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WELSH STATUTORY INSTRUMENTS

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**2015 No. 54**

**The Education (Student Support) (Wales) Regulations 2015**

**PART 11**

**SUPPORT FOR FULL-TIME DISTANCE LEARNING COURSES**

**Eligible distance learning students**

**69.**—(1) An eligible distance learning student qualifies for support in connection with the eligible distance learning student undertaking a designated distance learning course subject to and in accordance with this Part.

(2) Subject to paragraphs (3) and (8), a person is an eligible distance learning student in connection with a designated distance learning course if in assessing the person's application for support under regulation 77 the Welsh Ministers determine that the person falls within one of the categories set out in Part 2 of Schedule 1.

(3) Subject to paragraph (8), a person ("A" in this paragraph) is not an eligible distance learning student if—

- (a) subject to paragraph (4), there has been bestowed on A or paid to A in connection with the distance learning course—
  - (i) a healthcare bursary whether or not the amount of such bursary is calculated by reference to A's income;
  - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(1); or
  - (iii) a Scottish healthcare allowance whether or not the amount of such allowance is calculated by reference to A's income;
- (b) A is in breach of any obligation to repay any loan;
- (c) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18;
- (d) A has, in the opinion of the Welsh Ministers, shown by A's conduct that A is unfitted to receive support under this Part; or
- (e) subject to paragraph (5), A is a prisoner.

(4) Paragraph (3)(a) does not apply if—

- (a) the person applying for support under this Part is a disabled student; and
- (b) there has been bestowed on or paid to the person in connection with the distance learning course—
  - (i) a healthcare bursary the amount of which is calculated by reference to the person's income; or

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(1) 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 and S.S.I. 2013/80.

(ii) a Scottish Healthcare Allowance whether or not the amount of such allowance is calculated by reference to the person's income.

(5) Paragraph (3)(e) does not apply in respect of an academic year during which the eligible distance learning student enters prison to serve a custodial sentence or is released from prison having served such a sentence.

(6) For the purposes of paragraphs (3)(b) and (3)(c), "loan" ("*benthyciad*") means a loan made under the student loans legislation.

(7) In a case where the agreement for a loan is subject to the law of Scotland, paragraph (3)(c) only applies if the agreement was made—

- (a) before 25 September 1991; and
- (b) with the concurrence of the borrower's curator or at a time when the borrower had no curator.

(8) Subject to paragraphs (10) to (12), a person is an eligible distance learning student for the purposes of this Part if the person satisfies the conditions in paragraph (9)(a), (b) or (c).

(9) The conditions referred to in paragraph (8) are—

- (a) the—
  - (i) person qualified as an eligible distance learning student in connection with an earlier academic year of the present distance learning course pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
  - (ii) person was ordinarily resident in Wales on the first day of the present distance learning course; and
  - (iii) person's status as an eligible distance learning student has not terminated;
- (b) the—
  - (i) present distance learning course is an end-on course;
  - (ii) person qualified as an eligible distance learning student in connection with the course in relation to which the present distance learning course is an end-on course;
  - (iii) period of eligibility in respect of the course in sub-paragraph (b)(ii) only ceased on the grounds that the student had completed the course; and
  - (iv) person was ordinarily resident in Wales on the first day of the first academic year of the course in sub-paragraph (b)(ii);
- (c) the—
  - (i) Welsh Ministers have previously determined that the person is an eligible—
    - (aa) student in connection with a designated course;
    - (bb) distance learning student in connection with a designated distance learning course other than the present distance learning course; or
    - (cc) part-time student in connection with a designated part-time course;
  - (ii) person's status as an eligible student, eligible distance learning student or as an eligible part-time student in connection with the course referred to in sub-paragraph (c)(i) has been converted or transferred from that course to the present distance learning course as a result of one or more conversions or transfers in accordance with regulations made by the Welsh Ministers under section 22 of the 1998 Act;
  - (iii) person was ordinarily resident in Wales on the first day of the first academic year of the course referred to in sub-paragraph (c)(i); and

(iv) person's status as an eligible distance learning student has not terminated.

(10) Where—

- (a) the Welsh Ministers determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person ("A" in this paragraph) was an eligible distance learning student in connection with an application for support for an earlier year of the present distance learning course or an application for support in connection with a designated course, designated part-time course or other designated distance learning course from which A's status as an eligible student, eligible part-time student or eligible distance learning student has been transferred to the present distance learning course; and
- (b) as at the day before the academic year in respect of which A is applying for support begins, the refugee status of A or of A's spouse, civil partner, parent (as defined in Part 1 of Schedule 1) or step-parent, as the case may be, has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002<sup>(2)</sup>),

A's status as an eligible distance learning student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(11) Where—

- (a) the Welsh Ministers determined that, by virtue of being a person with leave to enter or remain or the spouse, civil partner, child or step-child of such a person, a person ("A" in this paragraph) was an eligible distance learning student in connection with an application for support for an earlier year of the present distance learning course or an application for support in connection with a designated course, designated part-time course or other designated distance learning course from which A's status as an eligible student, eligible part-time student or eligible distance learning student has been transferred to the present distance learning course; and
- (b) as at the day before the academic year in respect of which A is applying for support begins, the period for which the person with leave to enter or remain is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A's status as an eligible distance learning student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(12) Paragraphs (10) and (11) do not apply where the student began the course in connection with which the Welsh Ministers determined that the student was an eligible student or eligible part-time student, as the case may be, before 1 September 2007.

(13) An eligible distance learning student may not, at any one time, qualify for support under these Regulations for—

- (a) more than one designated distance learning course;
- (b) a designated distance learning course and a designated course;
- (c) a designated distance learning course and a designated part-time course;
- (d) a designated distance learning course and a designated postgraduate course.

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(2) 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 and S.I. 2010/21.

**Students becoming eligible during the course of the academic year**

70.—(1) Where one of the events listed in paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant in respect of fees in respect of that academic year in accordance with this Part provided that the relevant event occurred within the first three months of the academic year; and
- (b) a grant in respect of fees is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(2) Where one of the events listed in sub-paragraphs (a), (b), (e), (f), (g), (h) or (i) of paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant for books, travel and other expenditure in respect of that academic year in accordance with this Part; and
- (b) a grant for books, travel and other expenditure is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(3) Where one of the events listed in sub-paragraphs (a), (b), (e), (f), (g), (h) or (i) of paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant for disabled distance learning students' living costs in respect of that academic year in accordance with this Part; and
- (b) a grant for disabled distance learning students' living costs is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(4) The events are—

- (a) the student's course becomes a designated distance learning course;
- (b) the student, the student's spouse, civil partner or parent (as defined in Part 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) a state accedes to the European Union and the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the state of which the student is a national accedes to the European Union where the student 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;
- (f) the student acquires the right of permanent residence;
- (g) the student becomes a person described in paragraph 6(1)(a) of Schedule 1;
- (h) the student becomes the child of a Swiss national; or
- (i) the student becomes the child of a Turkish worker.

**Designated distance learning courses**

71.—(1) A course is designated for the purposes of section 22(1) of the 1998 Act and regulation 69 if it is designated by the Welsh Ministers under this regulation.

(2) Subject to paragraph (4), the Welsh Ministers may designate a course under this regulation if in their opinion—

- (a) the course is listed in Schedule 2 other than a course for the initial training of teachers;
- (b) the course is a full-time course;
- (c) the course is of at least one academic year's duration;

- (d) students undertaking the course in the United Kingdom are not required to be in attendance on it by the institution providing the course; and
  - (e) subject to paragraph (5), the course began before 1 September 2012.
- (3) For the purposes of determining whether the requirement in paragraph (2)(d) is satisfied the Welsh Ministers may disregard—
- (a) any requirement imposed by the institution providing the course to attend any institution for the purposes of—
    - (i) registration or enrolment;
    - (ii) an examination;
  - (b) any requirement imposed by the institution providing the course to attend any institution on a weekend or during any vacation;
  - (c) any period of attendance at the institution providing the course which a student may but is not required to complete by that institution.
- (4) The Welsh Ministers may not designate a course as a designated distance learning course if—
- (a) it falls within paragraph 7 or 8 of Schedule 2; and
  - (b) the governing body of a maintained school has arranged for the provision of the course to a pupil of the school.
- (5) A course which begins on or after 1 September 2012 is a designated distance learning course where—
- (a) a student transfers to that course pursuant to regulation 80 from a previous designated distance learning course which began before 1 September 2012; or
  - (b) that course is an end-on course undertaken by distance learning following on from a designated distance learning course which began before 1 September 2012,
- and that course would otherwise be a designated course for the purposes of regulation 5.

### **Period of eligibility**

72.—(1) A student’s status as an eligible distance learning student is retained in connection with a designated distance learning course until that status terminates in accordance with this regulation or regulation 69.

(2) The period for which an eligible distance learning student retains the status referred to in paragraph (1) is the “period of eligibility” (“*cyfnod cymhwysra*”).

(3) Subject to the following paragraphs and regulation 69, the period of eligibility terminates at the end of the academic year in which the eligible distance learning student completes the designated distance learning course.

(4) The period of eligibility terminates when the eligible distance learning student (“A” in this paragraph and in paragraph (5))—

- (a) withdraws from A’s designated distance learning course in circumstances where the Welsh Ministers have not transferred or converted or will not transfer or convert A’s status under regulation 80, 81, 82, or 108; or
- (b) abandons or is expelled from A’s designated distance learning course.

(5) The Welsh Ministers may terminate the period of eligibility where in their opinion A has shown by A’s conduct that A is unfitted to receive support under these Regulations.

(6) If the Welsh Ministers are satisfied that an eligible distance learning student has failed to comply with any requirement to provide information under this Part or has provided information

which is inaccurate in a material particular, the Welsh Ministers may take such of the following actions as they consider appropriate in the circumstances—

- (a) terminate the period of eligibility;
- (b) determine that the student no longer qualifies for any particular support or particular amount of support under these Regulations;
- (c) treat any support paid to the student under these Regulations as an overpayment which may be recovered under regulation 85.

(7) Where the period of eligibility terminates before the end of the academic year in which the eligible distance learning student completes the designated distance learning course the Welsh Ministers may, at any time, renew or extend the period of eligibility for such period as they determine.

### **Support for distance learning courses**

**73.**—(1) For the purposes of this regulation, the support available is—

- (a) a grant in respect of fees not exceeding the lesser of the following amounts—
  - (i) £1,025; or
  - (ii) the actual fees, being the amount of fees charged to the eligible distance learning student in respect of an academic year of the designated distance learning course; and
- (b) a grant not exceeding £1,155 for books, travel and other expenditure in connection with the designated distance learning course.

(2) An eligible distance learning student does not qualify for support under paragraph (1)(b) if the only paragraph in Part 2 of Schedule 1 into which the eligible distance learning student falls is paragraph 9.

(3) An eligible distance learning student does not qualify for support under this regulation if—

- (a) the eligible distance learning student is a disabled student; and
- (b) there has been bestowed on or paid to the eligible distance learning student in connection with the designated distance learning course—
  - (i) a healthcare bursary the amount of which is calculated by reference to the eligible distance learning student's income; or
  - (ii) a Scottish healthcare allowance whether or not the amount of such allowance is calculated by reference to the eligible distance learning student's income.

(4) An eligible distance learning student does not qualify for support under this regulation unless the Welsh Ministers consider that the eligible distance learning student is undertaking the designated distance learning course in Wales on the first day of the first academic year.

(5) An eligible distance learning student will no longer qualify for support under this regulation if the Welsh Ministers consider that the eligible distance learning student is undertaking the designated distance learning course outside the United Kingdom.

(6) An eligible distance learning student does not qualify for support under this regulation if the eligible distance learning student has undertaken one or more distance learning courses for eight academic years in aggregate and the eligible distance learning student has received in respect of each of those academic years a loan or a grant of the kind described in paragraph (7).

(7) The loans and grants are—

- (a) a loan, a grant in respect of fees or a grant for books, travel and other expenditure each made in respect of an academic year of a distance learning course pursuant to regulations made under section 22 of the 1998 Act;

- (b) a loan, a grant in respect of fees or a grant for books, travel and other expenditure each made in respect of an academic year of a distance learning course by the Department for Employment and Learning (Northern Ireland) pursuant to regulations made under Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998(3); or
- (c) a loan in respect of an academic year of a distance learning course made pursuant to regulations made under sections 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(4).

(8) Subject to paragraph (11), an eligible distance learning student does not qualify for support under this regulation if the eligible distance learning student holds a first degree from an educational institution in the United Kingdom.

(9) For the purposes of paragraph (8), a degree is not to be treated as a first degree where—

- (a) it is a degree (other than an honours degree) that has been awarded to the eligible distance learning student who has completed the required modules, examinations or other forms of assessment for the eligible distance learning student's first degree course; and
- (b) that student is undertaking the present distance learning course so as to obtain an honours degree on completion of the required modules, examinations or other forms of assessment (whether or not that student continues the course at the same educational institution after the award of the degree referred to in sub-paragraph (a)).

(10) No support is payable to an eligible distance learning student under these Regulations in connection with that student undertaking a distance learning course that is not a designated distance learning course.

(11) Paragraph (8) does not apply where the Welsh Ministers determine that the following conditions are satisfied in relation to an eligible distance learning student—

- (a) the eligible distance learning student has provided all information required by the Welsh Ministers in relation to a first degree held by the student from an educational institution in the United Kingdom;
- (b) that information is accurate; and
- (c) the Welsh Ministers have incorrectly provided notification that the eligible distance learning student qualifies for support under this regulation in respect of the present distance learning course.

(12) Where paragraph (11) applies an eligible distance learning student may qualify for support under this regulation in accordance with paragraphs (13) to (15).

(13) Subject to paragraph (15), if the Welsh Ministers make the determination under paragraph (11) before the first day of the first academic year of the present distance learning course then the eligible distance learning student may qualify for support under this regulation in respect of the first academic year of the present distance learning course.

(14) Subject to paragraph (15), if the Welsh Ministers make the determination under paragraph (11) on or after the first day of the first academic year of the present distance learning course then the eligible distance learning student may qualify for support under this regulation in respect of—

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(3) S.I. 1998/1760 (N.I. 14), to which there are amendments not relevant to these Regulations.

(4) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998 and was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) and section 34(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3). Section 74 was amended by section 82 of and Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

- (a) the academic year of the present distance learning course during which the Welsh Ministers make the determination; and
- (b) an academic year of the present distance learning course which the student has completed prior to the Welsh Ministers making the determination.

(15) An eligible distance learning student subject to a determination under paragraph (7) may qualify for support under this regulation otherwise than in accordance with paragraphs (13) and (14), where the Welsh Ministers consider this to be appropriate as a result of the exceptional circumstances of a particular case.

### Amount of support

74.—(1) Subject to paragraph (2) and regulation 80(6), the amount of support payable under regulation 73 in respect of an academic year is as follows—

- (a) if at the date of the eligible distance learner student’s application the eligible distance learning student or the eligible distance learning student’s partner is entitled—
  - (i) under Part VII of the Social Security Contributions and Benefits Act 1992(5) to income support or housing benefit;
  - (ii) under Part 1 of the Jobseekers Act 1995(6) to income-based jobseeker’s allowance;
  - (iii) under Part 1 of the Welfare Reform Act 2007(7) to an income-related employment and support allowance;
  - (iv) to universal credit; or
  - (v) to a reduction under a council tax reduction scheme;
 the maximum amount of support available under regulation 73(1) is payable;
- (b) where the relevant income is less than £16,865, the maximum amount of support available under regulation 73(1) is payable;
- (c) where the relevant income is £16,865, the maximum amount of support available under regulation 73(1)(b) is payable together with £50 less than the maximum amount of support available under regulation 73(1)(a);
- (d) where the relevant income exceeds £16,865 but is less than £25,435, the maximum amount of support available under regulation 73(1)(b) is payable and the amount of support payable under regulation 73(1)(a) is the amount determined in accordance with paragraph (2);
- (e) where the relevant income is £25,435, the maximum amount of support available under regulation 73(1)(b) is payable and the amount of support payable under regulation 73(1)(a) is £50;

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(5) 1992 c. 4; Part VII was amended by the Local Government Finance Act 1992 (c. 14), Schedule 9 and Schedule 14; the Social Security (Incapacity for Work) Act 1994, Schedules 1 and 2; the Jobseekers Act 1995 (c. 18), Schedule 2 and Schedule 3; the Housing Act 1996 (c. 52), Schedule 19 Part 6; the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 8; the Health and Social Care Act 2001 (c. 15), Schedule 6 Part 3; the State Pension Credit Act 2002 (c. 16), Schedule 2 and Schedule 3, the Tax Credits Act 2002 (c. 21), Schedule 6; S.I. 2002/1397; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6, paragraphs 169 and 179; the Civil Partnership Act 2004 (c. 33), Schedule 24 and Schedule 30; the Welfare Reform Act 2007 (c. 5), sections 30(2) and 31(1), Schedule 3, Schedule 5 and Schedule 8; the Welfare Reform Act 2009 (c. 24), section 3; the Welfare Reform Act 2012 (c.5), section 69 and Schedule 14(1); S.I. 2008/632; S.I. 2008/787; S.I. 2009/497; S.I. 2010/793; S.I. 2014/516 and S.I. 2014/560.

(6) 1995 c. 18; Part I was amended by the Employment Rights Act 1996 (c. 18), Schedule 1; the Social Security Act 1998 (c. 14), Schedule 7; the Welfare Reform and Pensions Act 1999 (c. 30), Schedules 7 and 8; the National Insurance Contributions Act 2002 (c. 19), Schedule 1; S.I. 2006/343; the Welfare Reform Act 2007 (c. 5), Schedule 3; the Welfare Reform Act 2009 (c. 24), section 12; the Welfare Reform Act 2012 (c. 5), sections 44, 49 and 60 and Schedules 2, 7 and 14.

(7) 2007 c. 5, amended by the Welfare Reform Act 2012 (c. 5), sections 28, 51, 52, 53, 54, 57 and 60 and Schedules 3 and 14 and the Children and Families Act 2014 (c. 6), Schedule 7.



- (f) where the relevant income exceeds £25,435 but is less than £26,095, the maximum amount of support available under regulation 73(1)(b) is payable and no support is payable under regulation 73(1)(a);
  - (g) where the relevant income is £26,095 or more but less than £28,180 no support is available under regulation 73(1)(a) and the amount of support payable under regulation 73(1)(b) is the amount left after deducting from the maximum amount of support available under regulation 73(1)(b) £1 for every £1.886 by which the relevant income exceeds £26,095;
  - (h) where the relevant income is £28,180, no support is payable under regulation 73(1)(a) and the amount of support payable under regulation 73(1)(b) is £50;
  - (i) where the relevant income exceeds £28,180 no support is payable under regulation 73(1).
- (2) Where paragraph (1)(d) applies, the amount of support payable under regulation 73(1)(a) is determined by deducting from the maximum amount of support available under regulation 73(1)(a) one of the following amounts—
- (a) £50 plus a further £1 for each complete £9.26 by which the relevant income exceeds £16,865; or
  - (b) where the actual fees are less than £1,025, an amount equal to that left after deducting from the amount calculated under sub-paragraph (a) the difference between £1,025 and the actual fees (unless the amount is a negative number in which case the maximum amount of support available under regulation 73(1)(a) is payable).

#### **Interpretation of regulation 74**

**75.**—(1) For the purposes of regulation 74 and this regulation—

- (a) subject to sub-paragraph (b), “partner” (“*partner*”) means any of the following—
  - (i) the spouse of an eligible distance learning student;
  - (ii) the civil partner of an eligible distance learning student;
  - (iii) a person ordinarily living with an eligible distance learning student as if the person were the eligible distance learning student’s spouse where an eligible distance learning student is aged 25 or over on the first day of the academic year in respect of which the eligible distance learning student is being assessed for support and where the eligible distance learning student began the specified designated distance learning course before 1 September 2005;
  - (iv) a person ordinarily living with an eligible distance learning student as if the person were the eligible distance learning student’s spouse or civil partner where an eligible distance learning student began the specified designated distance learning course on or after 1 September 2005;
- (b) a person who would otherwise be a partner under sub-paragraph (a) is not to be treated as a partner if—
  - (i) in the opinion of the Welsh Ministers, that person and the eligible distance learning student are separated; or
  - (ii) the person is ordinarily living outside the United Kingdom and is not maintained by the eligible distance learning student;
- (c) “relevant income” (“*incwm perthnasol*”) has the meaning given in paragraph (2).

(2) Subject to paragraph (3), an eligible distance learning student’s relevant income is equal to the eligible distance learning student’s financial resources in the preceding financial year less—

- (a) £2,000 in respect of the eligible distance learning student’s partner;

- (b) £2,000 in respect of the only or eldest child who is dependent on the eligible distance learning student or the eligible distance learning student's partner; and
- (c) £1,000 in respect of each other child who is dependent on the eligible distance learning student or the eligible distance learning student's partner.

(3) Where the Welsh Ministers are satisfied that an eligible distance learning student's financial resources in the preceding financial year are greater than the eligible distance learning student's financial resources in the current financial year and that the difference between the two amounts is £1,000 or more, they must assess that student's financial resources by reference to those resources in the current financial year.

(4) In this regulation, an eligible distance learning student's financial resources in a financial year means the aggregate of the eligible distance learning student's income for that year together with the aggregate of the income for that year of any person who at the date of the application for support under this Part is the eligible distance learning student's partner.

(5) In this regulation—

- (a) “child” (“*plentyn*”) in relation to an eligible distance learning student includes any child of the student's partner and any child for whom the student has parental responsibility;
- (b) “current financial year” (“*blwyddyn ariannol gyfredol*”) means the financial year which includes the first day of the academic year in respect of which a person is being assessed for support under this Part;
- (c) “dependent” (“*dibynnol*”) means wholly or mainly financially dependent;
- (d) “financial year” (“*blwyddyn ariannol*”) means the period of twelve months for which the income of the eligible distance learning student is computed for the purposes of the income tax legislation which applies to it;
- (e) “income” (“*incwm*”) means gross income from all sources excluding—
  - (i) any payment made under section 23C(5A) of the Children Act 1989; and
  - (ii) any tax credits awarded pursuant to any claims under section 3 of the Tax Credits Act 2002<sup>(8)</sup>;
- (f) “preceding financial year” (“*blwyddyn ariannol flaenorol*”) means the financial year immediately preceding the current financial year;
- (g) “specified designated distance learning course” (“*cwrs dysgu o bell dynodedig a bennir*”) means the course in respect of which the person is applying for support under this Part or, where the student's status as an eligible distance learning student has been transferred to the present distance learning course as a result of one or more transfers of that status by the Welsh Ministers from a distance learning course (the “initial course”) (“*cwrs cychwynnol*”) in connection with which the Welsh Ministers determined the student to be an eligible distance learning student pursuant to regulations made under section 22 of the 1998 Act, the specified designated distance learning course is the initial course.

### **Grant for disabled distance learning students' living costs**

**76.**—(1) An eligible distance learning student qualifies in accordance with this Part for a grant to assist with the additional expenditure which the Welsh Ministers are satisfied the eligible distance learning student is obliged to incur by reason of a disability to which the eligible distance learning student is subject in respect of the eligible distance learning student undertaking a designated distance learning course.

<sup>(8)</sup> 2002 c. 21, section 3 was amended by the Civil Partnership Act 2004 (c. 33), section 254 and Schedule 24.

(2) An eligible distance learning student does not qualify for the grant under this regulation if the only paragraph in Part 2 of Schedule 1 into which the eligible distance learning student falls is paragraph 9.

(3) An eligible distance learning student does not qualify for the grant under this regulation in respect of any academic year that is a bursary year.

(4) An eligible distance learning student does not qualify for the grant under this regulation unless the Welsh Ministers consider that the eligible distance learning student is undertaking the designated distance learning course in Wales on the first day of the first academic year.

(5) An eligible distance learning student will no longer qualify for the grant under this regulation if the Welsh Ministers consider that the eligible distance learning student is undertaking the designated distance learning course outside the United Kingdom.

(6) Subject to the following paragraphs, the amount of grant under this regulation is the amount that the Welsh Ministers consider appropriate in accordance with the student's circumstances.

(7) The amount of the grant under this regulation must not exceed—

(a) £21,181 in respect of an academic year for expenditure on a non-medical personal helper;

(b) £5,332 in respect of all the academic years during the period of eligibility for expenditure on major items of specialist equipment;

(c) the additional expenditure incurred—

(i) within the United Kingdom for the purpose of attending the institution;

(ii) within or outside the United Kingdom for the purpose of attending, as a part of the eligible distance learning student's course, any period of study at an overseas institution or for the purpose of attending the Institute;

(d) £1,785 in respect of an academic year for any other expenditure including expenditure incurred for the purposes referred to in sub-paragraph (a) or (b) which exceeds the specified maxima.

(8) Subject to paragraphs (9) and (10), the grant under this regulation is payable to an eligible distance learning student in respect of the four quarters of the academic year.

(9) Where a grant under this regulation is used for expenditure on major items of specialist equipment (within the meaning of paragraph (7)(b)) it may be payable in respect of the whole academic year.

(10) Where regulation 70(3) applies, an eligible distance learning student may only qualify for a grant under this regulation for the purposes specified in paragraph (7)(a), (c) and (d) in respect of such quarters as begin after the relevant event in regulation 70(4) occurs.

### **Applications for support**

77.—(1) A person must apply for support in connection with each academic year of a designated distance learning course by completing and submitting to the Welsh Ministers an application in such form as the Welsh Ministers may require.

(2) The application must be accompanied by—

(a) a declaration completed by the academic authority; and

(b) such additional documentation as the Welsh Ministers may require.

(3) The Welsh Ministers may take such steps and make such inquiries as they consider necessary to determine whether the applicant is an eligible distance learning student, whether the applicant qualifies for support under this Part and the amount of support payable, if any.

(4) The Welsh Ministers must notify the applicant of whether the applicant qualifies for support under this Part and, if the applicant does qualify, the amount of support payable in respect of the academic year, if any.

(5) Subject to paragraph (6), the application must reach the Welsh Ministers within a period of six months beginning with the first day of the academic year of the designated distance learning course in respect of which it is submitted.

(6) Paragraph (5) does not apply where—

- (a) one of the events listed in paragraph (4) of regulation 70 occurs after the first day of the academic year in respect of which the applicant is applying for support under this Part, in which case the application must reach the Welsh Ministers within a period of six months beginning with the day on which the relevant event occurred;
- (b) the applicant is applying for the grant for disabled distance learning students' living costs, in which case the application must reach the Welsh Ministers as soon as is reasonably practicable; or
- (c) the Welsh Ministers consider that having regard to the circumstances of the particular case the time limit should be relaxed, in which case the application must reach the Welsh Ministers not later than such date as they specify.

#### **Declarations provided by academic authorities**

**78.**—(1) Subject to paragraph (2), the academic authority must, on the request of the applicant, complete a declaration in such form as may be required by the Welsh Ministers to accompany the application for support under regulation 77.

(2) An academic authority is not required to complete a declaration if it is unable to give the confirmation required by sub-paragraph 3(a)(ii) or 3(b)(ii).

(3) In this Part, “declaration” (“*datganiad*”) means—

- (a) where the applicant is applying for support in connection with the designated distance learning course for the first time, a statement that—
  - (i) provides the course information; and
  - (ii) confirms that the applicant has undertaken at least two weeks of the designated distance learning course;
- (b) in any other case, a statement that—
  - (i) provides the course information; and
  - (ii) confirms that the applicant has enrolled to undertake the academic year of the designated distance learning course in respect of which the applicant is applying for support.

(4) In this regulation, “course information” (“*gwybodaeth am y cwrs*”) means—

- (a) the amount of fees being charged in respect of the academic year in respect of which the applicant is applying for support under this Part;
- (b) certification by the academic authority that it considers the applicant is undertaking the designated distance learning course in Wales; and
- (c) in any case where the applicant is a disabled student, certification by the academic authority that it considers the applicant has chosen to undertake the designated distance learning course for a reason other than that the applicant is unable to attend a designated course for a reason which relates to the applicant's disability.

## Information

79. Schedule 3 applies in respect of the provision of information by an applicant or an eligible distance learning student.

## Transfer of status

80.—(1) Where an eligible distance learning student transfers from a designated distance learning course to another designated distance learning course, the Welsh Ministers must transfer the student's status as an eligible distance learning student to that other course where—

- (a) they receive a request from the eligible distance learning student to do so;
- (b) they are satisfied that one or more of the grounds for transfer in paragraph (2) applies; and
- (c) the period of eligibility has not terminated.

(2) The grounds for transfer are—

- (a) the eligible distance learning student starts to undertake another designated distance learning course at the same institution;
- (b) the eligible distance learning student starts to undertake a designated distance learning course at another institution; or
- (c) after commencing a designated distance learning course for a first degree (other than an honours degree) the eligible distance learning student is, before the completion of that course, admitted to a designated distance learning course for an honours degree in the same subject at the same institution.

(3) Subject to paragraph (4), an eligible distance learning student who transfers under paragraph (1) is to receive in connection with the academic year of the course to which the eligible distance learning student transfers the remainder of the support under this Part for which the Welsh Ministers have determined the eligible distance learning student qualifies in respect of the academic year of the course from which the eligible distance learning student transfers.

(4) The Welsh Ministers may re-assess the amount of support payable after the transfer in accordance with this Part.

(5) An eligible student who transfers under paragraph (1) after the Welsh Ministers have determined the eligible distance learning student's support under this Part in connection with the academic year of the course from which the eligible distance learning student is transferring but before the eligible distance learning student completes that year, may not apply for another grant under regulation 73(1)(b) or regulation 76 in connection with the academic year of the course to which the eligible distance learning student transfers.

(6) Where a student transfers under paragraph (1), the maximum amount of support under regulation 73(1)(a) in respect of the academic years to and from which the eligible distance learning student transfers is the amount of support available in connection with the course with the highest actual fees as defined in regulation 73.

## Conversion of status – eligible students transferring to designated distance learning courses

81.—(1) Where an eligible student ceases to undertake a designated course and transfers to a designated distance learning course at the same or at another institution, the Welsh Ministers must convert the student's status as an eligible student to that of an eligible distance learning student in connection with the course to which the eligible student is transferring where—

- (a) they receive a request from the eligible student to do so; and
- (b) the period of eligibility has not terminated.

(2) The following applies to an eligible student who transfers under paragraph (1)—

- (a) where the Welsh Ministers have determined to pay an amount of grant for disabled students' living costs to that student under Part 5 in periodic instalments, no payment in respect of that amount of grant must be made in respect of any instalment period beginning after the date on which that student becomes an eligible distance learning student;
  - (b) the maximum amount of grant for disabled distance learning students' living costs to which that student would, apart from this regulation, be entitled in connection with that student undertaking a designated distance learning course in respect of that academic year is reduced by one third where that student became an eligible distance learning student in the second quarter of the academic year and by two thirds where that student became an eligible distance learning student in a later quarter of that year;
  - (c) where an amount of grant for disabled students' living costs for any purpose has been paid to the student under Part 5 in a single instalment, the maximum amount of grant for disabled distance learning students' living costs payable to that student for that purpose is reduced (or where sub-paragraph (b) applies, further reduced) by the amount of grant paid to that student for that purpose pursuant to Part 5, and where the resulting amount is nil or a negative amount that amount is nil; and
  - (d) where immediately before that student became an eligible distance learning student that student was eligible to apply, but had not applied for a loan for living costs in respect of that year, or had not applied for the maximum amount or increased maximum to which that student was entitled, that student may apply for such a loan or such additional amount as if that student had continued to be an eligible student and in the circumstances mentioned in paragraph (3) the maximum amount or increased maximum amount of such loan for the academic year is reduced in accordance with that paragraph.
- (3) Where the request under paragraph (1) is made during the first quarter of the academic year in respect of which the loan for living costs is payable the maximum amount or increased maximum amount of loan (as the case may be) is reduced by two thirds and where the request is made during the second quarter of that year that amount is reduced by one third.

### **Conversion of status – eligible distance learning students transferring to designated courses**

**82.**—(1) Where an eligible distance learning student ceases to undertake a designated distance learning course and transfers to a designated course at the same or at another institution, the Welsh Ministers must convert the student's status as an eligible distance learning student to that of an eligible student in connection with the course to which the eligible distance learning student is transferring where—

- (a) they receive a request from the eligible distance learning student to do so; and
  - (b) the period of eligibility has not terminated.
- (2) The following applies to an eligible distance learning student who transfers under paragraph (1)—
- (a) where the Welsh Ministers have determined to pay an amount of grant for disabled distance learning students' living costs to that student in periodic instalments no payment in respect of that amount of grant must be made in respect of any instalment period beginning after the date on which that student becomes an eligible student;
  - (b) any support to which that student is entitled under this Part in respect of the academic year in which that student transfers is ignored in determining the amount of support to which that student may be entitled in respect of that year under Parts 4 to 6;
  - (c) the maximum amount of any support under Part 5 or 6 to which that student would, apart from this regulation, be entitled in connection with a designated course in respect of the academic year is reduced by one third where that student became an eligible student during

the second quarter of that academic year and by two thirds where that student became an eligible student in a later quarter of that year; and

- (d) where an amount of grant for disabled distance learning students' living costs for any purpose has been paid to that student in a single instalment, the maximum amount of grant for disabled students' living costs payable to that student under Part 5 for that purpose is reduced (or, where sub-paragraph (c) applies, further reduced) by the amount of grant for disabled distance learning students' living costs paid to that student for that purpose and where the resulting amount is nil or a negative amount that amount is nil.

### **Payment of grants for fees**

**83.**—(1) Subject to paragraphs (2) and (3), the Welsh Ministers must pay the grant in respect of fees for which the eligible distance learning student qualifies once they have received from the relevant academic authority—

- (a) a request for payment; and
- (b) confirmation of the eligible distance learning student's attendance on the designated distance learning course.

(2) The Welsh Ministers may make payments under paragraph (1) at such times and in such instalments (if any) as they see fit.

(3) The Welsh Ministers may make provisional payments under paragraph (1) in such cases as they deem appropriate.

(4) In this regulation "confirmation of the eligible distance learning student's attendance on the designated distance learning course" ("*cadarnhad o bresenoldeb y myfyriwr dysgu o bell cymwys ar y cwrs dysgu o bell dynodedig*") means confirmation from the relevant academic authority that the eligible distance learning student—

- (a) has enrolled on and started undertaking the designated distance learning course, where the confirmation relates to a payment of the entire grant in respect of fees or the first instalment of the grant in respect of fees; or
- (b) remains enrolled and continues to undertake the designated distance learning course at the date of the confirmation, where the confirmation relates to an instalment of the grant in respect of fees other than the first instalment.

(5) Where an eligible distance learning student ceases to undertake a designated distance learning course during the academic year and the academic authority has determined or agreed that the student will not return during that academic year, the academic authority must inform the Welsh Ministers as soon as is practicable of the eligible distance learning student's departure from the designated distance learning course.

### **Payment of grants for books, travel and other expenditure and grants for disabled distance learning students' living costs**

**84.**—(1) Payments of the grant for books, travel and other expenditure and the grant for disabled distance learning students' living costs may be made in such manner as the Welsh Ministers consider appropriate and they may make it a condition of entitlement to payment that the eligible distance learning student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(2) Where the Welsh Ministers cannot make a final assessment on the basis of the information provided by the eligible distance learning student, they may make a provisional assessment and payment of the grant for books, travel and other expenditure and the grant for disabled distance learning students' living costs.

(3) The Welsh Ministers may pay the grant for books, travel and other expenditure and the grant for disabled distance learning students' living costs in instalments or in a single lump sum.

(4) Subject to paragraph (5), the Welsh Ministers may pay the grant for books, travel and other expenditure and the grant for disabled distance learning students' living costs at such times as they consider appropriate.

(5) The Welsh Ministers must not pay the first instalment or, where it has been determined not to pay support in instalments, make any payment of the grant for books, travel and other expenditure or the grant for disabled distance learning students' living costs before they have received a declaration under regulation 78 unless an exception referred to in paragraph (6) applies.

(6) For the purposes of paragraph (5) an exception applies if—

- (a) a grant for disabled distance learning students' living costs is payable in which case that particular grant may be paid before the Welsh Ministers have received a declaration;
- (b) the Welsh Ministers have determined that owing to exceptional circumstances it would be appropriate to make a payment without receiving a declaration.

### **Overpayments**

**85.**—(1) Any overpayment of a grant in respect of fees is recoverable by the Welsh Ministers from the academic authority.

(2) An eligible distance learning student must, if so required by the Welsh Ministers, repay any amount paid to the eligible distance learning student under this Part which for whatever reason exceeds the amount of grant to which the eligible distance learning student is entitled under this Part.

(3) The Welsh Ministers must recover an overpayment of grant for books, travel and other expenditure and grant for disabled distance learning students' living costs unless they consider that it is not appropriate to do so.

(4) The methods of recovery are—

- (a) subtracting the overpayment from any kind of grant payable to the eligible distance learning student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (b) taking such other action for the recovery of an overpayment as is available to the Welsh Ministers.

(5) A payment of the grant for disabled distance learning students' living costs made before the relevant date is an overpayment if the eligible distance learning student withdraws from the course before the relevant date unless the Welsh Ministers decide otherwise.

(6) In this regulation, the “relevant date” (“*dyddiad perthnasol*”) is the date on which the first term of the academic year in question actually begins.

(7) In the circumstances set out in paragraph (8) or (9), there is an overpayment of the grant for disabled distance learning students' living costs unless the Welsh Ministers decide otherwise.

(8) The circumstances referred to in paragraph (7) are—

- (a) the Welsh Ministers apply all or part of the grant for disabled distance learning students' living costs to the purchase of specialist equipment on behalf of the eligible distance learning student;
- (b) the eligible distance learning student's period of eligibility terminates after the relevant date; and
- (c) the equipment has not been delivered to the eligible distance learning student before the period of eligibility terminates.

(9) The circumstances referred to in paragraph (7) are—



- (a) the eligible distance learning student's period of eligibility terminates after the relevant date; and
  - (b) a payment of the grant for disabled part-time students' living costs in respect of specialist equipment is made to the student after the period of eligibility terminated.
- (10) Where there is an overpayment of the grant for disabled distance learning students' living costs, the Welsh Ministers may accept the return of specialist equipment purchased with the grant by way of recovery of all or part of the overpayment if they consider it is appropriate to do so.