Draft Regulations laid before Parliament under section 104(3A) of the Children Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

CHILDREN AND YOUNG PERSONS, ENGLAND

The Children Act 1989 (Higher Education Bursary)(England) Regulations 2009

Made - - - - 2009

Coming into force in accordance with regulation 1.

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 23C(5B) and 104(4) of the Children Act 1989(**1**).

In accordance with section 104 (3A) and (3B)(**2**) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

Citation commencement and application

1.—(1) These Regulations may be cited as the Children Act 1989 (Higher Education Bursary) (England) Regulations 2009 and come into force on the day after the day on which they are made.

(2) These Regulations apply in relation to the payment of the relevant amount for the purposes of section 23C(5A) of the Children Act 1989 ("the Act") by a local authority in England to a former relevant child(**3**) who is pursuing a course of higher education started on or after 1st September 2008.

Relevant amount

2. For the purposes of section 23C(5A) of the Act, the relevant amount is £2,000 ("the higher education bursary").

(**1**) 1989 c.41. Subsection (5B) of section 23C of the Children Act 1989 ("the 1989 Act") was inserted by section 21(2) of the Children and Young Persons Act 2008 (c.23) ("the 2008 Act"). "Prescribed" means prescribed in regulations made under the 1989 Act – see section 105 (1). Section 104(4) was amended by Schedule 3 to the 2008 Act, paragraph 25.

(**2**) Subsections (3A) and (3B) were inserted in section 104 of the 1989 Act by Schedule 3 to the 2008 Act, paragraph 25. They provide that the first regulations to be made in exercise of the powers conferred by section 23C(5B)(b) are to be made by the affirmative procedure.

(**3**) "Former relevant child" is defined in section 23C(1) of the 1989 Act.

Meaning of higher education

3. For the purposes of section 23C(5A) of the Act, higher education means a course of higher education that is of at least two academic years' duration and is designated by or under regulations made under section 22(1) of the Teaching and Higher Education Act 1998(**4**) on the date on which the former relevant child starts the course.

Provision as to payment of the relevant amount

4.—(1) The local authority may pay the higher education bursary to a former relevant child as a lump sum or by instalments.

(2) In the case of a former relevant child who started higher education on or after 1st September 2008 but before 1st September 2009—

(a) if the higher education bursary is to be paid as a lump sum, it must be paid by 31st December 2009; or

(b) if the higher education bursary is to be paid by instalments, the first instalment must be paid by 31st December 2009 and the final instalment must be paid before the end of the final year of the course or not more than four weeks after the start of the fourth year of the course, whichever is the earlier.

(3) In the case of a former relevant child who starts higher education on or after 1st September 2009—

(a) if the higher education bursary is to be paid as a lump sum, it must be paid by 31st December 2009 or not more than four weeks after the start of the first year of the course, whichever is the later; or

(b) if the higher education bursary is to be paid by instalments—

(i) the first instalment must be paid by 31st December 2009 or not more than four weeks after the start of the first year of the course, whichever is the later; and

(ii) the final instalment must be paid before the end of the final year of the course or not more than four weeks after the start of the fourth year of the course, whichever is the earlier.

(4) Before making any decision about payment of the higher education bursary the local authority must, as far as reasonably practicable, ascertain and give due consideration to the wishes and feelings of the former relevant child.

(5) The local authority may withhold payment of any unpaid balance of the higher education bursary during any period when the former relevant child is not pursuing higher education in accordance with the pathway plan(**5**) for that person.

(6) The local authority may recover the whole of the higher education bursary or any part of it from a person to whom payment has been made if there has been a mistake as to the eligibility of that person for the payment.

(**4**) c.30. Courses are designated as higher education courses in regulations made under section 22(1) of the Teaching and Higher Education Act 1998. The Education (Student Support) Regulations 2008 SI 2008/529 apply to the provision of support to students in relation to an academic year (as defined in the Regulations) that began on or after 1st September 2008. These Regulations were revoked with transitional provisions and savings by The Education (Student Support) (No. 2) Regulations 2008 (SI 2008/1582) which apply in relation to an academic year that begins on or after 1st September 2009, as amended by SI 2008/2094, SI 2008/2939, SI 2009/470 and SI 2009/862. See also The Education (Student Support)(Dance and Drama) Regulations 1999, SI 1999/2263, as amended by SI 2001/2893.

(**5**) "Pathway plan" is defined in section 23E of the 1989 Act, inserted by the Children (Leaving Care) Act 2000 (c. 35).