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WELSH STATUTORY INSTRUMENTS

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**2019 No. 895 (W. 161)**

**EDUCATION, WALES**

**The Education (Student Support) (Postgraduate  
Master’s Degrees) (Wales) Regulations 2019**

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| <i>Made</i>  | - - - - | <i>29 April 2019</i> |
| <i>Laid before the National<br/>Assembly for Wales</i> | - -     | <i>30 April 2019</i> |
| <i>Coming into force</i>                               | - -     | <i>27 May 2019</i>   |

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 22 and 42(6) of the Teaching and Higher Education Act 1998<sup>(1)</sup>, and now exercisable by them<sup>(2)</sup>, make the following Regulations:

**PART 1**

**General**

**Title and commencement**

1.—(1) The title of these Regulations is the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

(2) These Regulations come into force on 27 May 2019.

**Application**

2.—(1) These Regulations apply in relation to Wales.

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- (1) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7; the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257; the Education Act 2011 (c. 21), section 76; S.I. 2013/1181 and the Higher Education and Research Act 2017 (c. 29), section 88. See section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.
- (2) The Secretary of State’s functions in section 22(2)(a) to (i) and (k) were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with subsections (a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s function in section 42 was transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) These Regulations apply to the provision of support to students in relation to a course which begins on or after 1 August 2019 whether anything done under these Regulations is done before, on or after 1 August 2019.

(3) But these Regulations do not apply to the provision of support to students in relation to such a course if the course is one in relation to which the student's status has transferred under regulation 6 of the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017<sup>(3)</sup> ("the 2017 Master's Degree Loans Regulations").

(4) For provision about support provided to students in relation to a course—

- (a) to which paragraph (3) applies, or
- (b) which begins before 1 August 2019,
- (c) see the 2017 Master's Degree Loans Regulations.

## PART 2

### Overview

#### Overview

3.—(1) The remaining Parts of these Regulations are arranged as follows.

(2) Part 3 introduces 2 Schedules—

- (a) Schedule 1, which contains provisions about the interpretation of certain key terms;
- (b) Schedule 4, which contains an index of the terms defined in these Regulations.

(3) Part 4 comprises 2 Chapters containing provision about the key concepts which determine eligibility for support under these Regulations—

- (a) Chapter 1 makes provision about determining whether a course is designated for the purposes of these Regulations and is therefore a course in respect of which a student may be eligible for support;
- (b) Chapter 2 makes provision about how a student undertaking a designated course may be eligible for support under these Regulations.

(4) Part 5 makes administrative provision about—

- (a) applications for support under these Regulations;
- (b) requirements imposed on applicants and eligible students to provide information;
- (c) contracts for loans applied for under these Regulations.

(5) Part 6 makes provision about the grant support available to eligible students including provision about—

- (a) the qualifying conditions that a student must meet in order to qualify for a grant;
- (b) the amount of grant available.

(6) Part 7 makes provision about the loan support available to eligible students including provision about—

- (a) the qualifying conditions that a student must meet in order to qualify for a loan;
- (b) the amount of loan available.

(7) Part 8 comprises 3 Chapters about payments, overpayments and the recovery of overpayments, in particular—

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(3) [S.I. 2017/523 \(W. 109\)](#), amended by [S.I. 2017/712 \(W. 169\)](#), [S.I. 2018/277 \(W. 53\)](#) and [S.I. 2018/814 \(W. 165\)](#).

- (a) Chapter 1 makes provision permitting payments to be made on the basis of provisional decisions;
  - (b) Chapter 2 makes provision about the payment of grants and loans, including provision about when payments may be made and the requirements to be met before payments are made;
  - (c) Chapter 3 makes provision about overpayments, including provision specifying what constitutes an overpayment and how an overpayment may be recovered.
- (8) Part 9 sets out restrictions on the payment of loans, including provision—
- (a) restricting payment of a loan if the student fails to provide a National Insurance number;
  - (b) withholding payment of a loan if the student fails to provide certain requested information.
- (9) Part 10 contains amendments to the 2017 Master’s Degree Loans Regulations.

## PART 3

### Interpretation and index

#### **Interpretation and index**

4.—(1) Schedule 1 makes provision about the interpretation of certain key terms for the purposes of these Regulations.

(2) Schedule 4, which is the final Schedule to these Regulations, contains the index of defined terms.

## PART 4

### Key concepts

#### CHAPTER 1

#### Designated courses

#### **Designated courses**

5. In these Regulations (and for the purposes of section 22 of the Teaching and Higher Education Act 1998 (“the 1998 Act”)), a course is a designated course if it—

- (a) satisfies each of the conditions in regulation 6, and
- (b) does not fall within any of the exceptions in regulation 7.

#### **Designated courses – conditions**

6.—(1) The conditions are—

##### *Condition 1*

The course is one which—

- (a) (a) leads to an award granted or to be granted by a body falling within section 214(2) (a) or (b) of the Education Reform Act 1988(4), and

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(4) 1998 c. 40; section 214(2) was amended by the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8 and by the Higher Education and Research Act 2017 (c. 29), section 53.

- (b) (b) the teaching and supervision which comprise the course have been approved by that body.

**Condition 2**

The course is one of the following—

- (a) (a) a full-time course of one or two academic years' duration, or
- (b) (b) a part-time course which it is ordinarily possible to complete in up to four academic years.

**Condition 3**

The course is provided by—

- (a) (a) a Welsh funded institution, a Scottish funded institution, a Northern Irish funded institution or an English regulated institution (whether alone or in conjunction with an institution within or outside the United Kingdom), or
- (b) (b) a registered English institution on behalf of an English plan provider.

**Condition 4**

At least half of the teaching and supervision which comprise the course is provided in the United Kingdom.

(2) For the purposes of Condition 3—

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
- (b) a university and any constituent college or institution in the nature of a college of a university is regarded as—
  - (i) a Welsh funded institution,
  - (ii) a Scottish funded institution,
  - (iii) a Northern Irish funded institution,
  - (iv) an English regulated institution,
  - (v) a registered English institution, or
  - (vi) an English plan provider,
 if either the university or the constituent college or institution is such an institution;
- (c) an institution is not regarded as a Welsh funded institution by reason only that it receives funds from the governing body of a higher education institution as a connected institution in accordance with section 65(3A) and (3B) of the Further and Higher Education Act 1992<sup>(5)</sup>.

**Designated courses – exceptions**

7. A course is not a designated course if it is recognised as a designated course for the purposes of—

- (a) regulation 5 or 83 of the Education (Student Support) (Wales) Regulations 2017<sup>(6)</sup> (“the 2017 Student Support Regulations”);

<sup>(5)</sup> 1992 c. 13; subsections (3A) and (3B) of section 65 were inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27.

<sup>(6)</sup> S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42) and S.I. 2018/814 (W. 165).

- (b) regulation 5 or 8 of the Education (Student Support) (Wales) Regulations 2018(7) (“the 2018 Student Support Regulations”);
- (c) regulation 4 of the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018(8) (“the 2018 Doctoral Degree Loans Regulations”).

### **Designation of other courses**

8.—(1) The Welsh Ministers may specify that a course is to be treated as a designated course despite the fact that, but for the specification, it would not otherwise be a designated course.

(2) The Welsh Ministers may suspend or revoke the specification of a course made under paragraph (1).

## CHAPTER 2

### Eligibility

#### **Eligible students**

9.—(1) A person is an eligible student in connection with a designated course that the person is undertaking if—

- (a) the person falls within one of the categories of persons set out in Schedule 2, and
- (b) none of the exceptions set out in regulation 10 apply to the person.

(2) A person may, at any given time, be an eligible student only in connection with one designated course.

#### **Eligible students – exceptions**

10.—(1) A person (“P”) is not an eligible student if any of the following exceptions applies—

##### *Exception 1*

P is in breach of any obligation to repay any loan.

##### *Exception 2*

P has reached the age of 18 and has not ratified any agreement for a loan made with P when P was under the age of 18.

##### *Exception 3*

The Welsh Ministers think that P’s conduct is such that P is not fit to receive support.

##### *Exception 4*

P is a prisoner, unless P is an eligible prisoner.

##### *Exception 5*

P is enrolled on a course which is a designated course under—

- (a) (a) regulation 5, 66 or 83 of the 2017 Student Support Regulations and is receiving support under those Regulations for that course;
- (b) (b) regulation 5 of the 2018 Student Support Regulations and is receiving support under those Regulations for that course;

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(7) [S.I. 2018/191 \(W. 42\)](#), amended by [S.I. 2018/813 \(W. 164\)](#) and [S.I. 2018/814 \(W. 165\)](#).

(8) [S.I. 2018/656 \(W. 124\)](#), amended by [S.I. 2018/814 \(W. 165\)](#).

- (c) (c) regulation 4 of the 2017 Master’s Degree Loans Regulations and is receiving support under those Regulations for that course;
- (d) (d) regulation 4 of the 2018 Doctoral Degree Loans Regulations and is receiving support under those Regulations for that course.

*Exception 6*

P has already obtained an equivalent or higher qualification.

*Exception 7*

P has already enrolled on a designated course and is in receipt of support under these Regulations for that course.

*Exception 8*

P has previously received support in respect of a course—

- (a) (a) under these Regulations,
- (b) (b) under the 2017 Master’s Degree Loans Regulations, or
- (c) (c) in the form of a loan provided out of funds provided by a government authority within the United Kingdom.

But P may be an eligible student despite this exception if the Welsh Ministers are of the view that P had not been able to complete the course to which the previous loan related due to compelling personal reasons.

*Exception 9*

In respect of P undertaking the designated course, there has been bestowed on or paid to P—

- (a) (a) a healthcare bursary;
- (b) (b) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007<sup>(9)</sup>;
- (c) (c) any allowance, bursary or award of similar description made under section 67(4)(a) of the Care Standards Act 2000<sup>(10)</sup> save to the extent that P is eligible for such a payment in respect of travel expenses;
- (d) (d) any allowance, bursary or award of a similar description made under section 116(2) (a) of the Regulation and Inspection of Social Care (Wales) Act 2016<sup>(11)</sup> save to the extent that P is eligible for such a payment in respect of travel expenses;
- (e) (e) any allowance, bursary or award made under the KESS 2 Scheme.

*Exception 10*

The designated course is a distance learning course and P is not in Wales on the first day of the first academic year of the course.

But this exception does not apply where—

- (a) (a) P or a close relative of P is a member of the armed forces,
- (b) (b) P is not in Wales on the first day of the first academic year, and
- (c) (c) P is not in Wales on that day because P or the close relative is serving as a member of the armed forces outside Wales.

<sup>(9)</sup> S.S.I.2007/151, amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I.2009/309, S.S.I. 2012/72, S.S.I. 2013/80 and S.S.I. 2017/180.

<sup>(10)</sup> 2000 c. 14; amended by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), Schedule 3(2), paragraph 43.

<sup>(11)</sup> 2016 anaw 2.

### *Exception 11*

P is aged 60 or over on the first day of the first academic year of the designated course.

(2) In Exceptions 1 and 2, “loan” means a loan made under any provision of the student loans legislation.

(3) The Welsh Ministers may only exercise their discretion under Exception 8 once in respect of a particular student.

### **Period of eligibility – general rule**

**11.**—(1) A student’s status as an eligible student in connection with a designated course is retained until the end of the student’s period of eligibility unless terminated in accordance with regulation 12 or 13.

(2) A student’s period of eligibility ends at the end of the academic year in which the student completes the designated course.

### **Early termination of eligibility**

**12.**—(1) An eligible student’s (“P’s”) period of eligibility terminates at the end of the day on which—

- (a) P withdraws from P’s designated course and the Welsh Ministers do not transfer P’s status as an eligible student under regulation 17, or
- (b) P abandons or is expelled from P’s designated course.

(2) Where—

- (a) an eligible student’s (“P’s”) designated course is a distance learning course, and
- (b) P undertakes the course outside the United Kingdom,  
P’s period of eligibility terminates at the beginning of the first day on which P undertakes the course outside the United Kingdom.

(3) Paragraph (2) does not apply where P is undertaking a distance learning course outside the United Kingdom because P or a close relative of P is serving as a member of the armed forces.

### **Misconduct and failure to provide accurate information**

**13.**—(1) The Welsh Ministers may terminate an eligible student’s period of eligibility if they are satisfied that the student’s conduct is such that the student is no longer fit to receive support.

(2) Paragraph (3) applies if the Welsh Ministers are satisfied that an eligible student—

- (a) has failed to comply with a requirement to provide information or documentation under these Regulations, or
- (b) has provided information or documentation which was materially inaccurate.

(3) Where this paragraph applies, the Welsh Ministers may—

- (a) terminate the student’s period of eligibility;
- (b) determine that the student does not qualify for a particular category of support or amount of such support.

### **Reinstatement of eligibility after termination**

**14.** Where a student’s period of eligibility terminates under regulation 12 or 13 during the academic year in which the student completes the designated course, the Welsh Ministers may reinstate the student’s period of eligibility for such period as they think appropriate.

**Students becoming eligible during a course**

15. Where one of the events listed in regulation 16(1) occurs during the currency of a student's course, a student may qualify for support under these Regulations, provided the student complies with the application provisions set out in Part 5.

16.—(1) The events are—

- (a) the student's course becomes a designated course;
- (b) the student becomes an eligible student on the grounds that—
  - (i) the student or the student's spouse, civil partner or parent is recognised as a refugee, becomes a person granted stateless leave or becomes a person with leave to enter or remain;
  - (ii) a state accedes to the EU where the student is a national of that state or a family member of a national of that state;
  - (iii) the student becomes a family member of an EU national;
  - (iv) the student acquires the right of permanent residence;
  - (v) the student becomes a child of a Turkish worker;
  - (vi) the student becomes a person described in paragraph 6(1)(a) of Schedule 2;
  - (vii) the student becomes the child of a Swiss national;
  - (viii) the student or the student's parent becomes a person with section 67 leave to remain;
- (c) the student commences a designated course after the start date of the designated course as the relevant academic authority has permitted the student to commence the course at this later start date.

(2) In this regulation, the following terms have the same meaning as in Schedule 2—

- “child” (“*plentyn*”);
- “family member” (“*aelod o deulu*”) (within the meaning given by paragraph 8(5) of Schedule 2);
- “parent” (“*rhiant*”);
- “person granted stateless leave” (“*person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth*”);
- “person with leave to enter or remain” (“*person sydd â chaniatâd i ddod i mewn neu i aros*”);
- “person with section 67 leave to remain” (“*person sydd â chaniatâd i aros o dan adran 67*”);
- “refugee” (“*ffoadur*”);
- “right of permanent residence” (“*hawl i breswyllo 'n barhaol*”);
- “Turkish worker” (“*gweithiwr Twrcaid*”).

**Transfer of status**

17.—(1) Where an eligible student (“P”) transfers from a designated course to another designated course (“the new course”), the Welsh Ministers must transfer the student's status as an eligible student to the new course if—

- (a) they receive a request from the student to do so,
- (b) they are satisfied that one of the grounds for transfer applies (see paragraph (2)), and
- (c) the student's period of eligibility has not terminated.

(2) The grounds for transfer are—



- (a) on the recommendation of the academic authority P ceases one designated course and starts to undertake another designated course at the same institution; or
- (b) P starts to undertake a designated course at another institution.

(3) Where P transfers under paragraph (1), P is entitled to receive in connection with the course to which P transfers, the remainder of the support, if any, in accordance with regulation 33 and where relevant regulation 36, in respect of the course from which P transfers.

## PART 5

### Applications, providing information and loan contracts

#### Requirement to apply for support

**18.**—(1) A person does not qualify for support as an eligible student in relation to a designated course unless the person makes an application for support in relation to that course.

(2) An application under paragraph (1) must—

- (a) be in such form and contain such information as the Welsh Ministers may require,
- (b) be accompanied by such documentation as the Welsh Ministers may require,
- (c) reach the Welsh Ministers within the time limit specified in regulation 19, and
- (d) state whether the person is applying for—
  - (i) a base grant,
  - (ii) a contribution to costs grant,
  - (iii) a contribution to costs loan, or
  - (iv) any combination of the above.

#### Time limits

**19.**—(1) Subject to paragraph (2), an application under regulation 18(1) or an application to amend the amount of the loan under regulation 31(4) must reach the Welsh Ministers no later than the end of the ninth month of the final academic year of the course.

(2) Paragraph (1) does not apply where the Welsh Ministers consider that having regard to the circumstances of the particular case the time limit should not apply, in which case the application to amend the amount must reach the Welsh Ministers no later than such date as they specify in writing.

#### Welsh Ministers' decision on an application

**20.**—(1) The Welsh Ministers may take any steps and make any inquiries as they think necessary to make a decision on an application under regulation 18.

(2) Those steps may include requiring the applicant to provide further information or documentation.

(3) The Welsh Ministers may make a provisional decision on an application under regulation 18 (see regulation 32 for provision about payments made on the basis of a provisional decision).

(4) A decision on an application made by the Welsh Ministers after a provisional decision has been made may—

- (a) confirm the provisional decision, or
- (b) substitute it with a different decision.

(5) The Welsh Ministers must notify the applicant of a decision (including a provisional decision) on an application under regulation 18.

(6) The notification must state—

- (a) whether the Welsh Ministers consider the applicant to be an eligible student,
- (b) if so, whether the eligible student qualifies for support in relation to the designated course,
- (c) if the student does qualify, the category of support for which the student qualifies and the amount payable,
- (d) in the case of a provisional decision, the fact that the decision is provisional and the consequences of that fact.

**21.**—(1) Paragraph (2) applies where—

- (a) a person (“P”) makes an application for support in accordance with regulation 18,
- (b) any information or documentation provided by P in, or in connection with, the application is not materially inaccurate, and
- (c) P receives notification from the Welsh Ministers under regulation 20(5) incorrectly stating that P is an eligible student.

(2) Where this paragraph applies, despite the notification incorrectly stating that P is an eligible student, the Welsh Ministers may, for the purposes of these Regulations, treat P as being an eligible student.

### **Requirements on eligible students to provide information**

**22.**—(1) An eligible student must, as soon as reasonably practicable after being requested to do so, provide the Welsh Ministers with such information or documentation as the Welsh Ministers may require—

- (a) for the purposes of determining—
  - (i) the eligibility of a student;
  - (ii) whether a student qualifies for support;
  - (iii) the type and amount of support payable to a student;
  - (iv) whether an overpayment has been made to a student;
- (b) for any purpose relating to the recovery of an overpayment;
- (c) for any purpose relating to the repayment of a loan;
- (d) for any other purpose related to these Regulations that the Welsh Ministers think appropriate.

(2) A request under paragraph (1) may include requesting sight of an eligible student’s—

- (a) valid passport issued by the state of which that student is a national,
- (b) valid national identity card, or
- (c) birth certificate.

(3) Where an event mentioned in paragraph (4) occurs in respect of an eligible student, the student must inform the Welsh Ministers as soon as is reasonably practicable after the event occurs.

(4) The events are—

- (a) the student withdraws from, is suspended from, abandons or is expelled from their course;
- (b) the student transfers to another course (whether at the same or at a different institution);

- (c) the student otherwise ceases to undertake their course and does not intend to or is not permitted to continue it for the remainder of the academic year;
  - (d) the student is absent from the course for—
    - (i) more than 60 days due to illness, or
    - (ii) for any period for any other reason;
  - (e) the month for the start or completion of the course changes;
  - (f) the applicant’s home or term-time—
    - (i) address,
    - (ii) telephone number, or
    - (iii) email address,changes;
  - (g) the applicant becomes or ceases to be a prisoner.
- (5) Information or documentation that is required to be provided to the Welsh Ministers under these Regulations must be provided in such form as the Welsh Ministers may specify.
- (6) The Welsh Ministers may require that—
  - (a) an application under regulation 18;
  - (b) any other documentation provided to them under these Regulations,must be signed in such manner (including electronically) as they may specify.
- (7) The reference to an eligible student in paragraph (1) is to be treated as including a person who makes an application under regulation 18 even if the Welsh Ministers’ decision on the application is that the person is not an eligible student.
- (8) See regulation 13 for provision about the consequences of failing to comply with a requirement imposed by this regulation.

### **Requirement to enter into a contract for a loan**

- 23.**—(1) An eligible student may not receive a contribution to costs loan under these Regulations unless the student enters into a contract for the loan with the Welsh Ministers.
- (2) The contract—
  - (a) must be in such form and on such terms, and
  - (b) may be required to be signed in such manner (including electronically),as the Welsh Ministers may specify.

## **PART 6**

### **Base grant and contribution to costs grant**

#### **CHAPTER 1**

##### **Qualifying conditions**

### **Base grant and contribution to costs grant**

- 24.** A base grant and contribution to costs grant are grants made available by the Welsh Ministers to an eligible student in relation to a designated course.

## CHAPTER 2

### Base grant

#### Amount of base grant

25. The amount of the base grant available to an eligible student is £1,000.

## CHAPTER 3

### Contribution to costs grant

#### Qualifying conditions for contribution to costs grant

26. An eligible student qualifies for a contribution to costs grant in relation to a designated course unless the eligible student is an eligible prisoner.

#### Amount of contribution to costs grant

- 27.—(1) The maximum amount of contribution to costs grant available to an eligible student is £5,885.

- (2) Where—

- (a) the student's household income does not exceed £18,370, or
- (b) the student is a care leaver,

the amount of contribution to costs grant is £5,885.

- (3) Where the student's household income exceeds £18,370 but is less than £59,200, the amount of contribution to costs grant payable to the student is the maximum amount of contribution to costs grant reduced by £1 for every £6.937 of household income exceeding £18,370.

- (4) Where the eligible student's household income is £59,200 or more, the amount of contribution to costs grant payable is £0.

#### Household income

28. See Schedule 3 for provision about calculating an eligible student's household income.

#### Meaning of care leaver

29. An eligible student is a "care leaver" if the student—

- (a) is under the age of 25 on the first day of the first academic year of the designated course,
- (b) is, or has been, a category of young person defined in, or by virtue of, section 104 of the Social Services and Well-being (Wales) Act 2014(12), and
- (c) between the student's 14<sup>th</sup> birthday and the first day of the first academic year of the course, the student—
  - (i) was looked after, fostered or accommodated (within the meaning of sections 74 and 104 of the Social Services and Well-being (Wales) Act 2014) for an aggregate period of 13 weeks or more, or

- (ii) was a person with respect to whom a special guardianship order (within the meaning given by section 14A of the Children Act 1989<sup>(13)</sup>) was in force for a period of 13 weeks or more.

## PART 7

### Contribution to costs loan

#### Contribution to costs loan

**30.** A contribution to costs loan is a loan made available by the Welsh Ministers to an eligible student in respect of a designated course.

#### Amount of contribution to costs loan

**31.**—(1) The amount of contribution to costs loan payable to an eligible student is calculated as follows—

Maximum amount of contribution to costs loan available to the student in respect of a designated course.

*Minus*

Amount of contribution to costs grant payable to the student under regulation 27.

(2) Subject to paragraph (3), the maximum amount of contribution to costs loan is £16,000.

(3) Where an eligible prisoner applies for a contribution to costs loan the amount of loan must not exceed the lesser of—

(a) the fees payable in respect of the designated course minus the amount of base grant payable to the eligible prisoner under regulation 25, and

(b) £16,000.

(4) Except where regulation 36(5) to (10) applies an eligible student may apply to the Welsh Ministers to amend the amount of contribution to costs loan for which the student has applied, provided that—

(a) in aggregate, the amounts of contribution to costs loan applied for do not exceed the applicable amounts set out in paragraphs (2) and (3);

(b) such application is made in accordance with regulation 18(2).

## PART 8

### Payments, Overpayments and Recovery

#### CHAPTER 1

##### Payment following a provisional decision

#### Payment based on provisional assessment

**32.** Where the Welsh Ministers make a provisional decision on an application made under regulation 18, the Welsh Ministers may make a payment based on that decision.

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<sup>(13)</sup> 1989 c. 41; section 14A was inserted by the Adoption and Children Act 2002 (c. 38) and amended by the Children and Families Act 2014 (c. 6) and the Children and Young Persons Act 2008 (c. 23).

## CHAPTER 2

### Payment of grants and loans

#### **Payment of grants and loans**

**33.**—(1) The Welsh Ministers must pay an amount of base grant, contribution to costs grant or contribution to costs loan to an eligible student where it is payable to the student.

(2) Subject to paragraph (3), the Welsh Ministers may pay that amount—

(a) either as a lump sum or by instalments, and

(b) at such times, and in such manner, as the Welsh Ministers consider appropriate.

(3) The Welsh Ministers may make it a condition of entitlement to payment that the eligible student must provide the Welsh Ministers with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(4) In the case of an eligible prisoner, the Welsh Ministers must pay the base grant and contribution to costs loan for which an eligible prisoner qualifies to the institution to which the eligible prisoner is liable to make payment for the fees payable in connection with the designated course or to such third party that the Welsh Ministers consider appropriate for the purpose of ensuring the payment of such fees to the relevant institution.

#### **Confirmation of attendance**

**34.**—(1) The Welsh Ministers must not pay the grant or loan or any instalment of the grant or loan for which an eligible student qualifies unless they have received from the relevant academic authority confirmation (in such form as may be required by the Welsh Ministers) of the student's attendance on the designated course.

(2) The academic authority must forthwith inform the Welsh Ministers and provide the Welsh Ministers with particulars if the student withdraws, is suspended or is expelled from the designated course or is otherwise absent.

(3) An eligible student is not to be considered absent from the eligible student's course if the eligible student is unable to attend due to illness and the eligible student's absence has not exceeded 60 days.

#### **Absence from the course**

**35.**—(1) Subject to paragraphs (2) to (4), if the Welsh Ministers receive notice under regulation 34(2) or under regulation 22(3) in relation to an event listed in regulation 22(4)(a) to (d), the Welsh Ministers may not make any further payment of the base grant, contribution to costs grant or the contribution to costs loan in respect of the eligible student to which the notice relates.

(2) Further payments may be made despite the student's lack of attendance if, in the opinion of the Welsh Ministers, those payments would be appropriate in all the circumstances during the student's absence.

(3) If the eligible student recommences the designated course the student must notify the Welsh Ministers and give full details of the length and cause of the preceding absence.

(4) After considering the student's notification under paragraph (3), the Welsh Ministers may recommence any remaining payments of the base grant, contribution to costs grant or the contribution to costs loan under regulation 33, if, in the opinion of the Welsh Ministers, it would be appropriate in all the circumstances for such payment to be made.

**Effect of becoming, or ceasing to be, an eligible prisoner**

36.—(1) Paragraph (2) applies where an eligible student who is in receipt of a base grant, contribution to costs grant or contribution to costs loan becomes an eligible prisoner and continues to undertake a designated course.

(2) The Welsh Ministers must—

- (a) not make any future payment of the contribution to costs grant,
- (b) adjust future payment of the base grant and contribution to costs loan or future payments of instalments of the base grant and contribution to costs loan, so that the total of the support received by the eligible student does not exceed the amount to which the student, as an eligible prisoner, is entitled to under regulation 31(3), and
- (c) make any future payments of the base grant or contribution to costs loan in accordance with regulation 33(4).

(3) Paragraphs (4) to (10) apply where an eligible prisoner who is in receipt of a base grant or a contribution to costs loan ceases to be an eligible prisoner and remains an eligible student, and continues to undertake a designated course.

(4) The Welsh Ministers must make any future payments of the base grant, contribution to costs loan and contribution to costs grant, if any, in accordance with regulation 33(2).

(5) Where an eligible student (“P”) ceases to be an eligible prisoner P may, subject to paragraphs (6) to (8) apply for a contribution to costs grant.

(6) Subject to paragraph (8), the amount of the contribution to costs grant payable to P is calculated by reference to the following formula—

$$G \times \left( \frac{R}{T} \right)$$

where—

G equals the maximum amount of contribution to costs grant payable to P in accordance with paragraph (7);

T equals the total number of days of the duration of the designated course;

R equals the number of days of the designated course which remain when P ceases to be an eligible prisoner.

(7) The maximum amount of the contribution to costs grant payable to P is—

- (a) £5,885 where the student’s household income does not exceed £18,370;
- (b) £5,885 reduced by £1 for every £6.937 of household income exceeding £18,370;
- (c) £0 where the student’s household income is £59,200 or more.

(8) The amount of contribution to costs grant payable to a student under paragraph (6) must not exceed £16,000 minus A, where A is the amount of contribution to costs loan the student has already received when they cease to be an eligible prisoner.

(9) Where P ceases to be an eligible prisoner P may, subject to paragraph (10), apply for the amount of contribution to costs loan to be increased.

(10) The maximum amount of the increase of P’s contribution to costs loan for which P may apply under paragraph (9) is calculated by reference to the following formula—

$$(J - F) \times \left( \frac{R}{T} \right)$$

where—

J equals £16,000 minus the maximum amount of contribution to costs grant payable to P under paragraph (7);

F equals the amount of contribution to costs loan for which P qualifies as an eligible prisoner;

T equals the total number of days of the duration of the designated course;

R equals the number of days of the designated course which remain when P ceases to be an eligible prisoner.

## CHAPTER 3

### Overpayments and recovery

#### **Overpayments - general**

**37.**—(1) Where an eligible student has been paid an amount of any grant or contribution to costs loan which exceeds the amount to which the student is entitled under these Regulations, the student must repay the excess amount if required to do so by the Welsh Ministers.

(2) In this Chapter, references to an eligible student are to be treated as including a person who has received support but is not, or is no longer, an eligible student.

#### **Recovery of overpayments of grants**

**38.**—(1) The Welsh Ministers must recover any overpayment of a grant unless they think it is not appropriate to do so.

(2) A payment of a grant made before the day on which the course begins is an overpayment if the student withdraws from the course before that day.

(3) Overpayment of a grant may be recovered by subtracting the overpayment from any grant payable to the eligible student from time to time under these Regulations or any other regulations made by the Welsh Ministers under section 22 of the 1998 Act.

(4) Paragraph (3) does not prevent the Welsh Ministers from recovering an overpayment by any other method available to them.

#### **Recovery of overpayment of contribution to costs loan**

**39.**—(1) Any overpayment of a contribution to costs loan is recoverable by the Welsh Ministers from—

- (a) the institution or third party which received the monies of the contribution to costs loan where payment was made to such institution or third party, or
- (b) the student who received the contribution to costs loan.

(2) An overpayment of a contribution to costs loan may be recovered from a student under paragraph (1)(b) in whichever one or more of the following ways the Welsh Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from any amount of the contribution to costs loan which remains to be paid;
- (b) by subtracting the overpayment from any kind of grant or loan payable to the student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (c) by requiring the student to repay the contribution to costs loan in accordance with regulations made under section 22 of the 1998 Act;



(d) by taking such other action for the recovery of the overpayment as is available to them.

### **Repayment**

**40.**—(1) The Welsh Ministers may at any time require an applicant or eligible student to enter into an agreement to repay a contribution to costs loan by a particular method.

(2) Where the Welsh Ministers have required an agreement as to the method of repayment under this regulation, the Welsh Ministers may withhold any payment of a contribution to costs loan until the applicant or eligible student provides what has been required.

## **PART 9**

### **Restrictions relating to contribution to costs loans**

#### **Requirement to provide national insurance number**

**41.**—(1) The Welsh Ministers may make it a condition of entitlement to payment of the contribution to costs loan or any instalment of the loan that an eligible student must provide them with the student’s United Kingdom national insurance number.

(2) If that condition is imposed, the Welsh Ministers must not make any payment of the contribution to costs loan until the eligible student has complied, unless the Welsh Ministers are satisfied that, owing to exceptional circumstances, it would be appropriate to make a payment despite the condition not being complied with.

#### **Information requirements relating to loans**

**42.**—(1) Where the Welsh Ministers have required information or documentation under regulation 22(1), for any of the purposes mentioned in paragraph (2) of this regulation, they may withhold any payment of a contribution to costs loan or contribution to costs grant until the student complies with the requirement or provides a satisfactory explanation for not doing so.

(2) The purposes are—

- (a) determining whether the student is an eligible student who qualifies for a loan;
- (b) determining the amount of loan payable to the student;
- (c) any matter relating to the payment of a loan by the student.

## **PART 10**

### **Amendments to the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017**

#### **Amendments to the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017**

**43.** The 2017 Master’s Degree Loans Regulations are amended as follows.

**44.** In regulation 1 (title, commencement and application), after paragraph (3) insert—

“(4) These Regulations do not apply to the provision of postgraduate master’s degree loans to students in relation to courses which begin on or after 1 August 2019 unless

regulation 2(3) of the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019 applies to the course.”

**45.** In regulation 2 (interpretation), in paragraph (1)—

(a) for the definition of “fees” substitute—

““fees” (*ffioedd*) has the meaning given in section 57(1) of the Higher Education (Wales) Act 2015(**14**);”;

(b) in the appropriate place insert—

““person with section 67 leave to remain” (*person sydd â chaniatâd i aros o dan adran 67*) means a person who—

(a) has extant leave to remain in the United Kingdom under section 67 of the Immigration Act 2016(**15**) and in accordance with the immigration rules(**16**); and

(b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;”.

**46.** In regulation 4—

(a) for paragraph (1)(b) substitute—

“(b) wholly provided by an institution in the United Kingdom that before 1 August 2019 was a publicly funded institution (whether alone or in conjunction with another such institution or with an institution situated outside the United Kingdom);”;

(b) for paragraph (3)(d) substitute—

“(d) an institution is not to be regarded as having been publicly funded before 1 August 2019 by reason only that it received public funds before that date from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992; and”.

**47.** In regulation 8 (events), after paragraph (b) insert—

“(ba) the student or the student’s parent becomes a person with section 67 leave to remain;”.

**48.** In Schedule 1, after paragraph 5 (persons with leave to enter or remain and their family members) insert—

**“Persons with section 67 leave to remain**

**5A.—(1)** A person who—

(a) is a person with section 67 leave to remain;

(b) is ordinarily resident in Wales on the first day of the first academic year of the course; and

(c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

**(2)** A person who—

(a) is the child of a person with section 67 leave to remain;

(14) 2015 anaw 1.

(15) 2016 c. 19.

(16) See paragraphs 352ZG to 352ZS.

- (b) on the leave application date was under 18 years old and was the child of the person with section 67 leave to remain;
  - (c) is ordinarily resident in Wales on the first day of the first academic year of the course; and
  - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (3) In this paragraph, “leave application date” means the date on which the person with section 67 leave to remain made the application that led to that person being granted leave to remain in the United Kingdom.”

29 April 2019

*Kirsty Williams*  
Minister for Education, one of the Welsh  
Ministers

## SCHEDULES

### SCHEDULE 1

Regulation 4(1)

#### Interpretation

#### Meaning of academic year

- 1.—(1) An “academic year”, in respect of a course, is determined as follows—
- (a) identify the period in Column 2 of Table 1 within which the academic year actually begins;
  - (b) the academic year is the period of 12 months beginning on the date specified in the entry in Column 1 of the Table corresponding to the period set out in Column 2.
- (2) Any reference in these Regulations to an “academic year” is a reference to a year determined in accordance with sub-paragraph (1).

**Table 1**

| <i>Column 1</i>  | <i>Column 2</i>                                 |
|--|---|
| <i>Start date of academic year for the purposes of these Regulations</i> | <i>Period within which academic year begins</i> |
| 1 September  | On or after 1 August but before 1 January       |
| 1 January  | On or after 1 January but before 1 April        |
| 1 April  | On or after 1 April but before 1 July           |
| 1 July   | On or after 1 July but before 1 August          |

#### Educational institutions

- 2.—(1) In these Regulations—
- (a) “Welsh funded institution” means an institution maintained or assisted by recurrent grants out of funds provided by the Welsh Ministers;
  - (b) “Scottish funded institution” means an institution maintained or assisted by recurrent grants out of funds provided by the Scottish Ministers;
  - (c) “Northern Irish funded institution” means an institution maintained or assisted by recurrent grants out of funds provided by the Northern Ireland Executive;
  - (d) “English regulated institution” means a registered English institution subject to a fee limit condition under section 10 of the Higher Education and Research Act 2017<sup>(17)</sup>;
  - (e) “registered English institution” means an institution registered by the Office for Students<sup>(18)</sup> in the register;

<sup>(17)</sup> 2017 c. 29.

<sup>(18)</sup> The Office for Students is a body corporate established under section 1 of the Higher Education and Research Act 2017.

- (f) “English plan provider” means a registered English institution which has an access and participation plan approved by the Office for Students under section 29 of the Higher Education and Research Act 2017 and which remains in force.

(2) In this paragraph, any reference to the register is a reference to the register established and maintained by the Office for Students under section 3 of the Higher Education and Research Act 2017.

### Interpretation of other key terms

#### 3.—(1) In these Regulations—

“academic authority” (“*awdurdod academaidd*”) 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;

“close relative” (“*perthynas agos*”) (in relation to a person (“P”)) means—

- (a) P’s spouse or civil partner;
- (b) a person ordinarily living with P as if the person were P’s spouse or civil partner;
- (c) P’s parent, where P is under the age of 25;
- (d) P’s child, where P is dependent on that child;

“course” (“*cwrs*”) means, unless the context otherwise requires, a taught programme of study, a programme of research, or a combination of both, and which may include one or more periods of work experience, and which leads, on successful completion, to the award of a postgraduate master’s degree;

“current academic year” (“*blwyddyn academaidd gyfredol*”) means the academic year of the designated course in which the student applies for support;

“distance learning course” (“*cwrs dysgu o bell*”) means a course in relation to which a student undertaking the course is not required to be in attendance by the institution providing the course, other than to satisfy any requirement imposed by the institution to attend any institution—

- (a) for the purpose of registration, enrolment or any examination, or
- (b) on a weekend or during any vacation;

“eligible prisoner” (“*carcharor cymwys*”) means a prisoner—

- (a) who begins a designated course on or after 1 August 2019,
- (b) who has been authorised by the prison Governor or Director or other appropriate authority to study the designated course, and
- (c) whose earliest release date is within 4 years of the first day of the first academic year of the designated course;

“equivalent or higher qualification” (“*cymhwyster cyfatebol neu uwch*”) means a qualification determined in accordance with paragraph (2) to be an equivalent or higher qualification;

“EU national” (“*gwladolyn UE*”) means a national of a member State of the EU;

“fees” (“*ffioedd*”) has the meaning given in section 57(1) of the Higher Education (Wales) Act 2015<sup>(19)</sup>;

“healthcare bursary” (“*bwrsari gofal iechyd*”) means a bursary or award of similar description under section 63(6) of the Health Services and Public Health Act 1968<sup>(20)</sup> or Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(21)</sup>;

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(19) 2015 anaw 1.

(20) 1968 c. 46.

*Status: This is the original version (as it was originally made).*

“information” (“*gwybodaeth*”) includes documents;

“KESS 2 Scheme” (“*Cynllun KESS 2*”) means the Knowledge Economy Skills Scholarships 2 Scheme which is funded, in part, by the European Social Fund<sup>(22)</sup>;

“member of the armed forces” (“*aelod o'r lluoedd arfog*”) means a member of the regular naval, military or air forces of the Crown;

“periods of work experience” (“*cyfnodau o brofiad gwaith*”) means—

- (a) periods of industrial, professional or commercial experience associated with the designated course 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 the student is studying for that student’s designated course (provided that the period of residence in that country is a requirement of that student’s 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);

“prisoner” (“*carcharor*”) means a person who is serving a sentence of imprisonment in the United Kingdom including a person who is detained in a young offender institution (and “prison” is to be construed accordingly);

“public funds” (“*cronfeydd cyhoeddus*”) means moneys provided by Parliament including funds provided by the Welsh Ministers;

“statutory award” (“*dyfardal statudol*”) means any award bestowed, grant paid, or other support provided, by virtue of the 1998 Act or the Education Act 1962<sup>(23)</sup>, or any comparable award, grant, or other support, in respect of undertaking a course which is paid out of public funds;

“student loans legislation” (“*y ddeddfwriaeth ar fenthyciadau i fyfyrwyr*”) means the Education (Student Loans) Act 1990<sup>(24)</sup>, the Education (Student Loans) (Northern Ireland) Order 1990<sup>(25)</sup>, the Education (Scotland) Act 1980<sup>(26)</sup> and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998<sup>(27)</sup> and regulations made under that Order or the 1998 Act and regulations made under the 1998 Act;

“support” (“*cymorth*”), except where otherwise indicated, means financial support by way of grant or loan made by the Welsh Ministers under—

- (a) these Regulations, or
- (b) any other regulations made under section 22 of the 1998 Act.

(2) The Welsh Ministers may determine that a qualification is an equivalent or higher qualification if—

- (a) an eligible student holds a higher qualification from any institution whether or not in the United Kingdom, and
- (b) the qualification referred to in paragraph (a) is a postgraduate master’s degree from an institution in the United Kingdom or is of an academic level which, in the opinion of the Welsh Ministers, is equivalent to or higher than a qualification to which the designated course leads.

(21) S.I. 1972/1265 (N.I. 14).

(22) The European Social Fund is established under Article 162 of the Treaty on the Functioning of the European Union.

(23) 1962 c. 12 (now repealed).

(24) Repealed by the Teaching and Higher Education Act 1998 (c. 30), Schedule 4, with savings *see* the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998 (S.I. 1998/2004) (C. 46).

(25) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/274 (N.I. 1), Schedule 5 Part 2, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (N.I.) 1998 No. 306.

(26) 1980 c. 44.

(27) S.I. 1998/1760 (N.I. 14) to which there have been amendments not relevant to these Regulations.

## SCHEDULE 2

Regulation 9(1)(a)

### Categories of eligible students

#### **Category 1 – Persons settled in the United Kingdom**

- 1.—(1) A person—
  - (a) who on the first day of the first academic year of the course—
    - (i) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence, and
    - (ii) is ordinarily resident in Wales,
  - (b) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course, and
  - (c) whose residence in the United Kingdom and Islands has not, during any part of the period referred to in paragraph (b), been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 11(2)).
- (2) A person who—
  - (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
  - (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course, and
  - (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

#### **Category 2 – Refugees and their family members**

- 2.—(1) A person who—
  - (a) is a refugee,
  - (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was recognised as a refugee, and
  - (c) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (2) A person who—
  - (a) is the spouse or civil partner of a refugee,
  - (b) was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum,
  - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and
  - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (3) A person who—
  - (a) is the child of a refugee or the child of the spouse or civil partner of a refugee,

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- (b) on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date,
- (c) was under 18 years old on the date on which the refugee made the application for asylum,
- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and
- (e) is ordinarily resident in Wales on the first day of the first academic year of the course.

### **Category 3 – Persons granted stateless leave and their family members**

- 3.—(1) A person granted stateless leave who—
- (a) is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.
- (2) A person—
- (a) who—
    - (i) is the spouse or civil partner of a person granted stateless leave, and
    - (ii) on the leave application date, was the spouse or civil partner of a person granted stateless leave,
  - (b) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.
- (3) A person—
- (a) who—
    - (i) is the child of a person granted stateless leave or the child of the spouse or civil partner of a person granted stateless leave, and
    - (ii) on the leave application date, was the child of a person granted stateless leave or the child of a person who, on the leave application date, was the spouse or civil partner of a person granted stateless leave,
  - (b) who was under 18 on the leave application date,
  - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.
- (4) In this paragraph—
- (a) “person granted stateless leave” means a person who—
    - (i) has extant leave to remain as a stateless person under the immigration rules, and
    - (ii) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;
  - (b) “leave application date” means the date on which a person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules.



#### **Category 4 – Persons with leave to enter or remain and their family members**

- 4.—(1) A person—
- (a) with leave to enter or remain,
  - (b) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is the spouse or civil partner of a person with leave to enter or remain,
  - (b) was the spouse or civil partner of the person with leave to enter or remain on the leave application date,
  - (c) is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (3) A person who—
- (a) is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain,
  - (b) on the leave application date was under 18 years old and was the child of the person with leave to enter or remain or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date,
  - (c) is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (4) In this paragraph, a “person with leave to enter or remain” means a person (“P”)—
- (a) who has—
    - (i) applied for refugee status but has, as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is considered not to qualify for recognition as a refugee, it is thought right to allow P to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave, and who has been granted leave to enter or remain accordingly,
    - (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow P to enter or remain in the United Kingdom on the grounds of discretionary leave, and who has been granted leave to enter or remain accordingly,
    - (iii) been granted leave to remain on the grounds of private life under the immigration rules,
    - (iv) been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is not considered to qualify for leave to remain on the grounds of private life under the immigration rules, P has been granted leave to remain outside the rules(28) on the grounds of Article 8 of the European Convention on Human Rights,
  - (b) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain

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(28) Paragraph 276BE(2) of the Immigration Rules refers.

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an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002<sup>(29)</sup>), and

- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since P was granted leave to enter or remain.

(5) In this paragraph, “leave application date” means the date on which the person with leave to enter or remain made the application that led to that person being granted leave to enter or remain in the United Kingdom.

### **Category 5 – Persons with section 67 leave to remain**

5.—(1) A person who—

- (a) is a person with section 67 leave to remain,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (c) has been ordinarily resident in the United Kingdom throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person who—

- (a) is the child of a person with section 67 leave to remain,
- (b) on the leave application date was under 18 years old and was the child of the person with section 67 leave to remain,
- (c) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) In this paragraph—

- (a) “person with section 67 leave to remain” means a person who—
  - (i) has extant leave to remain in the United Kingdom under section 67 of the Immigration Act 2016<sup>(30)</sup> and in accordance with the immigration rules, and
  - (ii) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;
- (b) “leave application date” means the date on which the person with section 67 leave to remain made the application that led to that person being granted leave to remain in the United Kingdom.

### **Category 6 – Workers, employed persons, self-employed persons and their family members**

6.—(1) A person who—

- (a) is one of the following—
  - (i) an EEA migrant worker or an EEA self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
  - (ii) a Swiss employed person or a Swiss self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
  - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii), who is ordinarily resident in Wales on the first day of the first academic year of the course;

<sup>(29)</sup> 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19), Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9, S.I. 2010/21, the Immigration Act 2014 (c. 22), Schedule 9.

<sup>(30)</sup> 2016 c. 19.

- (iv) an EEA frontier worker or an EEA frontier self-employed person;
  - (v) a Swiss frontier employed person or a Swiss frontier self-employed person;
  - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v), and
- (b) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (b) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
  - (c) is entitled to support by virtue of Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union, as extended by the EEA Agreement<sup>(31)</sup>.
- (3) In sub-paragraph (1)—
- “EEA frontier self-employed person” (“*person hunangyflogedig trawsffiniol AEE*”) means an EEA national who—
- (a) is a self-employed person in Wales, and
  - (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, at least once a week;
- “EEA frontier worker” (“*gweithiwr trawsffiniol AEE*”) means an EEA national who—
- (a) is a worker in Wales, and
  - (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, at least once a week;
- “EEA migrant worker” (“*gweithiwr mudol AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;
- “EEA self-employed person” (“*person hunangyflogedig AEE*”) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;
- “family member” (“*aelod o deulu*”) means—
- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
    - (i) the person’s spouse or civil partner,
    - (ii) direct descendants of the person or of the person’s spouse or civil partner who are under the age of 21 or who are 21 and over and are dependants of the person or the person’s spouse or civil partner, or
    - (iii) dependent direct relatives in the ascending line of the person or that person’s spouse or civil partner;
  - (b) in relation to a Swiss frontier employed person, a Swiss employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
    - (i) the person’s spouse or civil partner, or

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(31) OJ No L141, 27.05.2011, p. 1.

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(ii) the person's child or the child of the person's spouse or civil partner;

"Swiss employed person" ("*person cyflogedig Swisaidd*") means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

"Swiss frontier employed person" ("*person cyflogedig trawsffiniol Swisaidd*") means a Swiss national who—

- (a) is an employed person in Wales, and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, at least once a week;

"Swiss frontier self-employed person" ("*person hunangyflogedig trawsffiniol Swisaidd*") means a Swiss national who—

- (a) is a self-employed person in Wales, and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, at least once a week;

"Swiss self-employed person" ("*person hunangyflogedig Swisaidd*") means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom.

(4) For the purposes of sub-paragraph (3)—

"EEA national" ("*gwladolyn AEE*") means a national of an EEA State other than the United Kingdom;

"employed person" ("*person cyflogedig*") means an employed person within the meaning of Annex 1 to the Swiss Agreement;

"self-employed person" ("*person hunangyflogedig*") means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be, or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

"worker" ("*gweithiwr*") means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be.

### **Category 7 – Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere**

7.—(1) A person who—

- (a) is settled in the United Kingdom,
- (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence,
- (c) is ordinarily resident in the United Kingdom on the day on which the course begins,
- (d) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (e) in a case where the person's ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if sub-paragraph (3) or (4) applies to the person.

(3) This sub-paragraph applies to a person who is—

- (a) a United Kingdom national,
- (b) a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement), or
- (c) a person who has exercised a right of permanent residence,

who has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.

(4) This paragraph applies to a person (“P”)—

- (a) who is settled in the United Kingdom and has a right of permanent residence, and
- (b) who goes to the state within the territory comprising the EEA and Switzerland of which P is a national or of which the person in relation to whom P is a family member is a national.

(5) For the purposes of sub-paragraph (4), P is a family member of another person (“Q”) if P—

- (a) is Q’s spouse or civil partner,
- (b) is a direct descendant of Q or of Q’s spouse or civil partner and P—
  - (i) is under the age of 21, or
  - (ii) is 21 or over and a dependant of Q or of Q’s spouse or civil partner, or
- (c) where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, is a dependant direct relative in Q’s ascending line or that of Q’s spouse or civil partner.

### **Category 8 – EU nationals**

**8.—(1)** A person—

- (a) who is either—
  - (i) an EU national on the first day of the first academic year of the course, other than a person who is a United Kingdom national who has not exercised a right of residence, or
  - (ii) a family member of such a person,
- (b) who is undertaking a designated course in Wales,
- (c) who has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) whose ordinary residence in the territory comprising the EEA and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 11(2)).

(2) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course, and
- (d) in a case where a person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the

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territory comprising the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(3) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) or (2)(a) is treated as being satisfied.

(4) For the purposes of sub-paragraph (1)(a), a United Kingdom national has not exercised a right of residence if that person has not exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.

(5) For the purposes of sub-paragraph (1)(a), a person (“P”) is a family member of another person (“Q”) if—

- (a) P is Q’s spouse or civil partner,
- (b) P is a direct descendant of Q or of Q’s spouse or civil partner and P—
  - (i) is under the age of 21, or
  - (ii) is 21 or over and a dependant of Q or of Q’s spouse or civil partner, or
- (c) in a case where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, P is a dependent direct relative in Q’s ascending line or that of Q’s spouse or civil partner.

#### **Category 9 – Children of Swiss nationals**

9. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) in a case where the person’s ordinary residence referred to in sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

#### **Category 10 – Children of Turkish workers**

10.—(1) A person who—

- (a) is the child of a Turkish worker,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (c) has been ordinarily resident in the territory comprising the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

(2) In this paragraph, “Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands, and
- (b) is, or has been, lawfully employed in the United Kingdom.

### **Ordinary residence – additional provision**

**11.**—(1) For the purpose of this Schedule, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the designated course, or
- (b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course,

is to be considered to be ordinarily resident in the place from which the person moved.

(2) For the purpose of this Schedule, a person (“P”) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the EEA, Switzerland and Turkey if P would have been so resident but for the fact that—

- (a) P,
- (b) P’s spouse or civil partner,
- (c) P’s parent, or
- (d) in the case of a dependent direct relative in the ascending line, P’s child or child’s spouse or civil partner,

is or was temporarily employed outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey.

(3) For the purposes of sub-paragraph (2), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey includes—

- (a) in the case of members of the armed forces, any period which they serve outside the United Kingdom as members of such forces;
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside the territory comprising the EEA and Switzerland as members of such forces;
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the EEA, Switzerland and Turkey as members of such forces.

(4) For the purposes of this Schedule, an eligible student who is a prisoner is to be considered to be ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.

(5) For the purposes of this Schedule, an area which—

- (a) was previously not part of the EU or the EEA, but
- (b) at any time before or after these Regulations come into force becomes part of one or other or both of these territories,

is to be considered to have always been a part of the EEA.

### **Further provision on ordinary residence: care leavers**

**12.**—(1) A care leaver is treated as being ordinarily resident in Wales on the first day of the first academic year of the designated course even if, on that day, the care leaver—

- (a) is looked after outside Wales (in a case where regulation 29(c)(i) applies to the student), or
- (b) is residing outside Wales under a special guardianship order (in a case where regulation 29(c)(ii) applies to the student),

under arrangements made by a Welsh local authority.

(2) In paragraph (1)—

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“care leaver” (“*person sy’n ymadael â gofal*”) has the meaning given in regulation 29;  
 “looked after” (“*derbyn gofal*”) has the meaning given in section 74 of the Social Services and Well-being (Wales) Act 2014;  
 “Welsh local authority” (“*awdurdod lleol Cymreig*”) means a local authority within the meaning given by section 197(1) of that Act.

## Interpretation

### 13. In this Schedule—

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States<sup>(32)</sup>;

“EEA” (“*AEE*”) means the European Economic Area, that is to say the territory comprised by the EEA States;

“immigration rules” (“*rheolau mewnfudo*”) means the rules laid before Parliament by the Secretary of State under section 3(2) of the Immigration Act 1971<sup>(33)</sup>;

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

“parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly;

“refugee” (“*ffoadur*”) 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 28 July 1951<sup>(34)</sup> as extended by its 1967 Protocol<sup>(35)</sup>;

“right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“settled” (“*wedi setlo*”) has the meaning given by section 33(2A) of the Immigration Act 1971<sup>(36)</sup>;

“Swiss Agreement” (“*Cytundeb y Swistir*”) means the Agreement between the EU 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 21 June 1999<sup>(37)</sup> and which came into force on 1 June 2002.

<sup>(32)</sup> OJ No L158, 30.04.2004, p.77-123.

<sup>(33)</sup> [1971 c. 77](#).

<sup>(34)</sup> Cmnd. 9171.

<sup>(35)</sup> Cmnd. 3906, the Protocol entered into force on 4 October 1967.

<sup>(36)</sup> [1971 c.77](#); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

<sup>(37)</sup> Cm. 4904 and OJ No L114, 30.04.02, p. 6.



## SCHEDULE 3

Regulation 28

### Calculation of income

## PART 1

### Introduction

#### Overview of Schedule

1.—(1) This Schedule is arranged as follows.

(2) Part 2 makes provision about the calculation of an eligible student's household income for the purposes of determining the amount of contribution to costs grant payable to the student.

(3) Part 3 sets out the meaning of "taxable income", which is required in order to calculate a person's residual income.

(4) Part 4 makes provision about the calculation of residual income where—

(a) Chapter 1 sets out how to calculate the residual income of an eligible student for the purposes of calculating the student's household income, and

(b) Chapter 2 sets out how to calculate the residual income of an eligible student's parent, eligible student's partner or eligible student's parent's partner for the purposes of calculating the student's household income.

(5) Part 5 defines certain terms used in this Schedule.

## PART 2

### Household income

#### Household income of an eligible student

2. This Part makes provision about the calculation of an eligible student's household income.

#### Calculation of household income

3.—(1) An eligible student's household income is calculated by applying the following steps—

##### *Step 1*

If the student is not an independent eligible student (see paragraph 4), aggregate the total residual income of the persons listed in List A.

If the student is an independent eligible student, aggregate the total income of the persons listed in List B.

##### **List A**

The persons are—

(a) the eligible student, plus

(b) either—

(i) each of the eligible student's parents (subject to paragraph 5), or

(ii) where the student's parents have separated, the parent selected under paragraph 6(3) and that parent's partner (if that parent has one), (subject to paragraph 7).

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**List B**

The persons are—

- (a) the independent eligible student, plus
- (b) the student’s partner (if the student has one), (subject to paragraphs 7 and 8).

*Step 2*

Calculate the applicable amount of dependent child deduction (see sub-paragraphs (2) to (4)) and deduct that from the aggregated total calculated under Step 1.

The result is the eligible student’s household income.

(2) A dependent child deduction is a deduction made in respect of each child wholly or mainly financially dependent on—

- (a) the eligible student,
- (b) the eligible student’s partner,
- (c) the eligible student’s parent, or
- (d) the partner of the eligible student’s parent,

where the income of that person is taken into account for the purpose of calculating household income.

(3) But no deduction is to be made in respect of a child of—

- (a) the eligible student’s parent, or
- (b) the partner of the eligible student’s parent,

if the child is the eligible student.

(4) In Table 2, Column 2 sets out the amount of dependent child deduction in respect of the academic year set out in the corresponding entry in Column 1.

**Table 2**

| <i>Column 1</i>                        | <i>Column 2</i>                            |
|--|--|
| <i>Academic year</i>                   | <i>Amount of dependent child deduction</i> |
| Beginning on or after 1 September 2019 | £1,130                                     |

**Independent eligible students**

4.—(1) An eligible student is an independent eligible student if one of the following cases applies—

*Case 1*

The student is aged 25 or over on the first day of the current academic year.

*Case 2*

The student is married or is in a civil partnership before the beginning of the first day of the current academic year, whether or not the marriage or civil partnership continues to subsist after that date.

*Case 3*

The student has no parent living.

*Case 4*

The Welsh Ministers are satisfied that—

- (a) (a) neither of the student's parents can be found, or
- (b) (b) it is not reasonably practicable to get in touch with either of the student's parents.

*Case 5*

Either—

- (a) (a) the student has not communicated with either of the student's parents for a period of one year or more ending on the day before the first day of the current academic year, or
- (b) (b) in the opinion of the Welsh Ministers, the student is irreconcilably estranged from the student's parents on other grounds.

*Case 6*

The student's parents reside outside the European Union and the Welsh Ministers are satisfied that—

- (a) (a) the assessment of the household income by reference to the parents' income would place those parents in jeopardy, or
- (b) (b) it would not be reasonably practicable for the parents to send funds to the United Kingdom for the purposes of supporting the student.

*Case 7*

Where paragraph 6 (separation of parents) applies, the parent selected by the Welsh Ministers under sub-paragraph (3) of that paragraph has died, irrespective of whether that parent had a partner.

*Case 8*

On the first day of the current academic year, the student has the care of a person under the age of 18.

*Case 9*

The student has been supported by the student's earnings for any period of three years (or periods which together aggregate at least three years) ending before the first day of the first academic year of the designated course.

*Case 10*

The student is a care leaver within the meaning given by regulation 29.

(2) For the purposes of Case 9, an eligible student is treated as being supported by the student's earnings if during the period or periods referred to in Case 9 one of the following grounds applies—

*Ground 1*

The eligible student was participating in arrangements for training unemployed persons under a scheme operated, sponsored or funded by a public body.

*Ground 2*

The eligible student received a benefit payable by a public body in respect of a person who is available for employment but is unemployed.

*Ground 3*

(3) The eligible student was available for employment and had complied with any registration requirement of a public body as a condition of entitlement for participation in arrangements for training or the receipt of benefits.

*Ground 4*

The eligible student held a state studentship or comparable award.

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*Ground 5*

The eligible student received a pension, allowance, or other benefit paid by reason of the student's disability, injury or sickness or for a reason associated with childbirth.

**Eligible student's parent dies leaving a surviving parent**

5.—(1) Where—

- (a) the parent of an eligible student dies before the current academic year, and
- (b) the parent's income has been or would have been taken into account for the purposes of determining household income,

only the residual income of the surviving parent is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the parent dies during the current academic year, the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by  $X/52$ , and
- (b) the residual income of the surviving parent for the applicable financial year multiplied by  $Y/52$ ,

where—

X is the number of weeks in the current academic year during which both parents were alive, and

Y is the remaining number of weeks in the current academic year.

**Separation of eligible student's parents**

6.—(1) Where the eligible student's parents are separated for the duration of the current academic year, only the residual income of the parent selected under sub-paragraph (3) is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the student's parents have separated during the current academic year the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by  $X/52$ , and
- (b) the residual income of the parent selected under sub-paragraph (3) for the applicable financial year multiplied by  $Y/52$ ,

where—

X is the number of weeks in the current academic year during which the parents were not separated, and

Y is the number of weeks in the current academic year during which the parents were separated.

(3) Where sub-paragraph (1) or (2) applies, the Welsh Ministers must select the parent whose residual income it is the most appropriate to take into account in the circumstances.

**Separation of eligible student's parent or independent eligible student from partner**

7.—(1) Where—

- (a) the parent of an eligible student, or

- (b) an independent eligible student,

is separated from his or her partner for the duration of the current academic year, the income of the partner is not aggregated under Step 1 in paragraph 3(1).

- (2) Where—

- (a) the parent of the eligible student, or
- (b) an independent eligible student,

has separated from his or her partner during the current academic year, the amount of the partner's residual income to be aggregated under Step 1 is calculated by applying the formula in subparagraph (3).

- (3) The formula to be applied is—

$$X \times \left( \frac{C}{52} \right)$$

Where—

**X** is the residual income of—

- (a) the eligible student's parent's partner, where List A of Step 1 applies, or
  - (b) the independent eligible student's partner where List B of Step 1 applies,
- for the applicable financial year;

**C** is the number of complete weeks of the current academic year during which—

- (a) the eligible student's parent and his or her partner, or
  - (b) the independent eligible student and the student's partner,
- were not separated.

were not separated.

(4) Where an eligible student has more than one partner in any one academic year, this paragraph and Step 1 of paragraph 3(1) apply in relation to each partner.

### **Independent eligible student or partner is a parent of an eligible student**

- 8. Where—

- (a) an independent eligible student ("I") or the partner of the independent eligible student ("PI") is a parent of an eligible student ("S"), and
- (b) a statutory award payable to S is calculated by reference to the residual income of I or PI, or both,

the residual income of PI is not aggregated under List B of Step 1 in paragraph 3(1) for the purposes of calculating the household income of I.

## **PART 3**

### **Taxable income**

#### **Taxable income**

- 9.—(1) In this Schedule, a person's taxable income means—

- (a) the aggregate of—

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- (i) the total income on which the person is charged to income tax under Step 1 of section 23 of the Income Tax Act 2007<sup>(38)</sup>, and
  - (ii) if not already a component of total income under sub-paragraph (i), payments and other benefits specified in section 401(1) of the Income Tax (Earnings and Pensions) Act 2003<sup>(39)</sup> received by the person or treated as received by the person (but disregard section 401(2) of that Act for the purposes of this sub-paragraph), or
- (b) where the income tax legislation of another member State applies to the person's income, the person's total income from all sources as determined for the purposes of the income tax legislation of that member State.
- (2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of more than one member State applies to the person in respect of the year under consideration, the person's total income from all sources is the amount derived from the determination resulting in the greatest amount of total income, including any income which is required to be taken into account under paragraph 18.
- (3) But a person's taxable income does not include income paid to another person under a pension arrangements order.

## PART 4

### Residual income

#### CHAPTER 1

##### Residual income of an eligible student

#### Calculation of eligible student's residual income

**10.** For the purposes of calculating an eligible student's household income under Part 2, the student's residual income is calculated as follows—

The eligible student's taxable income in respect of the current academic year.

*Plus*

Income payable to the eligible student under a pension arrangements order during the current academic year, net of income tax.

*Minus*

The aggregate of the deductions set out in paragraph 11 (unless already deducted for the purposes of determining the student's taxable income).

#### Deductions for the purpose of calculating residual income of an eligible student

**11.** For the purposes of calculating an eligible student's residual income, the deductions are—

##### *Deduction A*

Remuneration paid to the eligible student in the current academic year for work done during any academic year of the course, but not remuneration in respect of any—

- (a) period of leave taken by the student, or

<sup>(38)</sup> 2007 c. 3; section 23 was amended by the Finance Act 2009 (c. 10), Schedule 1, paragraph 6(o)(i), the Finance Act 2013 (c. 29), Schedule 3, paragraph 2(2) and the Finance Act 2014 (c. 26), Schedule 17, paragraph 19.

<sup>(39)</sup> 2003 c. 1; section 401 was amended by S.I. 2005/3229, S.I. 2011/1037 and S.I. 2014/211.

(b) other period during which the student is relieved of a duty to attend work, so that the student may undertake the course.

#### *Deduction B*

The gross amount of any premium or sum paid by the eligible student during the current academic year in relation to a pension in respect of which—

- (a) relief is given under section 188 of the Finance Act 2004<sup>(40)</sup>, or
- (b) where the student's income is computed for the purposes of the income tax legislation of another member State, relief would be given if that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

#### **Income of eligible student received in currency other than sterling**

**12.**—(1) Where the eligible student receives income in a currency other than sterling, the value of the income is—

- (a) the amount of sterling the eligible student receives for the income, or
- (b) where the student does not convert the income into sterling, the value of the sterling which the income would purchase using the HMRC exchange rate.

(2) The HMRC exchange rate<sup>(41)</sup> is the rate published by Her Majesty's Revenue and Customs for the month corresponding to the month in which the income is received.

## CHAPTER 2

### Residual income of persons other than an eligible student

#### **Persons to whom this chapter applies**

**13.** This Chapter makes provision for the calculation of a person's ("P's") residual income where P means the following—

- (a) the parent of the eligible student,
- (b) the eligible student's partner, or
- (c) the eligible student's parent's partner,

as the case may be, and where P's income is aggregated under Step 1 in paragraph 3(1) for the purpose of calculating an eligible student's household income.

#### **Calculation of residual income of persons other than eligible student**

**14.** P's residual income is calculated as follows—

P's taxable income for the applicable financial year.

*Plus*

Income payable to P under a pension arrangements order during the applicable financial year, net of income tax.

*Minus*

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<sup>(40)</sup> 2004 c. 12; section 188 was amended by the Finance Act 2007 (c. 11), sections 68 and 114 and Schedules 18, 19 and 27, the Finance Act 2013 (c. 29), section 52 and the Finance Act 2014 (c. 26), Schedule 7.

<sup>(41)</sup> See <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>.

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The aggregate of the deductions set out in paragraph 15 (unless already deducted for the purposes of determining P's taxable income).

### **Deductions for the purpose of calculating residual income of persons other than eligible student**

**15.—**(1) For the purpose of calculating P's residual income, the deductions are—

#### *Deduction A*

The gross amount of any premium or sum paid by P in respect of a pension during the applicable financial year, in relation to which—

- (a) relief is given under section 188 of the Finance Act 2004, or
- (b) where P's income is computed for the purpose of the income tax legislation of another member State, relief would have been given if that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

#### *Deduction B*

Where paragraph 18 applies, a sum equivalent to Deduction A provided that this sum does not exceed the deductions which would be made if the whole of P's income were in fact income for the purposes of the Income Tax Acts.

#### *Deduction C*

£1,130, where P—

- (a) is an eligible student in respect of the current academic year but is also the parent of an eligible student, or
- (b) holds a statutory award in respect of the same period.

### **Applicable financial years: calculating residual income of persons other than eligible student**

**16.—**(1) This paragraph specifies the applicable financial year for the purposes of calculating P's residual income.

(2) Unless sub-paragraph (3) applies, the applicable financial year is PY-1.

(3) Where the Welsh Ministers are satisfied that P's residual income for CY is likely to be at least 15% lower than P's residual income for PY-1, the applicable financial year is CY.

### **Income from business or profession**

**17.—**(1) Sub-paragraph (2) applies where—

- (a) the applicable financial year for the purposes of calculating P's residual income is PY-1, and
- (b) the Welsh Ministers are satisfied that P's income is wholly or mainly derived from the profits of a business or profession carried on by P.

(2) Where this paragraph applies, P's residual income is P's income for the earliest period of twelve months ending in PY-1 in respect of which accounts are kept relating to P's business or profession.



### **Treatment of income not treated as income for income tax purposes**

**18.**—(1) Sub-paragraph (3) applies where P is in receipt of any income which, for any of the reasons set out in sub-paragraph (2), does not form part of P’s income for the purpose of the Income Tax Acts or the income tax legislation of another member State.

(2) The reasons are—

#### *Reason 1*

- (a) P is not resident or domiciled in the United Kingdom, or
- (b) P’s income is computed for the purposes of the income tax legislation of another member State and P is not resident or domiciled in that member State.

#### *Reason 2*

- (a) P’s income does not arise in the United Kingdom, or
- (b) P’s income does not arise in the member State in which P’s income is computed for the purposes of that State’s income tax legislation.

#### *Reason 3*

The income arises from an office, service or employment, income from which is exempt from tax.

(3) P’s taxable income is to be taken to include the income described in sub-paragraph (1) as if it were part of P’s income for the purposes of the Income Tax Acts or the income tax legislation of another member State, as the case may be.

### **P’s income in currency other than sterling**

**19.**—(1) Where P’s income is computed for the purposes of the income tax legislation of another member State, P’s residual income is to be calculated in accordance with this Part in the currency of that member State and is to be taken to be the sterling value of that income determined in accordance with the relevant HMRC rate.

(2) The relevant HMRC rate is the average exchange rate issued by Her Majesty’s Revenue and Customs for the calendar year ending immediately before the end of PY-1.

## **PART 5**

### **Interpretation**

#### **Interpretation**

**20.**—(1) In this Schedule, any reference to a person’s (“A’s”) partner means—

- (a) A’s spouse or civil partner, or
- (b) a person ordinarily living with A as if the person were A’s spouse or civil partner.

(2) In this Schedule—

“applicable financial year” (“*blwyddyn ariannol gymwys*”) means the financial year determined in accordance with paragraph 16;

“CY” (“*BG*”) means the financial year beginning immediately before the first day of the current academic year;

“financial year” (“*blwyddyn ariannol*”) means the period of twelve months in respect of which the income of a person is computed for the purposes of the income tax legislation which applies to it;

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- “PY” (“*BF*”) means the financial year immediately preceding CY;
- “PY-1” (“*BF-1*”) means the financial year immediately preceding PY;
- “pension arrangements order” (“*gorchymyn trefniadau pensiwn*”) means an order under which a person pays benefits under a pension arrangement to another person under—
- (a) section 23 of the Matrimonial Causes Act 1973(42) which includes provision made by virtue of section 25B(4) (and including such an order as it may have effect by virtue of section 25E(3) of that Act)(43), or
- (b) Part 1 of Schedule 5 to the Civil Partnership Act 2004(44) which includes provision made by virtue of Part 6 of that Schedule (and including such an order as it may have effect by virtue of Part 7 of that Schedule);
- “public body” (“*corff cyhoeddus*”) means a state authority or agency whether national, regional or local.

## SCHEDULE 4

Regulation 4(2)

### Index of defined terms

1. Table 3 lists expressions defined or otherwise explained in these Regulations.

**Table 3**

| <i>Expression</i>                            | <i>Defined or referred to in ...</i> |
|--|--------------------------------------|
| “the 1998 Act”                               | Regulation 5                         |
| “the 2017 Master’s Degree Loans Regulations” | Regulation 2(3)                      |
| “the 2017 Student Support Regulations”       | Regulation 7(a)                      |
| “the 2018 Doctoral Degree Loans Regulations” | Regulation 7(c)                      |
| “the 2018 Student Support Regulations”       | Regulation 7(b)                      |
| “academic authority”                         | Schedule 1, paragraph 3(1)           |
| “academic year”                              | Schedule 1, paragraph 1              |
| “applicable financial year”                  | Schedule 3, paragraph 20(2)          |
| “base grant”                                 | Regulation 24                        |
| “care leaver”                                | Regulation 29                        |
| “close relative”                             | Schedule 1, paragraph 3(1)           |
| “contribution to costs grant”                | Regulation 24                        |
| “contribution to costs loan”                 | Regulation 30                        |
| “course”                                     | Schedule 1, paragraph 3(1)           |

(42) 1973 c. 18; section 23 was amended by the Administration of Justice Act 1982 (c. 53), section 16.

(43) Section 25B was inserted by the Pensions Act 1995 (c. 20), section 166(1) and was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 4. Section 25E was inserted by the Pensions Act 2004 (c. 35), section 319(1), Schedule 12, paragraph 3 and amended by the Pensions Act 2008 (c. 30), Schedule 6, paragraphs 1 and 6 and Schedule 11, Part 4.

(44) 2004 c. 33; paragraph 25 of Schedule 5 was modified by S.I. 2006/1934 and paragraph 30 of Schedule 5 was amended by the Pensions Act 2008 (c. 30), Schedules 6 and 11.

| <i>Expression</i>  | <i>Defined or referred to in...</i> |
|--|-------------------------------------|
| “current academic year”  | Schedule 1, paragraph 3(1)          |
| “CY”   | Schedule 3, paragraph 20(2)         |
| “designated course”  | Chapter 1 of Part 4                 |
| “Directive 2004/38”  | Schedule 2, paragraph 13            |
| “distance learning course”   | Schedule 1, paragraph 3(1)          |
| “EEA”  | Schedule 2, paragraph 13            |
| “EEA frontier self-employed person”  | Schedule 2, paragraph 6(3)          |
| “EEA frontier worker”  | Schedule 2, paragraph 6(3)          |
| “EEA migrant worker”   | Schedule 2, paragraph 6(3)          |
| “EEA national”   | Schedule 2, paragraph 6(4)          |
| “EEA self-employed person”   | Schedule 2, paragraph 6(3)          |
| “eligible prisoner”  | Schedule 1, paragraph 3(1)          |
| “eligible student”   | Regulation 9(1)                     |
| “employed person”  | Schedule 2, paragraph 6(4)          |
| “English plan provider”  | Schedule 1, paragraph 2(1)(f)       |
| “English regulated institution”  | Schedule 1, paragraph 2(1)(d)       |
| “equivalent or higher qualification”   | Schedule 1, paragraph 3(1)          |
| “EU national”  | Schedule 1, paragraph 3(1)          |
| “family member”  | Schedule 2, paragraph 6(3)          |
| “fees”   | Schedule 1, paragraph 3(1)          |
| “financial year”   | Schedule 3, paragraph 20(2)         |
| “healthcare bursary”   | Schedule 1, paragraph 3(1)          |
| “household income”   | Schedule 3, Part 2                  |
| “immigration rules”  | Schedule 2, paragraph 13            |
| “independent eligible student”   | Schedule 3, paragraph 4             |
| “information”  | Schedule 1, paragraph 3(1)          |
| “Islands”  | Schedule 2, paragraph 13            |
| “KESS 2 Scheme”  | Schedule 1, paragraph 3(1)          |
| “leave application date” (for the purpose of determining if a person is the family member of a person granted stateless leave)       | Schedule 2, paragraph 3(4)(b)       |
| “leave application date” (for the purpose of determining if a person is the family member of a person with leave to enter or remain) | Schedule 2, paragraph 4(5)          |

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| <i>Expression</i>  | <i>Defined or referred to in...</i> |
|--|-------------------------------------|
| “leave application date” (for the purpose of determining if a person is the child of a person with section 67 leave to remain) | Schedule 2, paragraph 5(3)(b)       |
| “loan” (for the purposes of Exceptions 1 and 2 in regulation 10(1))  | Regulation 10(2)                    |
| “looked after”   | Schedule 2, paragraph 12(2)         |
| “member of the armed forces”   | Schedule 1, paragraph 3(1)          |
| “new course”   | Regulation 17(1)                    |
| “Northern Irish funded institution”  | Schedule 1, paragraph 2(1)(c)       |
| “parent” and “child” (for the purposes of determining the category of a person under Schedule 2)                               | Schedule 2, paragraph 13            |
| “partner”  | Schedule 3, paragraph 20(1)         |
| “pension arrangements order”   | Schedule 3, paragraph 20(2)         |
| “period of eligibility”  | Regulation 11                       |
| “periods of work experience”   | Schedule 1, paragraph 3(1)          |
| “person granted stateless leave”   | Schedule 2, paragraph 3(4)(a)       |
| “person with leave to enter or remain”   | Schedule 2, paragraph 4(4)          |
| “person with section 67 leave to remain”   | Schedule 2, paragraph 5(3)(a)       |
| “prisoner” and “prison”  | Schedule 1, paragraph 3(1)          |
| “public body”  | Schedule 3, paragraph 20(2)         |
| “public funds”   | Schedule 1, paragraph 3(1)          |
| “PY”   | Schedule 3, paragraph 20(2)         |
| “PY-1”   | Schedule 3, paragraph 20(2)         |
| “refugee”  | Schedule 2, paragraph 13            |
| “register”   | Schedule 1, paragraph 2(2)          |
| “registered English institution”   | Schedule 1, paragraph 2(1)(e)       |
| “residual income”  | Schedule 3, Part 4                  |
| “right of permanent residence”   | Schedule 2, paragraph 13            |
| “Scottish funded institution”  | Schedule 1, paragraph 2(1)(b)       |
| “self-employed person”   | Schedule 2, paragraph 6(4)          |
| “settled”  | Schedule 2, paragraph 13            |
| “statutory award”  | Schedule 1, paragraph 3(1)          |
| “student loans legislation”  | Schedule 1, paragraph 3(1)          |
| “support”  | Schedule 1, paragraph 3(1)          |
| “Swiss Agreement”  | Schedule 2, paragraph 13            |

| <i>Expression</i>                     | <i>Defined or referred to in...</i> |
|---------------------------------------|-------------------------------------|
| “Swiss employed person”               | Schedule 2, paragraph 6(3)          |
| “Swiss frontier employed person”      | Schedule 2, paragraph 6(3)          |
| “Swiss frontier self-employed person” | Schedule 2, paragraph 6(3)          |
| “Swiss self-employed person”          | Schedule 2, paragraph 6(3)          |
| “taxable income”                      | Schedule 3, paragraph 9             |
| “Turkish worker”                      | Schedule 2, paragraph 10(2)         |
| “Welsh funded institution”            | Schedule 1, paragraph 2(1)(a)       |
| “Welsh local authority”               | Schedule 2, paragraph 12(2)         |
| “worker”                              | Schedule 2, paragraph 6(4)          |

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the making of grants and loans to students who are ordinarily resident in Wales for postgraduate master’s degree courses which begin on or after 1 August 2019.

To qualify for support under these Regulations a student must be an “eligible student”. To be an eligible student, a person must satisfy the eligibility provisions in Chapter 2 of Part 4 and any other eligibility requirements elsewhere in the Regulations. An eligible student must also satisfy the specific requirements applicable to each type of financial support.

To be an eligible student, a person must fall within one of the categories set out in Schedule 2. The majority of those categories require the person to be ordinarily resident in Wales. For the purposes of these Regulations, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland, the Channel Islands or the Isle of Man as a result of having moved from one of those areas for the purpose of undertaking a designated course is considered ordinarily resident in the place from which that person has moved (Schedule 2, paragraph 11(1)). A person is not an eligible student if, amongst other things, that person has already obtained a qualification equivalent to or higher than a master’s degree.

The period for which a student is eligible to receive support under these Regulations is determined in accordance with regulations 11 to 14. In certain circumstances an eligible student may transfer from one designated course to another.

Support is only available under these Regulations in respect of “designated” courses within the meaning of regulations 5 and 8. Support is provided to eligible students undertaking a designated course wherever they study in the United Kingdom. Regulations 15 and 16 set out the circumstances in which a student may qualify for support under these Regulations after the designated course has started.

Part 5 of these Regulations makes provision for applications for support (regulation 18), time limits for applications (regulation 19) and regulation 20 permits the Welsh Ministers to make such enquiries as they think necessary to make a decision on an application and to notify an applicant of

a decision. This Part also imposes obligations on eligible students to provide the Welsh Ministers with information (regulation 22) and to enter into a contract for a loan (regulation 23).

Support under these Regulations is available in the form of the following grants and loans—

- (a) base grant and contribution to costs grant (Part 6);
- (b) contribution to costs loan (Part 7).

The amount of base grant payable to an eligible student is £1,000 (regulation 25). The amount of contribution to costs grant payable to a student is determined by reference to the student's household income and whether they are a care leaver (regulation 27). An eligible student's household income is calculated in accordance with Part 2 of Schedule 3. "Care leaver" is defined in regulation 29.

Contribution to costs loans are payable to eligible students in accordance with Part 7 of these Regulations. The amount of contribution to costs loan is calculated in accordance with regulation 31.

Part 8 of these Regulations makes provision in respect of payments, overpayments and recovery of payments. Regulation 33 gives the Welsh Ministers the power to pay support in instalments.

Regulation 34 provides that the Welsh Ministers must not make any payment of support until they have received confirmation from the relevant academic authority of the student's attendance on the designated course. Regulation 35 enables the Welsh Ministers to cease further payments of support if they receive notice of a student's lack of attendance on the course, other than where they consider it appropriate to make such payments during the student's absence.

Regulation 36 sets out how entitlement to support changes when an eligible student becomes or ceases to be an eligible prisoner.

Chapter 3 of Part 8 sets out how the Welsh Ministers can recover any overpayment of support under these Regulations.

Part 9 sets out information requirements in relation to contribution to costs loans.

Part 10 contains amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017.

Schedule 4 is the final schedule to these Regulations and contains the index of defined terms.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Higher Education Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.