STATUTORY RULES OF NORTHERN IRELAND

2001 No. 285

EDUCATION

The Education (Grants for Disabled Postgraduate Students) Regulations (Northern Ireland) 2001

Made - - - -	*19th July 2001*
Coming into operation	*1st September 2001*

The Department of Higher and Further Education, Training and Employment, in exercise of the powers conferred by Article 3(1) and (2) of the Education (Student Support) (Northern Ireland) Order 1998(**1**) and now vested in it(**2**) and of every other power enabling it in that behalf, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Education (Grants for Disabled Postgraduate Students) Regulations (Northern Ireland) 2001 and shall come into operation on 1st September 2001.

Interpretation

2.—(1) In these Regulations—

"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" has the meaning given to it in paragraph (6);

"the Department" means the Department of Higher and Further Education, Training and Employment;

"designated course" means a course designated by or under regulation 4;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(**3**) as adjusted by the Protocol signed at Brussels on 17th March 1993(**4**);

"EEA migrant worker" has the meaning given to it in paragraph (5);

(**1**) S.I.1998/1760 (N.I. 14)
(**2**) S.R.1999 No. 481
(**3**) Cmnd. 2073
(**4**) Cmnd. 2183

"eligible student" means a person whom the Department has determined is eligible for a grant in connection with his undertaking a course in accordance with regulation 3 or 6;

"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 subject to the conditions laid down in the EEA Agreement the area comprised by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

"grant" means a grant made in accordance with these Regulations;

"the Islands" means the Channel Islands and the Isle of Man;

"the Order" means the Education (Student Support) (Northern Ireland) Order 1998;

"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(**5**) as extended by the Protocol thereto which entered into force on 4th October 1967(**6**) and any reference to the child of a refugee includes a reference to a step-child; and

"Research Council or similar body" means a body or institution mentioned in paragraph (7).

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

(a) his current course,

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

(c) his course designated by or under regulations made for the purposes of section 1 of the Education Act 1962(**7**) or Article 3 of the Order which, disregarding any intervening vacation, the student was undertaking immediately before undertaking the current course

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

(3) For the purpose 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(**8**) for the purposes of these Regulations, a person shall be treated as ordinarily resident in Northern Ireland, England and Wales, the United Kingdom, the United Kingdom and Islands or in the European Economic Area if he would have been so resident but for the fact that he, his spouse 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 the United Kingdom, the United Kingdom and Islands, or as the case may be, outside the European Economic Area and paragraph 7(*c*) of the Schedule shall not apply in the case of such a 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.

(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 operation has become part of one or other or both of these areas

(**5**) Cmnd. 9171
(**6**) Cmnd. 3906
(**7**) 1962 c. 12
(**8**) 1971 c. 77; amended by the British Nationality Act 1981 (c. 61), section 39 and Schedule 4; by the Immigration Act 1988 (c. 14), sections 1, 3, 4, 6 and 10 and the Schedule, by the Asylum and Immigration Appeals Act 1993 (c. 23), sections 10 to 12

shall be considered to have always been part of the European Community or European Economic Area as the case may be.

(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 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 of workers within the Community(**9**), as extended by the EEA 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 "academic year" means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September, according to whether the academic year of the course in question begins in the winter, the spring, the summer or the autumn respectively, but if students are required to begin the course during August or September and to continue it through the autumn the academic year of the course shall be considered to begin in the autumn rather than the summer.

(7) In these Regulations—

(a) "Research Council" means any of the following research councils—

Biotechnology and Biological Sciences Research Council,

Economic and Social Research Council,

Engineering and Physical Sciences Research Council,

Medical Research Council,

Natural Environment Research Council,

Particle Physics and Astronomy Research Council; and

(b) "similar body" means either of the following institutions—

the Arts and Humanities Research Board,

the British Academy.

Eligible students

3.—(1) Subject to and in accordance with these Regulations a person shall be eligible for a grant in connection with his undertaking a designated course and in respect of an academic year which begins on or after 1st September 2001 if:

(a) he is a person mentioned in the Schedule to these Regulations; and

(b) the Department is satisfied that, by reason of a disability to which he is subject, he will be obliged to incur additional expenditure in respect of his undertaking his course.

(2) A person shall not be eligible under this regulation if—

(a) there has been made to him or paid to him in relation to his undertaking the course—

(i) a bursary or award of similar description under Article 3 of the Order the amount of which includes an element for living costs;

(ii) a bursary or award of similar description under Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972(**10**) or section 63 of the Health

(**9**) O.J. No. L257, 19.10.68, p. 2
(**10**) S.I. 1972/1265 (N.I. 14).

Services and Public Health Act 1968(**11**) the amount of which is not calculated by reference to his income;

(iii) any allowance paid to him under regulations made under sections 73(*f*) and 74(*i*) of the Education (Scotland) Act 1980 in respect of a course leading to a qualification in a healthcare profession, other than a medical doctor or dentist(**12**);

(iv) any allowance, bursary or award of similar description made by a Research Council or similar body;

(v) any allowance, bursary or award of similar description made by his institution which includes any payment for the purpose of meeting additional expenditure incurred by the student by reason of his disability; or

(vi) any other scholarship, studentship, exhibition, bursary, award, grant, allowance or benefit however described payable in connection with the student's attendance on the course; or

(b) he has, in the opinion of the Department, shown himself by his conduct to be unfitted to receive any support.

(3) A person shall not be eligible for a grant for more than one designated course at any one time.

(4) Where a person who meets the requirements of this regulation is notified of that fact by the Department under regulation 5(4) he shall henceforth be an eligible student for the purposes of these Regulations unless, in relation to the second and any subsequent academic year of his course, he is not ordinarily resident in Northern Ireland on the first day of that academic year.

Designated courses

4.—(1) A course shall be designated for the purposes of Article 3 of the Order and regulations 3 and 6 if—

(a) it is a course entry for which a first degree (or equivalent qualification) or higher is normally required;

(b) it is a course—

(i) of at least one academic year's duration; and

(ii) in the case of a part-time course, the duration of which does not exceed twice the period normally required to complete a full-time course leading to the same qualification;

(c) it is wholly provided by an educational institution or institutions in the United Kingdom or the Republic of Ireland which are maintained or assisted by recurrent grants out of public funds or is provided by such an institution or institutions in conjunction with an institution or institutions outside the United Kingdom; and

(d) it is not a course for the initial training of teachers.

(2) For the purposes of these Regulations a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not it has entered an agreement with the student to provide the course.

(**11**) 1968 c. 46; section 63 was amended by the National Health Services Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 124 and Schedule 5, the National Health Services Act 1977 (c. 49), Schedule 15, paragraph 45 and Schedule 16, the National Health Services (Scotland) Act 1978 (c. 29), Schedule 16, paragraph 26(2) and Schedule 17, the Health Services Act 1980 (c. 53), sections 1 and 2 and Schedule 1, Part 1, paragraph 19(3), the Local Government Act 1985 (c. 51), Schedule 17, the Family Practitioner Committees (Consequential Modifications) Order 1985 (S.I. 1985/39), Article 6(1), 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, paragraph 74(1) and (2), the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 95(1) and (2), the Local Government Reorganisation (Wales) (Consequential Amendments) (No. 2) Order 1996 (S.I. 1996/1008), the Schedule, paragraph 1, and the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 1(4)

(**12**) S.I. 1992/580

(3) For the purposes of paragraph (1) a university and any constituent college or institution in the nature of a college or a university shall be regarded as maintained or assisted by recurrent grants out of public funds if either the university or the constituent college or institution is so maintained or assisted.

(4) For the purposes of Article 3 of the Order and regulations 3(1) and 6(2) the Department may designate courses under these Regulations which are not designated under paragraph (1).

Applications for grant

5.—(1) A person shall apply for a grant in respect of an academic year of a designated course by completing and submitting to the Department an application in such form as it may require, but which shall include a declaration signed by the student that:

(a) the particulars given in the form are correct to the best of his knowledge and belief;

(b) he will notify the Department (or if an Education and Library Board is exercising functions in relation to his application by virtue of a determination under Article 4(1)(*a*) of the Order he will notify them) of any change in them which might affect his eligibility for a grant; and

(c) he will if required to do so repay to the Department any amount paid to him which for whatever reason exceeds the amount of grant to which he is entitled under these Regulations.

(2) An applicant shall demonstrate his eligibility for a grant by providing such evidence as the Department may require.

(3) The Department may take such steps and make such inquiries as it considers necessary to determine whether the applicant is eligible for a grant.

(4) If the Department considers that the applicant is eligible for a grant it shall:

(a) where the application is the first to be made in connection with the applicant's undertaking the course, notify him of the fact that the applicant is an eligible student and the amount to which the Department considers he is entitled; and

(b) in respect of any subsequent application, notify him of the amount to which the Department considers he is entitled.

Transfers of eligibility

6.—(1) An eligible student may request that the Department transfer his eligibility in any case where—

(a) on the recommendation of the academic authority the eligible student starts to undertake another course at the institution; or

(b) with the written consent of the academic authorities of both institutions concerned, given on educational grounds, the eligible student starts to undertake a course at another institution.

(2) Subject to paragraph (3) the Department, on being satisfied of the matters referred to in paragraph (1) and that the second course is a designated course, shall transfer the eligible student's eligibility, and henceforth the eligible student shall for all purposes be an eligible student in connection with his undertaking the second course, whether or not he may have been eligible for a grant if he had applied under regulation 5.

(3) The Department may, after consulting the academic authority concerned, refuse to transfer eligibility under this regulation if it is satisfied that when the student applied for a grant he did not intend to complete the course to which his application related.