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WELSH STATUTORY INSTRUMENTS

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**2007 No. 2310 (W.181)**

**EDUCATION, WALES**

**The Education (Fees and Awards) (Wales) Regulations 2007**

<i>Made</i>	- - - -	<i>4 August 2007</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>7 August 2007</i>
<i>Coming into force</i>	- -	<i>31 August 2007</i>

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State and now vested<sup>(1)</sup> in them by sections 1 and 2 of the Education (Fees and Awards) Act 1983<sup>(2)</sup>, make the following Regulations:

**Title, commencement and application**

1.—(1) The title of these Regulations is the Education (Fees and Awards) (Wales) Regulations 2007.

(2) These Regulations come into force on 31 August 2007 and apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the 2005 Act” (“*Deddf 2005*”) means the Education Act 2005<sup>(3)</sup>;

“academic year” (“*blwyddyn academaidd*”) means the period of twelve months beginning on 1 January, 1 April, 1 July or 1 September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1

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- (1) The functions of the Secretary of State under section 1 of the Education (Fees and Awards) Act 1983, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I.2006/1458 with effect from 8 June 2006. The functions of the Secretary of State under section 2 of the Education (Fees and Awards) Act 1983, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales in relation to sections 1 and 2 of the Education (Fees and Awards) Act 1983 were transferred to the Welsh Ministers by virtue of paragraphs 30 (1) and 30(2) (d) of Schedule 11 of the Government of Wales Act 2006 (c. 32).
- (2) 1983 c. 40. Section 1 was amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 19; the Education Act 1994 (c. 30), Schedule 2, paragraph 7; the Education Act 1996 (c. 56), Schedule 37, paragraph 57; the Teaching and Higher Education Act 1998 (c. 30), Schedule 3, paragraph 5; the Learning and Skills Act 2000 (c. 21), Schedule 9, paragraphs 1 and 11; the Education Act 2002 (c. 32), Schedule 21, paragraph 5 and the Education Act 2005 (c. 18), Schedule 14, paragraph 9. Section 2 was amended by the Teaching and Higher Education Act 1988, section 44 and Schedule 4.
- (3) 2005 c. 18.

January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August or on or after 1 August and on or before 31 December, respectively;

“award” (“*dyfarniad*”) means a fees award or a maintenance award or both;

“education” (“*addysg*”) includes post-graduate research otherwise than in the course of employment;

“employment” (“*cyflogaeth*”) means full-time or part-time employment;

“European Community” (“*y Gymuned Ewropeaidd*”) means the territory comprised by the Member States of the European Community as constituted from time to time;

“European Economic Area” (“*Ardal Economaidd Ewropeaidd*”) means the area comprised by the EEA States;

“fees award” (“*dyfarniad ffioedd*”) means an award in respect only of any fees payable other than any element of those fees which is a charge for maintenance;

“HEFCW” (“*CCAUC*”) means the Higher Education Funding Council for Wales<sup>(4)</sup>;

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

“maintenance award” (“*dyfarniad cynnal*”) means any award other than a fees award;

“overseas territories” (“*tiriogaethau tramor*”) means Anguilla; Aruba; Bermuda, British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Faroe Islands; French Polynesia, French Southern and Antarctic Territories; Mayotte; Greenland; Montserrat; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten); Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and South Sandwich Islands; St Helena and Dependencies (Ascension Island and Tristan de Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

“post-compulsory education award” (“*dyfarniad addysg ôl-orfodol*”) means a scholarship, exhibition, bursary or other allowance granted by a local education authority under the Local Education Authority (Post-Compulsory Education Awards)(Wales) Regulations 2002<sup>(5)</sup>;

“training provider” (“*darparwr hyfforddiant*”) means a person who provides training for members of the school workforce under Part 3 of the 2005 Act;

(2) Despite section 11 of the Interpretation Act 1978<sup>(6)</sup> section 3(2) of the Education (Fees and Awards) Act 1983 (references to the United Kingdom to include references to the Islands) will not apply for the purposes of interpreting these Regulations.

(3) For the purposes of these Regulations, “parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” (“*plentyn*”) is to be construed accordingly.

(4) For the purposes of these Regulations, a person is to be treated as ordinarily resident in Wales, Great Britain, the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland and Turkey if he or she would have been so resident but for the fact that—

- (a) he or she;
- (b) his or her spouse or civil partner;
- (c) his or her parent; or

<sup>(4)</sup> Established under section 65 of the Further and Higher Education Act 1992 (c. 13).

<sup>(5)</sup> S.I. 2002 No.1856 (W. 180).

<sup>(6)</sup> 1978 c. 30.

(d) in the case of a dependent direct relative in the ascending line, his or her child or child's spouse or civil partner,

is or was temporarily employed outside the area in question.

(5) For the purposes of paragraph (4), temporary employment includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, 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 European Economic Area and Switzerland as members of such forces; and
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(6) For the purposes of regulations 6, 7 and 8, a person is to be treated as ordinarily resident in Wales, Great Britain, the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland and Turkey if he or she would have been so resident but for the fact that—

- (a) he or she;
- (b) his or her spouse or civil partner;
- (c) his or her parent; or
- (d) in the case of a dependent direct relative in the ascending line, his or her child or child's spouse or civil partner,

was temporarily receiving full-time education outside the area in question.

(7) For the purposes of these Regulations an area which—

- (a) was previously not part of the European Community or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or the other or both of these areas,

is to be considered to have always been a part of the European Economic Area.

### **Lawful acts**

**3.—**(1) If discrimination arises from the remission in whole or in part of any fee (on grounds of financial hardship or otherwise), nothing in these Regulations is to be construed as rendering that discrimination unlawful, if it would have been lawful had these Regulations not been made.

(2) If discrimination arises from any rule of eligibility for an award, nothing in these Regulations is to be construed as rendering that discrimination unlawful, if it would have been lawful had these Regulations not been made.

### **Fee charging**

**4.—**(1) It will be lawful for the institutions mentioned in paragraph (3) to charge higher fees in the case of a person who does not fall within the Schedule than in the case of a person who does fall within the Schedule.

(2) For the purposes of this regulation a person falls within the Schedule if they fall within it on the first day of an academic year of the course.

(3) The institutions mentioned in this paragraph are institutions—

- (a) within the higher education sector, including a constituent college, school or hall of such an institution;
- (b) within the further education sector;
- (c) which are training providers and are receiving financial support under section 86 of the 2005 Act;
- (d) which provide further education and are maintained by a local education authority.

(4) This regulation does not make lawful the charging of a fee which is unlawful by reason of a condition imposed under section 28 of the Higher Education Act 2004<sup>(7)</sup>.

#### **Awards by local education authorities**

5.—(1) It shall be lawful for a local education authority to adopt rules of eligibility for awards under sections 1(6) or 2 of the Education Act 1962<sup>(8)</sup> or for post-compulsory education awards which—

- (a) do not take account of regulation 2(4);
- (b) confine eligibility in the case of fees awards to those persons who fall within the Schedule, excluding those who fall within paragraph 5, or
- (c) confine eligibility in the case of maintenance awards to those persons who fall within the Schedule, excluding those who fall within paragraphs 5 and 9.

#### **Payments by the Training and Development Agency for Schools and HEFCW**

6.—(1) It shall be lawful for the Training and Development Agency for Schools<sup>(9)</sup> under section 78 of the 2005 Act and HEFCW under section 86 of the 2005 Act to adopt rules of eligibility for awards by any training provider to which they make grants, loans or other payments which confine eligibility to those persons who fall within the Schedule.

(2) It shall be lawful for a training provider who is receiving financial support under section 78 and or section 86 of the 2005 Act to adopt rules of eligibility for awards which confine eligibility to those persons who fall within the Schedule.

#### **Payments by HEFCW**

7.—(1) It shall be lawful for HEFCW to adopt rules of eligibility for awards to be made to students who are being trained (otherwise than by a course leading to a first degree) to teach persons over school age by an institution to which it makes grants, loans or other payments under section 65 of the Further and Higher Education Act 1992 which confine eligibility to those persons who fall within the Schedule.

(2) It shall be lawful for an institution to which HEFCW pays grants, loans or other payments for the purpose described in paragraph (1) to adopt rules of eligibility for awards which confine eligibility to those persons who fall within the Schedule.

(7) 2004 c. 8.

(8) 1962 c. 12. The Education Act 1962 was repealed by the Teaching and Higher Education Act 1998, subject to transitional and saving provisions to enable payments to be made pursuant to awards made under the Act before its repeal and to enable awards to be made in respect of courses beginning before 1 September 1999 and certain courses beginning after that date.

(9) The Teacher Training Agency was established under section 1 of the Education Act 1994 and under section 74 of the Education Act 2005, its name was changed to the Training and Development Agency for Schools. Under section 78 of the Education Act 2005 the Training and Development Agency for Schools may provide financial support to any person it thinks fit in furtherance of its objectives.

### **Payments by the Welsh Ministers**

8.—(1) It shall be lawful for the Welsh Ministers to adopt rules of eligibility for awards by an institution to which they make grants, loans or other payments under section 34 of the Learning and Skills Act 2000 which confine eligibility to those persons who fall within the Schedule.

(2) It shall be lawful for an institution to which the Welsh Ministers pay grants, loans or other payments to adopt rules of eligibility for awards (however described) which confine eligibility to those persons who fall within the Schedule.

### **Revocation**

9.—(1) The following Regulations are revoked in relation to Wales—

- (a) The Education (Fees and Awards) Regulations 1997<sup>(10)</sup>;
- (b) The Education (Student Fees and Support) (Switzerland) Regulations 2003<sup>(11)</sup>;
- (c) The Education (Fees and Awards) (Amendment) Regulations 2006<sup>(12)</sup>; and
- (d) The Education (Fees and Awards) (Amendment) (Wales) Regulations 2006<sup>(13)</sup>.

4 August 2007

*Jane E. Hutt*  
Minister for Children, Education, Lifelong  
Learning and Skills, one of the Welsh Ministers.

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<sup>(10)</sup> [S.I.1997/1972](#), amended by [S.I. 1998/1965](#), [S.I. 1999/229](#), [S.I. 2000/2192](#), [S.I. 2003/2945](#), [S.I. 2005/2114](#), [S.I. 2006/483](#) and [S.I. 2006/1795](#).

<sup>(11)</sup> [S.I. 2003/3280](#).

<sup>(12)</sup> [S.I. 2006/483](#).

<sup>(13)</sup> [S.I. 2006/1795 \(W.190\)](#)

## SCHEDULE

## 1. For the purposes of this Schedule —

“Directive 2004/38” (“*Cyfarwydddeb 2004/38*”) means Directive [2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004<sup>(14)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EC national” (“*gwladolyn o'r GE*”) means a national of a Member State of the European Community;

“EEA frontier self-employed person” (“*person hunangyflogedig ffin yr AEE*”) means an EEA national who —

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

“EEA frontier worker” (“*gweithiwr ffin yr AEE*”) means an EEA national who—

- (a) is a worker in United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or 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 national” (“*gwladolyn o'r AEE*”) means a national of an EEA State other than 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;

“EEA State” (“*Gwladwriaeth AEE*”) means a Member State of the European Economic Area;

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

“family member” (“*aelod o deulu*”) means (unless otherwise indicated) —

- (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) his or her spouse or civil partner;
  - (ii) his or her child or the child of his or her spouse or civil partner; or
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person —
  - (i) his or her spouse or civil partner; or
  - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to an EC national who falls within Article 7(1)(c) of Directive 2004/38 —
  - (i) his or her spouse or civil partner; or
  - (ii) direct descendants of his or her or of his or her spouse or civil partner who are—

<sup>(14)</sup> OJ L158, 30.4.2004, p.77-123.

- (aa) under the age of 21; or
  - (bb) dependants of his or her or of his or her spouse or civil partner;
- (d) in relation to an EC national who falls within Article 7(1)(b) of Directive 2004/38 —
  - (i) his or her spouse or civil partner; or
  - (ii) direct descendants of his or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of his or her or of his or her spouse or civil partner;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9 —
  - (i) his or her spouse or civil partner; or
  - (ii) direct descendants of his or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of his or her or of his or her spouse or civil partner;

“person with leave to enter or remain” (“*person sydd â chaniatâd i ddod i mewn neu i aros*”) means a person—

- (a) who has been informed by a person acting under the authority of the Secretary of the State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom;
- (b) who has been granted leave to enter or to remain accordingly; and
- (c) 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 an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002)(**15**); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since he or she was granted leave to enter or remain;

“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(**16**) as extended by the Protocol thereto which entered into force on 4 October 1967(**17**);

“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;

“self-employed person” (“*person hunan-gyflogedig*”) 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;

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(15) 002 c.41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 26 and Schedules 2 and 4, and the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9.

(16) Cmnd. 9171.

(17) Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Support Division, Department for Education and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

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“settled” (“*wedi setlo*”) has the meaning given by section 33(2A) of the Immigration Act 1971<sup>(18)</sup>;

“Swiss Agreement” (“*Cytundeb y Swistir*”) means the Agreement between the European Community 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>(19)</sup> and which came into force on 1 June 2002;

“Swiss employed person” (“*person Swisaidd cyflogedig*”) 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 Swisaidd cyflogedig y ffin*”) means a Swiss national who—

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

“Swiss frontier self-employed person” (“*person Swisaidd hunangyflogedig y ffin*”) means a Swiss national who—

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

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

“Turkish worker” (“*gweithiwr o Dwrci*”) means a Turkish national who—

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

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

### **Persons who are settled in the United Kingdom**

2.—(1) A person who on the first day of the first academic year of the course —

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom;
- (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) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands 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.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with regulation 2(4).

3. A person —

<sup>(18)</sup> 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

<sup>(19)</sup> Cm. 4904.



- (a) who is settled in the United Kingdom by virtue of having acquired the right of permanent residence on the first day of an academic year of the course;
- (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (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; and
- (d) who, in a case where his or her 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

### **Refugees and their family members**

#### **4.—(1) A person —**

- (a) who is a refugee;
- (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was recognised as a refugee; and
- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

#### **(2) A person —**

- (a) who is the spouse or civil partner of a refugee;
- (b) who was the spouse or civil partner of the refugee on the date on which the refugee made his or her application for asylum;
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was given leave to remain in the United Kingdom; and
- (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

#### **(3) A person —**

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

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

#### **5.—(1) A person—**

- (a) with leave to enter or remain; and
- (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

#### **(2) A person—**

- (a) who is the spouse or civil partner of a person with leave to enter or remain;

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- (b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made his or her application for asylum; and
  - (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (3) A person—
- (a) who 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) who, on the date on which the person with leave to enter or remain made his or her application for asylum, was the child of that person 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) who was under 18 on the date on which the person with leave to enter or remain made his or her application for asylum; and
  - (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

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

- 6.—(1) A person who—
- (a) is —
    - (i) an EEA migrant worker or an EEA self-employed person;
    - (ii) a Swiss employed person or a Swiss self-employed person;
    - (iii) a family member of a person mentioned in paragraph (i) or (ii);
    - (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; or
    - (vi) a family member of a person mentioned in paragraph (iv) or (v);
  - (b) subject to sub-paragraph (3), is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (c) has been ordinarily resident in the territory comprising the European Economic Area 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 an EC national falling within paragraph (a)(i) or (a)(iv) of sub-paragraph (1);
  - (b) subject to sub-paragraph (3), is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three year period preceding the first day of the first academic year of the course.
- (3) Paragraph (b) of sub-paragraphs (1) and (2) do not apply where the person falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).
7. A person who—
- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area 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 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(20)</sup>, as extended by the EEA Agreement<sup>(21)</sup>.

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

**8.—(1) A person who—**

- (a) is settled in the United Kingdom;
- (b) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the European Economic Area 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 his or her 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 European Economic Area 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 he or she is a United Kingdom national, 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 a person who has a right of permanent residence who in each case 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 or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if he or she goes to the state within the territory comprising the European Economic Area and Switzerland of which he or she is a national or of which the person in relation to whom he or she is a family member is a national .

**EC nationals**

**9.—(1) A person who —**

- (a) is either —
  - (i) an EC national on the first day of the first academic year of the course; or
  - (ii) a family member of a such a person;
- (b) is undertaking the course in the United Kingdom;
- (c) in the case of a person falling within sub-paragraph (1)(a)(i), has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course;
- (d) in the case of a person falling within sub-paragraph (1)(a)(ii), has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

<sup>(20)</sup> OJ No. L257, 19.10.1968, p.2 (OJ/SE 1968 (II) p.475).

<sup>(21)</sup> “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 — Cm 2073, as adjusted by the Protocol signed at Brussels on 17 March 1993, Cm 2183.

- (e) subject to sub-paragraph (2), whose ordinary residence in the relevant territory has not during any part of the period referred to in paragraphs (c) or (d) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the relevant territory in accordance with regulation 2(4).

**10.—(1) A person who—**

- (a) is an EC national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in the United Kingdom 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 his or her 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the European Community after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EC national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

**Children of Swiss nationals**

**11. 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 the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area 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 his or her 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

**Children of Turkish workers**

**12. A person who—**

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

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## EXPLANATORY NOTE

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

These Regulations, which come into force on 31 August 2007, replace the Regulations listed in regulation 9.

The Regulations provide that, in the circumstances described in the Regulations, it shall be lawful to discriminate between some or all of those persons mentioned in the Schedule, and any other person. Such discrimination might otherwise be unlawful under the Race Relations Act 1976. Nothing in the Regulations is to be construed as rendering unlawful anything done which would have been lawful had the Regulations not been made (regulation 3).

Regulation 4 provides that it shall be lawful for the institutions in paragraph (3) to charge higher fees to those people not mentioned in the Schedule, than those fees charged to people mentioned in that Schedule. Regulation 4(4) refers to section 28 of the Higher Education Act 2004. This section sets out the funding conditions that may be imposed on higher education institutions in relation to fees. Section 28 has not yet been commenced. Regulation 4(4) provides that if an institution were to breach a funding condition under section 28, these Regulations will not provide a defence.

Regulation 5 concerns rules of eligibility for discretionary awards made by local education authorities under sections 1(6) or 2 of the Education Act 1962. In the case of awards for fees, eligibility may be confined to everyone in the Schedule save for persons with leave to enter or remain. In the case of maintenance awards, rules of eligibility may exclude persons with leave to enter or remain and EC nationals. Local education authorities may confine eligibility further, by excluding anyone who has not been ordinarily resident in a relevant geographical area temporarily because of work.

Regulations 6, 7 and 8 concern teacher training and certain bodies which fund the provision of education and training. They provide that it shall be lawful for each of the Training and Development Agency for Schools, the Higher Education Funding Council for Wales and the Welsh Ministers, and institutions funded by them, to adopt rules of eligibility for awards which limit eligibility to those mentioned in the Schedule.

Regulation 9 revokes, in relation to Wales, the existing Regulations governing fees and awards and amending Regulations, subject to certain saving provisions.

The persons mentioned in the Schedule include those who are settled in the United Kingdom, refugees, persons with leave to enter or remain in the United Kingdom, migrant workers from the European Economic Area or Switzerland, nationals of Member States of the European Community and children of Swiss nationals and Turkish workers. To be settled in the United Kingdom, a person must be ordinarily resident there without being subject under immigration law to any restriction on the period for which the person may remain.