
STATUTORY RULES OF NORTHERN IRELAND

2008 No. 280

The Employment and Support Allowance
Regulations (Northern Ireland) 2008

PART 10

INCOME AND CAPITAL

CHAPTER 10

Students

Interpretation

131.—(1) In this Chapter—

“academic year” means the period of 12 months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course is to be considered to begin in the autumn rather than the summer;

“access funds” means—

- (a) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993⁽¹⁾, or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997⁽²⁾ in each case being grants, or grants, loans or other payments, as the case may be, made for the purpose of assisting students in financial difficulties;
- (b) grants made under section 68 of the Further and Higher Education Act 1992⁽³⁾ for the purpose of providing funds on a discretionary basis to be paid to students;
- (c) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980⁽⁴⁾;
- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the Learning and Skills Council for England under sections 5, 6 and 9 of the Learning and Skills Act 2000⁽⁵⁾; or
- (e) Financial Contingency Funds made available by the Welsh Ministers;

(1) S.I. 1993/2810 (N.I. 12); Article 30 was amended by Schedule 4 to the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)) and Article 11(2) of the Colleges of Education (Northern Ireland) Order 2005 (S.I. 2005/1963 (N.I. 13))

(2) S.I. 1997/1772 (N.I. 15)

(3) 1992 c. 13

(4) 1980 c. 44; section 74(1) was amended by paragraph 8(17) of Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39)

(5) 2000 c. 21; section 5 was amended by section 178(2) of the Education Act 2002 (c. 32), section 6 was amended by section 34(7) of the Special Educational Needs and Disability Act 2001 (c. 10) and section 9 was amended by section 176(2) of the Education and Inspections Act 2006 (c. 40)

“contribution” means any contribution in respect of the income of a student or of any other person which the Department, the Scottish Ministers or an education authority takes into account in ascertaining the amount of the student’s grant or student loan, or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Education (Scotland) Act 1980, the Scottish Ministers or education authority take into account being sums which the Scottish Ministers or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse or civil partner can reasonably be expected to contribute towards the holder’s expenses;

“course of advanced education” means—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ, or equivalent, including a course which is of a standard above a general certificate of education (advanced level), a Scottish national qualification (higher or advanced higher);

“covenant income” means the income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student’s grant or award;

“education authority” means a government department, an education and library board established under Article 3 of the Education and Libraries Order⁽⁶⁾, a local education authority as defined in section 212(1) of the Education Act 2002⁽⁷⁾, an education authority as defined in section 123 of the Local Government (Scotland) Act 1973⁽⁸⁾, any body which is a research council for the purposes of the Science and Technology Act 1965⁽⁹⁾ or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside the United Kingdom;

“full-time student” means a person who is not a qualifying young person or child within the meaning of section 138 of the Contributions and Benefits Act⁽¹⁰⁾ (child and qualifying young person) and who is—

- (a) aged less than 19 and is attending or undertaking a full-time course of advanced education;
- (b) aged 19 or over but under pensionable age and is attending or undertaking a full-time course of study at an educational establishment; or
- (c) on a sandwich course;

“grant” (except in the definition of “access funds”) means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds or any payment to which paragraph 13 of Schedule 8 or paragraph 48 of Schedule 9 applies;

“grant income” means—

- (a) any income by way of a grant;
- (b) in the case of a student, other than one to whom paragraph (c) refers, any contribution which has been assessed whether or not it has been paid;
- (c) in the case of a student who is a lone parent or is a person to whom Part 4 applies, any contribution which has been assessed and which has been paid,

⁽⁶⁾ Article 3 was amended by Schedule 9 to the Education Reform (Northern Ireland) Order 1989 (N.I. 20))

⁽⁷⁾ 2002 c. 32

⁽⁸⁾ 1973 c. 65; section 123 was substituted by paragraph 92(28) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39)

⁽⁹⁾ 1965 c. 4

⁽¹⁰⁾ Section 138 was substituted by section 2(2) the Child Benefit Act 2005 (c. 6)

and any such contribution which is paid by way of a covenant is to be treated as part of the student's grant income;

"period of experience" means a period of work experience which forms part of a sandwich course;

"period of study" means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either—
 - (i) the day before the start of the next year of the course in a case where the student's grant or loan is assessed at a rate appropriate to the student's studying throughout the year or, if the claimant does not have a grant or loan, where a loan would have been assessed at such a rate had the claimant had one, or
 - (ii) in any other case the day before the start of the normal summer vacation appropriate to the student's course;
- (c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

"sandwich course" has the meaning given by regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007(**11**), regulation 2(9) of the Education (Student Support) Regulations 2008(**12**) or regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007(**13**);

"standard maintenance grant" means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 6 to the Students Awards Regulations(**14**) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at the student's parent's home, the amount specified in paragraph 3 of Schedule 6 to the Students Awards Regulations;
- (c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980, the amount of money specified for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 6 to the Students Awards Regulations other than in head (a) or (b) of that sub-paragraph;

"student" means a person, other than a person in receipt of a training allowance, who is attending or undertaking a course of study at an educational establishment;

(11) S.R. 2007 No. 195

(12) S.I. 2008/529

(13) S.S.I. 2007/154

(14) The amounts in Schedule 6 are amended by the Schedule to S.R 2008 No. 254

“student loan” means a loan towards a student’s maintenance pursuant to any regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998⁽¹⁵⁾, section 22 of the Teaching and Higher Education Act 1998⁽¹⁶⁾ or sections 73(f), 73B and 74 of the Education (Scotland) Act 1980⁽¹⁷⁾ and is to include, in Scotland, amounts paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 2007⁽¹⁸⁾.

(2) For the purposes of the definition of “full-time student” in paragraph (1), a person is to be regarded as attending or, as the case may be, undertaking a full-time course of study, a full-time course of advanced education or as being on a sandwich course—

(a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—

(i) on the last day on which the claimant is registered with the educational establishment as attending or undertaking that part as a full-time course of study, or

(ii) on such earlier date (if any) as the claimant finally abandons the course or is dismissed from it;

(b) in any other case, throughout the period beginning on the date on which the claimant starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the claimant finally abandons it or is dismissed from it.

(3) For the purpose of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph is to include—

(a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the claimant was attending or undertaking a part of the course as a full-time course of study, any period in respect of which the claimant attends or undertakes the course for the purpose of retaking those examinations or that module;

(b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which the claimant is required to attend or undertake the course.

(4) In paragraph (2) “modular course” means a course of study which consists of 2 or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

Calculation of grant income

132.—(1) The amount of student’s grant income to be taken into account, subject to paragraphs (2) and (3), is to be the whole of the student’s grant income.

(2) There is to be disregarded from the amount of a student’s grant income any payment—

(a) intended to meet tuition fees or examination fees;

(15) [S.I. 1998/1760 \(N.I. 14\)](#); Article 3 was amended by section 147(3) of the Learning and Skills Act 2000 ([c. 21](#)), paragraph 238 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 ([c. 1](#)), section 147(4) of the Finance Act 2003 ([c. 14](#)) and Article 11(1) of the Higher Education (Northern Ireland) Order 2005 ([S.I. 2005/1116 \(N.I. 5\)](#))

(16) [1998 c. 30](#); section 22 was amended by section 146(2) of the Learning and Skills Act 2000

(17) [1980 c.44](#); section 73(f) was amended by section 29(1) of the Teaching and Higher Education Act 1998 ([c. 30](#)) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 ([asp 6](#)), section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998 and amended by section 3(3) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 and section 74 was amended by paragraph 8(17) of Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989

(18) [S.I. 2007/153](#)

- (b) intended to meet additional expenditure incurred by a disabled student in respect of that student's attendance on a course;
 - (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
 - (d) on account of the student maintaining a home at a place other than that at which the student resides while attending the course but only to the extent that the student's rent or rates are not met by housing benefit;
 - (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of that person;
 - (f) intended to meet the cost of books and equipment;
 - (g) intended to meet travel expenses incurred as a result of the student's attendance on the course;
 - (h) intended for the maintenance of a child dependant;
 - (i) intended for the child care costs of a child dependant.
- (3) Where a student does not have a student loan and is not treated as possessing such a loan, there is to be excluded from the student's grant income—
- (a) the sum of £290 per academic year in respect of travel costs; and
 - (b) the sum of £370 per academic year towards the costs of books and equipment,
- whether or not any such costs are incurred.
- (4) Subject to paragraph (6), a student's grant income, except any amount intended for the maintenance of adult dependants under Part 3 of Schedule 6 to the Students Awards Regulations, is to be apportioned—
- (a) subject to paragraph (7), in a case where it is attributable to the period of study, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study;
 - (b) in any other case, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.
- (5) Any grant in respect of an adult dependant paid under Article 44(2) of the Health and Personal Social Services Order (provisions relating to training) and any amount intended for the maintenance of an adult dependant under the provisions referred to in paragraph (4) is to be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53 weeks.
- (6) In a case where a student is in receipt of a student loan or where that student could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of an adult dependant under provisions other than those referred to in paragraph (4) is to be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.
- (7) In the case of a student on a sandwich course, any period of experience within the period of study is to be excluded and the student's grant income is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

Calculation of covenant income where a contribution is assessed

133.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of the student's covenant income to be taken into account for that period and any summer vacation immediately following is to be the whole amount of the student's covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant income is to be determined—

(a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53; and

(b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution is to be treated as increased by the amount, if any, by which the amount excluded under regulation 132(2)(g) falls short of the amount for the time being specified in paragraph 7(2) of Schedule 6 to the Students Awards Regulations (travel expenditure).

Calculation of covenant income where no grant income or no contribution is assessed

134.—(1) Where a student is not in receipt of income by way of a grant the amount of the student's covenant income is to be calculated as follows—

(a) any sums intended for any expenditure specified in regulation 132(2)(a) to (e), necessary as a result of the student's attendance on the course, are to be disregarded;

(b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded is to be apportioned equally between the weeks of the period of study and there is to be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 132(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;

(c) the balance, if any, is to be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 and treated as weekly income of which £5 is to be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of the student's covenant income is to be calculated in accordance with paragraph (1), except that—

(a) the value of the standard maintenance grant is to be abated by the amount of the student's grant income less an amount equal to the amount of any sums disregarded under regulation 132(2)(a) to (e); and

(b) the amount to be disregarded under paragraph (1)(b) is to be abated by an amount equal to the amount of any sums disregarded under regulation 132(2)(f) and (g) and (3).

Relationship with amounts to be disregarded under Schedule 8

135. No part of a student's covenant income or grant income is to be disregarded under paragraph 15 of Schedule 8 (charitable and voluntary payments).

Other amounts to be disregarded

136.—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 137, any amounts intended for any expenditure specified in regulation 132(2) necessary as a result of the student's attendance on the course is to be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulations 132(2) and (3), 133(3), 134(1)(a) or (b) and 137(6) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a Deed of Covenant which commences or takes effect after the first day of that vacation, that income is to be disregarded.

Treatment of student loans

137.—(1) A student loan is to be treated as income unless it is a specified loan or award in which case it is to be disregarded.

(2) For the purposes of paragraph (1), a “specified loan or award” means—

- (a) an award made by the Department for Employment and Learning under Article 51 of the Education and Libraries Order(19);
- (b) a loan made by the Higher Education Funding Council for England or the Higher Education Funding Council for Wales under section 65 of the Further and Higher Education Act 1992(20);
- (c) a loan made by an educational institution from funds it has received under the Education (Access Funds) (Scotland) Regulations 1990(21).

(3) In calculating the weekly amount of the loan to be taken into account as income—

- (a) in respect of a course that is of a single academic year’s duration or less, a loan which is payable in respect of that period is to be apportioned equally between the weeks in the period beginning with—
 - (i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year,
 - (ii) where the student is required to start attending the course in August or where the course is less than an academic year’s duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
- (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Department, the longest of any vacation is taken;
- (c) for the purposes of sub-paragraph (b), “quarter” has the meaning given by regulation 104(6) (calculation of income other than earnings);
- (d) in respect of the final academic year of a course (not being a course of a single year’s duration), a loan which is payable in respect of that final academic year is to be apportioned equally between the weeks in the period beginning with—
 - (i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year,
 - (ii) where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,

(19) Article 51 was substituted by Part 2 of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

(20) 1992 c. 13; section 65 was amended by section 27 of the Teaching and Higher Education Act 1998

(21) S.I. 1990/1534 (S. 157)

and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;

- (e) in any other case, the loan is to be apportioned equally between the weeks in the period beginning with the earlier of—
- (i) the first day of the first benefit week in September, or
 - (ii) the benefit week, the first day of which coincides with, or immediately follows, the first day of the autumn term,

and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of June,

and, in all cases, from the weekly amount so apportioned there is to be disregarded £10.

(4) A student is to be treated as possessing a student loan in respect of an academic year where—

- (a) a student loan has been made to that student in respect of that year; or
- (b) the student could acquire such a loan in respect of that year by taking reasonable steps to do so.

(5) Where a student is treated as possessing a student loan under paragraph (4), the amount of the student loan to be taken into account as income is to be, subject to paragraph (6)—

- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to the maximum student loan the student is able to acquire in respect of that year by taking reasonable steps to do so and either—
 - (i) in the case of a student other than one to whom head (ii) refers, any contribution whether or not it has been paid to that student, or
 - (ii) in the case of a student who is entitled to an income-related allowance by virtue of being a student to whom regulation 18 (circumstances in which the condition that the claimant is not receiving education does not apply) applies;
- (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
 - (i) the student took all reasonable steps to obtain the maximum student loan that student is able to acquire in respect of that year, and
 - (ii) no deduction in that loan was made by virtue of the application of a means test.

(6) There is to be deducted from the amount of income taken into account under paragraph (5)—

- (a) the sum of £290 per academic year in respect of travel costs; and
- (b) the sum of £370 per academic year towards the costs of books and equipment,

whether or not any such costs are incurred.

Treatment of payments from access funds

138.—(1) This regulation applies to payments from access funds that are not payments to which regulation 142(2) or (3) (further income treated as capital) applies.

(2) A payment from access funds, other than a payment to which paragraph (3) applies, is to be disregarded as income.

(3) Subject to paragraph (4) and paragraph 38 of Schedule 8, any payments from access funds which are intended and used for food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of a single claimant or, as the case may be, of the claimant's partner, and any payments from access funds which are used for any water charges for which that claimant or partner is liable is to be disregarded as income to the extent of £20 per week.

- (4) Where a payment from access funds is made—
- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
 - (b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment is to be disregarded as income.

Treatment of fee loans

139. A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998, section 22 of the Teaching and Higher Education Act 1998 or section 73(f) of the Education (Scotland) Act 1980, is to be disregarded as income.

Disregard of contribution

140. Where the claimant or the claimant's partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution is to be disregarded for the purposes of assessing that other partner's income.

Further disregard of student's income

141. Where any part of a student's income has already been taken into account for the purposes of assessing that student's entitlement to a grant or student loan, the amount taken into account is to be disregarded in assessing that student's income.

Student's income treated as capital

142.—(1) Any amount by way of a refund of tax deducted from a student's income is to be treated as capital.

(2) An amount paid from access funds as a single lump sum is to be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d), of a single claimant or, as the case may be, of the claimant's partner, or which is used for an item other than any water charges for which that claimant or partner is liable, is to be disregarded as capital but only for a period of 52 weeks from the date of the payment.

Disregard of changes occurring during summer vacation

143. In calculating a student's income there is to be disregarded any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of the student's period of study, from the date on which the change occurred up to the end of that vacation.