
STATUTORY INSTRUMENTS

1998 No. 2004

**EDUCATION, ENGLAND AND WALES
EDUCATION, SCOTLAND**

**The Teaching and Higher Education Act 1998 (Commencement
No. 2 and Transitional Provisions) Order 1998**

Made - - - - 12th August 1998

In exercise of the powers conferred by sections 42(6) and 46(4) of the Teaching and Higher Education Act 1998(1), the Secretary of State for Education and Employment, as respects England and Wales, and the Secretary of State for Scotland, as respects Scotland, hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998.

(2) In this Order:

“the 1962 Act” means the Education Act 1962(2);

“the 1990 Act” means the Education (Student Loans) Act 1990(3);

“the 1996 Act” means the Education (Student Loans) Act 1996(4);

“the 1998 Act” means the Education (Student Loans) Act 1998(5);

“the 1998 Regulations” means the Education (Mandatory Awards) Regulations 1998(6) as they will be amended by the Education (Mandatory Awards) Regulations 1998 (Amendment) Regulations 1998(7);

“first degree course”, “DipHE course”, “HND course”, “old award”, “postgraduate course for the initial training of teachers” and “transitional award” have the same meanings as in the 1998 Regulations; and

(1) 1998 c. 30.

(2) 1962 c. 12; the relevant provisions, as amended, are set out in Schedule 5 to the Education Act 1980 (c. 20).

(3) 1990 c. 6.

(4) 1996 c. 9.

(5) 1998 c. 1.

(6) S.I. 1998/1166.

(7) S.I. 1998/1972.

“HNC course” means a course for the Higher National Certificate of the Business and Technology Education Council or of the Scottish Qualifications Authority, and “Scottish HND course” means a course for the Higher National Diploma of that Authority.

- (3) In this Order, any reference:
- (a) to an article is to an article of this Order, and
 - (b) in an article to a paragraph is to a paragraph of that article.

Provisions coming into force

2. Subject to the following articles, the following provisions of the Teaching and Higher Education Act 1998 shall come into force on the day after this Order is made:

section 44(2), for the purpose of bringing into force the provisions of Schedule 4 referred to below;

in Schedule 4, the repeals relating to:

the 1990 Act;

the 1996 Act; and

the 1998 Act.

Transitional and saving provisions

3.—(1) The repeals of the 1990, 1996 and 1998 Acts shall not affect the continued operation of the provisions of those Acts or of any subordinate legislation made or to be made under them with respect to, or otherwise in connection with:

- (a) loans made under the 1990 Act before the coming into force of the repeals of those Acts;
- (b) the making of loans to any student who attends any course referred to in article 4; or
- (c) loans made to any such student.

(2) Without prejudice to the generality of paragraph (1), the repeals of the 1990, 1996 and 1998 Acts shall not affect the continued operation of any such provisions relating to any of the following functions:

- (a) the making of subordinate legislation;
- (b) the assignment of public sector loans under section 1A of the 1990 Act;
- (c) the making of arrangements (including arrangements which provide for the making of payments of any specified description) in connection with such an assignment.

4. Subject to article 7, the courses referred to in article 3(1)(b) are:

- (a) any course in respect of the attendance at which the student holds an old award under section 1(1) of the 1962 Act or would be eligible for such an award if an application were made;
- (b) any course in respect of the attendance at which a local education authority bestows an award on the student under section 1(6) of the 1962 Act, which is an old award for the purposes of the 1998 regulations as applied to such awards by virtue of section 1(7) of the 1962 Act;
- (c) any course which is referred to in Schedule 1 to the 1990 Act and which the student began to attend before 1 August 1998;
- (d) any course which is referred to in Schedule 1 to the 1990 Act and the first year of which begins on or after 1 August 1998 and before 1 August 1999, where the student had on or before 1 August 1997 received an offer of a place on that course, or on a similar course,,

- in either case for that year, and whether conditional on obtaining specified qualifications or not;
- (e) any course which is referred to in Schedule 1 to the 1990 Act and the first year of which begins on or after 1 August 1998 and before 1 August 1999, where the student had received an offer of a place on another course for a year which began before 1 August 1998, and—
 - (i) he was not able to take up that offer because of illness, and
 - (ii) he was offered a place on this course, whether or not at the same institution;
 - (f) any course which is referred to in Schedule 1 to the 1990 Act and the first year of which begins on or after 1 August 1998, where the student had received an offer of a place on a course for a year which began before 1 August 1998, and—
 - (i) he was not able to take up the offer because a specified qualification or grade was not awarded to him,
 - (ii) he appealed against the decision not to award the qualification or grade to him,
 - (iii) the appeal was allowed after the last date when he could have taken up the offer, and
 - (iv) as a result he was offered a place on this course, whether or not at the same institution.
 - (g) any course which is a first degree or a Scottish HND course and which the student begins to attend immediately after ceasing to attend a DipHE, HNC, HND or Scottish HND course (disregarding any intervening vacation), and the first year of the DipHE, HNC or HND course, or of the latter Scottish HND course, began either—
 - (i) before 1 August 1998, or
 - (ii) on or after 1 August 1998 and before 1 August 1999, and the student falls within paragraph (d), (e) or (f) in relation to that course;
 - (h) any postgraduate course for the initial training of teachers, which the student begins to attend immediately after ceasing to attend a first degree course (disregarding any intervening vacation), and the first year of that first degree course began either—
 - (i) before 1 August 1998, or
 - (ii) on or after 1 August 1998 and before 1 August 1999, and the student falls within paragraph (d), (e) or (f) in relation to that course.

5. If, with the agreement of the institution or institutions in question, a student withdraws from attending a course referred to in any of paragraphs (c) to (h) of article 4 without completing it, and (disregarding any intervening vacation) immediately commences attending another course which is provided by the same or a different institution, the date on which the first year of the first course began shall be regarded for the purposes of the relevant paragraph as the date on which the first year of the second or further course began.

6. For the purposes of article 4(d), a course is similar to another course if the subject matter of one course is in part the same as the subject matter of the other course and, where the offer of a place was on a course which is still offered, the other course is at the same institution.

7. There shall be excluded from paragraphs (c) to (h) of article 4 any course in respect of the attendance at which the student holds an old award or a transitional award under section 1(1) of the 1962 Act or would be eligible for such award if an application were made, or in respect of the attendance at which a local education authority bestows an award on the student under section 1(6) of the 1998 Regulations, which is an old award or a transitional award for the purposes of the 1998 Regulations as applied to such awards by virtue of section 1(7) of the 1962 Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

11th August 1998

Andrew Smith
Minister of State,
Department for Education and Employment

12th August 1998

Calum McDonald
Parliamentary Under Secretary of State, The
Scottish Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions of the Teaching and Higher Education Act 1998 specified in article 2 on the day after the Order is made. These provisions all relate to the repeal of the Education (Student Loans) Acts of 1990, 1996 and 1998.

Transitional and saving provisions are made in respect of loans made under the repealed Acts, the making of loans under those Acts to students attending certain courses, and the loans which are so made (article 3).

Students who hold old awards under the Education (Mandatory Awards) Regulations 1998 (as prospectively amended), and those who would be eligible for such awards if an application were made, will continue to be eligible for loans (“old style loans”) under the Education (Student Loans) Act 1990 (article 4(a)).

The same will apply to those students holding discretionary awards under section 1(6) of the Education Act 1962 equivalent to old awards (article 4(b)). It will also apply to students on courses referred to in Schedule 1 to the Education (Student Loans) Act 1990 which began before 1 August 1998 (article 4(c)); and to students on “end on courses” (namely first degree or Scottish HND courses) or PGCE courses (postgraduate courses for the initial training of teachers), which the student attends immediately after other courses which began before 1 August 1998 (article 4(g)(i) and (h)(i)).

Students who attend courses beginning between 1 August 1998 and 1 August 1999 who have taken a gap year, or were unable to take up the offer of a place on an earlier course due to illness, or have successfully appealed about their examination results, will also continue to be eligible for old style loans (article 4(d), (c) and (e)). This will also apply where such students attend an end on or PGCE course immediately afterwards (article 4(g)(ii) and (h)(ii)).

The meaning of “similar course” in article 4(d) is defined in article 6.

Article 5 provides that where students transfer between courses, the date of commencement of the first year of the first course is to be regarded as the date of commencement of the first year of the second (or further) course.

Article 7 excludes from paragraphs (c) to (h) of article 4 any course for which the student holds an old award or a transitional award under section 1(1) of the 1962 Act (or for which the student would be eligible if an application were made), since a student who holds or is eligible for an old award would be covered by paragraph (a) of article 4, and a student who holds or is eligible for a transitional award is not intended to be eligible for an old style loan. Similarly, article 7 also excludes any course for which a local education authority has bestowed an award on the student under section 1(6) of the 1962 Act, which is an old award or a transitional award for the purposes of the 1998 Regulations as applied to such awards by virtue of section 1(7) of that Act, since a student on whom an old award has been bestowed would be covered by paragraph (b) of article 4, and a student on whom a transitional award has been bestowed is not intended to be eligible for an old style loan.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Teaching and Higher Education Act 1998 have already been brought into force by commencement order made before the date of this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Provision</i>	<i>Date of commencement</i>	<i>S.I. No</i>
section 44(1) (partially)	17.7.1998	1998/1729 (S.93)
paragraph 4 of Schedule 3	17.7.1998	1998/1729 (S.93)