GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Education (Student Support) Regulations 2005 and shall come into force on 1st March 2005.

(2) Subject to paragraph (3), these Regulations extend to England and Wales only.

(3) Regulation 28(2) extends to Northern Ireland.

**Interpretation**

2.—(1) In these Regulations—

“the 1962 Act” means the Education Act 1962(1);

“the 1998 Regulations” means the Education (Student Support) Regulations 1998(2);

“the 1999 Regulations” means the Education (Student Support) Regulations 1999(3);

“the 2000 Regulations” means the Education (Student Support) Regulations 2000(4);

“the 2001 Regulations” means the Education (Student Support) Regulations 2001(5);

“the 2002 Regulations” means the Education (Student Support) Regulations 2002(6);

“the 2003 Regulations” means the Education (Student Support) (No. 2) Regulations 2002(7) as amended only by the Education (Student Support) (No. 2) Regulations 2002 (Amendment) Regulations 2003(8) and the Education (Student Fees and Support) (Switzerland) Regulations 2003(9);

“the 2004 Regulations” means the 2003 Regulations as amended by the Education (Student Support) (No. 2) Regulations 2002 (Amendment) Regulations 2004(10), the Education (Student Support) (No. 2) Regulations 2002 (Amendment) (No. 2) Regulations 2004(11), the

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(1) 1962 c. 12; sections 1 to 4 and Schedule 1 were substituted by the provisions set out in Schedule 5 to the Education Act 1980 (c. 20). Section 1(3)(d) was amended by the Education (Grants and Awards) Act 1984 (c. 11), section 4. Section 4 was amended by the Education Act 1994 (c. 30), Schedule 2, paragraph 2. The entire Act was repealed by the Teaching and Higher Education Act 1998 (c. 30), section 44(2) and Schedule 4, subject to the transitional provisions and savings set out in the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order 1998 (S.I.1998/3237), article 3.

(2) S.I. 1998/2003.

(3) S.I. 1999/496, amended by S.I. 1999/2266 and S.I. 2000/1120.

(4) S.I. 2000/1121, amended by S.I. 2000/1490, S.I. 2000/2142 and S.I. 2000/2912.

(5) S.I. 2001/951, amended by S.I. 2001/1730, S.I. 2001/2355 and S.I. 2002/174.

(6) S.I. 2002/195, amended by S.I. 2002/1318, S.I. 2002/2088 and S.I. 2002/3059.

(7) S.I. 2002/3200.

(8) S.I. 2003/1065.

(9) S.I. 2003/3280.

(10) S.I. 2004/161.

(11) S.I. 2004/1602.

Education (Student Support) (No. 2) Regulations 2002 (Amendment) (No. 3) Regulations 2004<sup>(12)</sup>, the Education (Student Support) (No. 2) Regulations 2002 (Amendment) (No. 4) Regulations 2004<sup>(13)</sup> and the Education (Student Support) (No. 2) Regulations 2002 (Amendment) Regulations 2005<sup>(14)</sup>;

“academic authority” means, in relation to an institution, the governing body or other body having the functions of a governing body and includes a person acting with the authority of that body;

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1st January and before 1st April, on or after 1st April and before 1st July, on or after 1st July and before 1st August or on or after 1st August and on or before 31st December, respectively;

“accelerated course” means a course which persons undertaking it are normally required by the institution providing it to attend (whether at premises of the institution or elsewhere) for a period of at least 40 weeks in the final year, being a course of two academic years' duration;

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

“borrower” means a person to whom a loan has been made;

“contribution” means an eligible student’s contribution calculated pursuant to regulation 29 and Schedule 5;

“designated course” means a course designated by regulation 5 or by the Secretary of State under regulation 5;

“designated part-time course” means a course designated by regulation 35 or by the Secretary of State under regulation 35;

“designated postgraduate course” means a course designated by regulation 47 or by the Secretary of State under regulation 47;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(15)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(16)</sup>;

“EEA migrant worker” has the meaning given in paragraph (5);

“electronic signature” is so much of anything in electronic form as—

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible part-time student” has the meaning given in regulation 34;

“eligible postgraduate student” has the meaning given in regulation 46;

“eligible student” has the meaning given in regulation 4;

“end-on course” means—

- (a) a course mentioned in paragraph 1 of Schedule 3 which, disregarding any intervening vacation, a student begins to attend immediately after ceasing to attend a course mentioned in paragraph 2 or 3 of Schedule 3 for which the student received or was entitled

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<sup>(12)</sup> S.I. 2004/2041.

<sup>(13)</sup> S.I. 2004/2598.

<sup>(14)</sup> S.I. 2005/5.

<sup>(15)</sup> Cm 2073.

<sup>(16)</sup> Cm 2183.

to receive a transitional award, a loan under the 1998 Regulations or support under the 1999, 2000, 2001, 2002, 2003 or 2004 Regulations; or

- (b) a course mentioned in paragraph 4 of Schedule 3 the duration of which does not exceed two years (the duration of a part-time course being expressed as its full-time equivalent) which, disregarding any intervening vacation, a student begins to attend immediately after ceasing to attend a course mentioned in paragraph 1 or 4 of Schedule 3 (provided that the course in paragraph 4 was a course leading to a first degree) for which the student received or was entitled to receive a transitional award, a loan under the 1998 Regulations or support under the 1999, 2000, 2001, 2002, 2003 or 2004 Regulations;

“European Community” means the territory comprised by the Member States of the European Community as constituted from time to time;

“European Economic Area” means the European Community and the area comprised by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“flexible postgraduate ITT course” means a postgraduate course of initial teacher training, the length and pattern of which is determined by reference to the eligible student’s experience and training requirements and which has been approved by the Teacher Training Agency<sup>(17)</sup>;

“former Metropolitan Police District” means—

- (a) Greater London, excluding the city of London, the Inner Temple and the Middle Temple;
- (b) in the county of Essex, in the district of Epping Forest—  
the area of the former urban district of Chigwell,  
the parish of Waltham Abbey;
- (c) in the county of Hertfordshire—  
in the borough of Broxbourne, the area of the former urban district of Cheshunt,  
the district of Hertsmere,  
in the district of Welwyn Hatfield, the parish of Northaw; and
- (d) in the county of Surrey—  
in the borough of Elmbridge, the area of the former urban district of Esher,  
the boroughs of Epsom and Ewell and Spelthorne,  
in the district of Reigate and Banstead, the area of the former urban district of Banstead;

“healthcare bursary” means a bursary or award of similar description under section 63 of the Health Services and Public Health Act 1968<sup>(18)</sup> or Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(19)</sup>;

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<sup>(17)</sup> The Teacher Training Agency was established under section 1 of the Education Act 1994 (c. 30).

<sup>(18)</sup> 1968 c. 46; section 63 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, the National Health Service Reorganisation Act 1973 (c. 32), Schedules 4 and 5, the National Health Service Act 1977 (c. 49), Schedules 15 and 16, the National Health Service (Scotland) Act 1978 (c. 29), Schedules 16 and 17, the Local Government Act 1985 (c. 51), Schedule 17, the Health and Medicines Act 1988 (c. 49), section 20, section 25(2) and Schedule 3, the Local Government (Scotland) Act 1994 (c. 39), Schedule 13, the Health Authorities Act 1995 (c. 17), Schedule 1, the Local Government Reorganisation (Wales) (Consequential Amendments No. 2) Order 1996 (S.I. 1996/1008), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, the Health Act 1999 (c. 8), Schedule 4, the Health and Social Care Act 2001 (c. 15), Schedule 5, the National Health Service Reform and Social Care Professions Act 2002 (c. 17), Schedules 2, 5 and 9, the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Regulations 2002 (S.I. 2002/2469), Schedule 1, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedules 4, 11 and 14, the Health and Social Care (Community Health and Standards) Act 2003 Commencement (No. 2) Order 2004 (S.I. 2004/288), article 7, the Health and Social Care (Community Health and Standards) Act 2003 (Commencement No. 1) (Wales) Order 2004 (S.I. 2004/480), article 6 and the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 (S.I. 2004/957), the Schedule.

<sup>(19)</sup> S.I. 1972/1265 (N.I. 14).

“higher education course” means a course referred to in Schedule 3 or a postgraduate or other course the standard of which is higher than the standard of a first degree course;

“Islands” means the Channel Islands and the Isle of Man;

“loan”, except where otherwise indicated, means a loan towards a student’s maintenance pursuant to any regulations made under section 22 of the Act, including the interest accrued on the loan and any penalties or charges incurred in connection with it;

“maintained school” means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;

“old award” is an award within the meaning of the Education (Mandatory Awards) Regulations 2003<sup>(20)</sup>;

“periods of work experience” means—

- (a) periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outside that institution;
- (b) periods during which a student is employed and residing in a country whose language is one that he is studying for his course (provided that the period of residence in that country is a requirement of his course and the study of one or more modern languages accounts for not less than one half of the total time spent studying on the course);

“public funds” means moneys provided by Parliament;

“publicly-funded” means maintained or assisted by recurrent grants out of public funds and related expressions are to be interpreted accordingly;

“qualified teacher” has the meaning given in section 132(1) of the Education Act 2002<sup>(21)</sup>;

“quarter” in relation to an academic year means a period in that year—

- (a) beginning on 1st January and ending on 31st March;
- (b) beginning on 1st April and ending on 30th June;
- (c) beginning on 1st July and ending on 31st August; or
- (d) beginning on 1st September and ending on 31st December;

“refugee” means a person who 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>(22)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(23)</sup> and any reference to the child of a refugee includes a reference to a step-child;

“Research Council” means any of the following research councils—

- (a) Arts and Humanities Research Council,
- (b) Biotechnology and Biological Sciences Research Council,
- (c) Economic and Social Research Council,
- (d) Engineering and Physical Sciences Research Council,
- (e) Medical Research Council,
- (f) Natural Environment Research Council,
- (g) Particle Physics and Astronomy Research Council;

“sandwich course” has the meaning given in paragraph (6);

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<sup>(20)</sup> S.I. 2003/1994, amended by S.I. 2004/1038 and S.I. 2004/1792.

<sup>(21)</sup> 2002 c. 32.

<sup>(22)</sup> Cmnd. 9171.

<sup>(23)</sup> Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Support Division, Department for Education and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

“Scottish healthcare allowance” means any allowance under sections 73(f) and 74(1) of the Education (Scotland) Act 1980(24) granted in respect of a person attending a course leading to a qualification in a healthcare profession other than as a medical doctor or dentist;

“statutory award” means any award bestowed, grant paid or other support provided by virtue of the Act or the 1962 Act, or any comparable award, grant or other support in respect of undertaking a course which is paid out of public funds;

“student loan account number” means the account number assigned by the lender to a loan made under the student loans legislation;

“student loans legislation” means the Education (Student Loans) Act 1990(25), the Education (Student Loans) (Northern Ireland) Order 1990(26), the Education (Scotland) Act 1980 and regulations made thereunder, the Education (Student Support) (Northern Ireland) Order 1998(27) and regulations made thereunder or the Act and regulations made thereunder;

“support” means financial support by way of grant or loan made by the Secretary of State pursuant to regulations made under section 22 of the Act;

“Switzerland Agreement” means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999(28) and which came into force on 1st June 2002; and

“transitional award” means an award made under the Education (Mandatory Awards) Regulations 1998(29) other than an old award.

(2) For the purposes of these Regulations, a person who is ordinarily resident in England and Wales, Scotland, Northern Ireland or the Islands as a result of having moved from another of those areas for the purpose of undertaking—

- (a) his present course; or
- (b) a previous designated course which, disregarding any intervening vacation, the student was undertaking immediately before undertaking his present course

shall be considered to be ordinarily resident in the place from which he moved.

(3) For the purposes of these Regulations, including for the purpose of determining whether a person is settled in the United Kingdom within the meaning of the Immigration Act 1971(30), a person shall be treated as ordinarily resident in England and Wales, the United Kingdom and Islands or in the European Economic Area or Switzerland if he would have been so resident but for the fact that he, his spouse or his civil partner or his parent, guardian or any other person having parental responsibility for him or any person having care of him when he is a child is or was temporarily employed outside England and Wales, the United Kingdom and Islands or, as the case may be, outside the European Economic Area or Switzerland and paragraph 8(c) of Schedule 2 shall not apply in the case of such person. Without prejudice to the foregoing, members of the regular naval, military or air forces of the Crown shall be treated as being temporarily employed within the meaning of this paragraph for any period during which they serve outside the United Kingdom as members of such forces.

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(24) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp6), section 3(2) and section 74 was amended by the Self Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(25) 1990 c. 6; repealed by the Teaching and Higher Education Act 1998 (c. 30), Schedule 4.

(26) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/1274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6.

(27) S.I. 1998/1760 (N.I. 14).

(28) Cm. 4904.

(29) S.I. 1998/1166, amended by S.I. 1998/1972.

(30) 1971 c. 77; amended by the British Nationality Act 1981 (c. 61), section 39 and Schedule 4.

- (4) For the purposes of these Regulations, an area which—
- (a) was previously not part of the European Community or the European Economic Area; but
  - (b) at any time before or after these Regulations come into force has become part of one or other or both of these areas,

shall be considered to have always been part of the European Economic Area.

(5) In these Regulations, a reference to an EEA migrant worker is a reference to a person who is a national of a Member State of the European Economic Area or Switzerland who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community(31), as extended by the EEA Agreement or the Switzerland Agreement; or
- (b) in circumstances where as a national of the United Kingdom he has an enforceable Community right to be treated no less favourably than a national of another Member State in relation to matters which are the subject of the above-mentioned Council Regulation.

(6) In these Regulations—

- (a) a course is a “sandwich course” if—
  - (i) it is not a course referred to in paragraph 4 of Schedule 3;
  - (ii) it consists of alternate periods of full-time study in an institution and periods of work experience; and
  - (iii) taking the course as a whole, the student attends the periods of full-time study for an average of not less than 18 weeks in each year;
- (b) for the purposes of calculating the student’s attendance, the course shall be treated as beginning with the first period of full-time study and ending with the last such period; and
- (c) where periods of full-time study and work experience alternate within any week of the course, the days of full-time study shall be aggregated with each other and with any weeks of full-time study in determining the number of weeks of full-time study in each year.

(7) Where these Regulations refer to a date before, on or after which an eligible student began the present designated course and the student’s status as an eligible student has been transferred to the present designated course as a result of one or more transfers of that status by the Secretary of State from a course (the “initial course”) in connection with which the Secretary of State determined the student to be an eligible student pursuant to regulations made under section 22 of the Act, the eligible student shall be treated for the purposes of the relevant regulation as if he began the present designated course on the date on which he began the initial course.

(8) Where these Regulations refer to a date before, on or after which an eligible student began the present designated course and that course is an end-on course, the eligible student shall be treated for the purposes of the relevant regulation as if he began that course on the date on which he began the course in relation to which the present designated course is an end-on course (the “preceding course”). Where the preceding course is itself an end-on course, the eligible student shall be treated for the purposes of the relevant regulation as if he began the present designated course on the date on which he began the course in relation to which the preceding course is an end-on course.

### **Revocation, savings and transitional provisions**

**3.—(1)** Subject to paragraphs (2) to (5), the regulations mentioned in Schedule 1 are revoked on 1st September 2005.

(2) The 2003 Regulations shall continue to apply to the provision of support to students in relation to an academic year which begins on or after 1st September 2003 but before 1st September 2004.

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(31) OJ No L257, 19.10. 1968, p 2 (OJ/SE 1968 (II) p 475).



(3) The 2004 Regulations shall continue to apply to the provision of support to students in relation to an academic year which begins on or after 1st September 2004 but before 1st September 2005.

(4) The Education (Grants for Disabled Postgraduate Students) Regulations 2000<sup>(32)</sup> shall continue to apply to the provision of support to postgraduate students with disabilities in relation to an academic year which begins before 1st September 2005.

(5) Part 9 of the 2003 Regulations shall apply to loans until the end of 31st August 2004, Part 9 of the 2004 Regulations shall apply to loans until the end of 31st August 2005 and regulations 27 and 28 of Part 6 of these Regulations shall apply to loans on and after 1st September 2005.

(6) These Regulations shall apply in relation to the provision of support to students in relation to an academic year which begins on or after 1st September 2005 whether anything done under these Regulations is done before, on or after 1st September 2005.

(7) Notwithstanding any other provision in these Regulations where—

- (a) a person attends a course in respect of which a transitional award was bestowed on him; or
- (b) no award under the 1962 Act was bestowed in respect of the course but a transitional award would have been bestowed on him if he had applied for an award under the 1962 Act and his resources had not exceeded his requirements,

he shall be an eligible student for the purposes of Parts 4 and 5 in connection with the course, or in connection with any subsequent course to which the award (either bestowed or which would have been bestowed under the 1962 Act) would have been transferred if transitional awards provided for payments after the first year of a course, but unless paragraph (8) applies he shall qualify for support by way of loan under Part 6 only if he is an eligible student under these Regulations and if he satisfies the qualifying conditions in Part 6.

(8) Notwithstanding any other provision in these Regulations, where any person received or was eligible to receive a loan in relation to an academic year of a course under the 1998 Regulations he shall be an eligible student for the purposes of Part 6 in connection with the course, or any subsequent designated course which (disregarding any intervening vacation) he starts immediately after ceasing that course, but unless paragraph (7) applies he shall qualify for support by way of grant under Parts 4 and 5 only if he is an eligible student under these Regulations and if he satisfies the relevant qualifying conditions in Parts 4 and 5.

(9) Modifications to these Regulations which apply while section 1 of the Civil Partnership Act 2004<sup>(33)</sup> is not in force in England and Wales are set out in Part 11.

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<sup>(32)</sup> S.I. 2000/2330, amended by S.I. 2000/3087, S.I. 2001/2300, S.I. 2002/2104, S.I. 2003/1588 and S.I. 2004/1658.

<sup>(33)</sup> 2004 c. 33.