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WELSH STATUTORY INSTRUMENTS

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**2021 No. 1365 (W. 360)**

**EDUCATION, WALES**

**The Education (Student Fees, Awards and Support) (Amendment) (Wales) Regulations 2021**

<i>Made</i>	- - - -	<i>1 December 2021</i>
<i>Laid before Senedd Cymru</i>		<i>3 December 2021</i>
<i>Coming into force</i>	- -	<i>31 December 2021</i>

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State under sections 1 and 2 of the Education (Fees and Awards) Act 1983<sup>(1)</sup> and sections 22(2)(a) and 42(6) of the Teaching and Higher Education Act 1998<sup>(2)</sup> and now exercisable by them<sup>(3)</sup> and powers conferred on them under sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015<sup>(4)</sup>, make the following Regulations:

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- (1) 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 Learning and Skills Act 2000 (c. 21), Schedule 9, paragraphs 1 and 11; the Education Act 2002 (c. 32), Schedule 21, paragraph 5 and Schedule 22; the Education Act 2005 (c. 18), Schedule 14, paragraph 9; S.I. 2010/1080, Schedule 1, paragraph 12; S.I. 2010/1158, Schedule 2, paragraph 1; the Education Act 2011 (c. 21), Schedule 5, paragraph 5 and Schedule 16, paragraph 5; and the Deregulation Act 2015 (c. 20), Schedule 14, paragraph 33. Section 2 was amended by the Teaching and Higher Education Act 1998 (c. 30), section 44 and Schedule 4.
- (2) 1998 c. 30; section 22(2)(a) was amended by the Higher Education and Research Act 2017 (c. 29), section 86(3)(a). See section 43(1) of the Teaching and Higher Education Act 1998 for the definitions of “prescribed” and “regulations”.
- (3) The functions of the Secretary of State in section 1 of the Education (Fees and Awards) Act 1983 were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 2006/1458 with effect from 8 June 2006. The functions of the Secretary of State in section 2 of that Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 1999/672. Section 44 of the Higher Education Act 2004 provided that the functions in section 22(2)(a) of the Teaching and Higher Education Act 2004 was to be exercised by the National Assembly for Wales concurrently with the Secretary of State, so far as they relate to making provision in relation to Wales. The Secretary of State’s function in section 42(6) was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, article 2 and Schedule 1 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (4) 2015 anaw 1. See section 57(1) for the definitions of “prescribed” and “regulations”.

## PART 1

### TITLE AND COMMENCEMENT

#### Title and commencement

1.—(1) The title of these Regulations is the Education (Student Fees, Awards and Support) (Amendment) (Wales) Regulations 2021.

(2) These Regulations come into force on 31 December 2021.

## PART 2

### AMENDMENTS TO THE EDUCATION (FEES AND AWARDS) (WALES) REGULATIONS 2007

#### CHAPTER 1

##### Introduction

2. The Education (Fees and Awards) (Wales) Regulations 2007(5) are amended in accordance with this Part.

#### CHAPTER 2

##### Citizens' rights and residency criteria

#### Amendments to Schedule 1

3. In Schedule 1—

- (a) in paragraph 1, in the definition of “person with protected rights”—
- (i) the existing text after “means—” is numbered as paragraph (1) of that definition;
  - (ii) in that paragraph as so numbered, omit the terminal “or” at the end of sub-paragraph (a)(iii) and after sub-paragraph (a)(iv) insert—  
“*(v) otherwise has rights deemed to apply by virtue of any citizens' rights deeming provisions; or*”
  - (iii) after that paragraph as so numbered, insert—  
“(2) In paragraph (1)(a)(v) “*citizens' rights deeming provisions*” means—
    - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
    - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(6)); or
    - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement.”

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(5) S.I. 2007/2310 (W. 181), amended by S.I. 2008/1259 (W. 126); S.I. 2010/1142 (W. 101); S.I. 2011/1043; S.I. 2011/1978 (W. 218); S.I. 2013/1792 (W. 179); S.I. 2018/814 (W. 165); S.I. 2019/235 (W. 54); S.I. 2019/1192 (W. 209); S.I. 2020/1302 (W. 287), S.I. 2021/9 (W. 4); S.I. 2021/481 (W. 148) and S.I. 2021/813 (W. 192).

(6) 2020 c. 1.

- (b) in paragraph 2A(1)(a) and (b), for “on the first day of the first academic year of the course” in each case substitute “on the day on which the first term of the first academic year actually begins”;
- (c) in paragraph 3(1)(a)(iv)—
  - (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”;
  - (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in sub-paragraph (3)”;
  - (iii) after sub-paragraph (2) insert—
    - “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
    - (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
    - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
    - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”

### CHAPTER 3

#### Eligibility of Irish citizens in the EEA and Switzerland

#### **Amendments to regulations 4 to 8**

- 4. In regulation 4—
  - (a) in paragraph (1)(a), after “9B,” insert “9BA,”;
  - (b) in paragraph (1B), for “paragraphs 8A and 9B” substitute “paragraphs 8A, 9B and 9BA”.
- 5. In regulation 5—
  - (a) in paragraphs (1)(b)(i) and (c)(i), in each case after “9B,” insert “9BA,”;
  - (b) in paragraph (4), for “paragraphs 8A and 9B” substitute “paragraphs 8A, 9B and 9BA”.
- 6. In regulation 6—
  - (a) in paragraphs (2)(a) and (3)(a), in each case after “9B,” insert “9BA,”;
  - (b) in paragraph (5), for “paragraphs 8A and 9B” substitute “paragraphs 8A, 9B and 9BA”.
- 7. In regulation 7—
  - (a) in paragraphs (2)(a) and (3)(a), in each case after “9B,” insert “9BA,”;
  - (b) in paragraph (5), for “paragraphs 8A and 9B” substitute “paragraphs 8A, 9B and 9BA”.
- 8. In regulation 8—
  - (a) in paragraphs (1)(a) and (2)(a), in each case after “9B,” insert “9BA,”;
  - (b) in paragraph (4), for “paragraph 8A and 9B” substitute “paragraphs 8A, 9B and 9BA”.

#### **Amendments to Schedule 1**

- 9. In Schedule 1, after paragraph 9B insert—

**“Irish citizens in the EEA and Switzerland**

**9BA.—(1) A person—**

- (a) who is an Irish citizen on the first day of an academic year of the course;
- (b) who was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising the European Economic Area, Switzerland and the EU overseas territories; or
  - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area, Switzerland and the EU overseas territories,
 

and has remained ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the EU overseas territories throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;
- (c) who is undertaking the course in the United Kingdom;
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, 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; and
- (e) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories has not during any part of the period referred to in paragraph (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 United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with regulation 2(4).

(3) In this paragraph “EU overseas territories” means Aruba; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); St Barthélemy; St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; and Wallis and Futuna.”

## PART 3

### AMENDMENTS TO THE HIGHER EDUCATION (QUALIFYING COURSES, QUALIFYING PERSONS AND SUPPLEMENTARY PROVISION) (WALES) REGULATIONS 2015

#### CHAPTER 1

##### Introduction

**10.** The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015(7) are amended in accordance with this Part.

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(7) S.I. 2015/1484 (W. 163), amended by S.I. 2016/276 (W. 100); S.I. 2018/814 (W. 165); S.I. 2019/235 (W. 54); S.I. 2019/1192 (W. 209); S.I. 2020/1302 (W. 287); S.I. 2021/9 (W. 4) and S.I. 2021/481 (W. 148).

## CHAPTER 2

### Citizens' rights and residency criteria

#### Amendments to the Schedule

##### 11. In the Schedule—

- (a) in paragraph 1(1), in the definition of “person with protected rights”—
  - (i) the existing text after “means—” is numbered as paragraph (1) of that definition;
  - (ii) in that paragraph as so numbered, omit the terminal “or” at the end of sub-paragraph (a)(ii), and after sub-paragraph (a)(iii) insert—
    - “(iv) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”;
  - (iii) after that paragraph as so numbered, insert—
    - “(2) In paragraph (1)(iv) “citizens’ rights deeming provisions” means—
      - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”
- (b) in paragraph 2A(1)(a) and (b), for “on the first day of the first academic year of the course” in each case substitute “on the day on which the first term of the first academic year actually begins”;
- (c) in paragraph 3—
  - (i) in sub-paragraph (1)(a)(iii)(bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in sub-paragraph (3)”;
  - (ii) in sub-paragraph (1)(a)(iii)(cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in sub-paragraph (3)”;
  - (iii) after sub-paragraph (2) insert—
    - “(3) For the purposes of sub-paragraph (1)(a)(iii), the citizens’ rights provisions referred to are—
      - (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”

## CHAPTER 3

### Eligibility of Irish citizens in the EEA and Switzerland

#### Amendment to regulation 4

12. In regulation 4—

- (a) in paragraph (3A), for “paragraph 8A or 9B” substitute “paragraph 8A, 9B or 9BA”;
- (b) in paragraph (9)(a), after “9B,” insert “9BA,”.

#### Amendment to the Schedule

13. In the Schedule, after paragraph 9B insert—

##### **“Irish citizens in the EEA and Switzerland**

**9BA.—**(1) A person—

- (a) who is an Irish citizen on the first day of the first academic year of the course;
- (b) who was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising the European Economic Area, Switzerland and the EU overseas territories, or
  - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area, Switzerland and the EU overseas territories;

and has remained ordinary resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the EU overseas territories throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;

- (c) who is undertaking the course in the United Kingdom;
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, 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; and
- (e) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories has not during any part of the period referred to in paragraph (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 United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with paragraph 1(3).

(3) In this paragraph, “EU overseas territories” means Aruba; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); St Barthélemy; St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; and Wallis and Futuna.”

## PART 4

### AMENDMENTS TO THE EDUCATION (STUDENT SUPPORT) (WALES) REGULATIONS 2017

#### CHAPTER 1

##### Introduction

**14.** The Education (Student Support) (Wales) Regulations 2017<sup>(8)</sup> are amended in accordance with this Part.

#### CHAPTER 2

##### Citizens' rights and residency criteria

#### Amendments to regulations 2, 4, 81 and 110

**15.** In regulation 2(1)—

(a) in the definition of “person with protected rights”—

(i) the existing text after “means—” is numbered as paragraph (1) of the definition;

(ii) in that paragraph as so numbered, omit the terminal “or” at the end of sub-paragraph (a)(iii), and after sub-paragraph (a)(iv) insert—

“(v) otherwise has rights deemed to apply by virtue of any citizens' rights deeming provisions; or”;

(b) after that paragraph as so numbered, insert—

“(2) In paragraph (1)(a)(v) “citizens' rights deeming provisions” means—

(a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;

(b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or

(c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement.”

**16.** In regulation 4(10E)(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

**17.** In regulation 81(10E)(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

**18.** In regulation 110(12E)(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

#### Amendment to Schedule 1

**19.** In Schedule 1—

(a) in paragraph 2A—

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<sup>(8)</sup> S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42); S.I. 2018/814 (W. 165); S.I. 2019/235 (W. 54); S.I. 2019/1094; S.I. 2019/1192 (W. 209); S.I. 2020/142 (W. 25); S.I. 2020/153 (W. 27); S.I. 2020/708 (W. 159); S.I. 2020/1302 (W. 287); S.I. 2021/9 (W. 4); S.I. 2021/73 (W. 19); S.I. 2021/481 (W. 148) and S.I. 2021/813 (W. 192).

- (i) in sub-paragraph (1)(a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”;
  - (ii) in sub-paragraph (1)(c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for at least part of that period”, and move the terminal “and” to the end of sub-paragraph (1)(d);
  - (iii) after sub-paragraph (1)(d) insert—
    - “(e) who did not move to Wales from the Islands for the purpose of undertaking the current course, or a course which, disregarding any intervening vacation, the person undertook immediately before the current course.”
- (b) in paragraph 3—
- (i) in sub-paragraph (1)(a)(iv)(bb) after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”;
  - (ii) in sub-paragraph (1)(a)(iv)(cc) after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”;
  - (iii) after sub-paragraph (2) insert—
    - “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
    - (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
    - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
    - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”
- (c) in paragraph 9C(1), move the terminal “and” at the end of sub-paragraph (c) to the end of sub-paragraph (d), and after that sub-paragraph insert—
- “(e) who did not move to Wales from the Islands for the purpose of undertaking the current course or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the current course.”

## CHAPTER 3

### Eligibility of Irish citizens in the EEA and Switzerland

#### **Amendments to regulations 4, 23, 41, 81 and 110**

- 20.** In regulation 4(2)(a), after “9B,” insert “9BA,”.
- 21.** In regulation 23(2), after “9A,” insert “9BA,”.
- 22.** In regulation 41(3), after “9A,” insert “9BA,”.
- 23.** In regulation 81(2)(a), after “9B,” insert “9BA,”.
- 24.** In regulation 110(3)(a)(i), after “9B,” insert “9BA,”.



## Amendments to Schedule 1

25. In Schedule 1, after paragraph 9B insert—

### “Irish citizens in the EEA and Switzerland

**9BA.**—(1) A person—

- (a) who is an Irish citizen on the first day of the first academic year of the course;
- (b) who was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising the European Economic Area and Switzerland; or
  - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area and Switzerland, and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;
- (c) who is—
  - (i) undertaking a designated course in Wales; or
  - (ii) undertaking a designated part-time course or a designated postgraduate course in Wales;
- (d) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, 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) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (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 United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(4).”

## Amendment to Schedule 4

26. In Schedule 4 paragraph (3), after “9B,” insert “9BA,”.

## PART 5

### AMENDMENTS TO THE EDUCATION (POSTGRADUATE MASTER’S DEGREE LOANS) (WALES) REGULATIONS 2017

#### CHAPTER 1

##### Introduction

27. The Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017<sup>(9)</sup> are amended in accordance with this Part.

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<sup>(9)</sup> S.I. 2017/523 (W. 109), amended by S.I. 2017/712 (W. 169); S.I. 2018/277 (W. 53); S.I. 2018/814 (W. 165); S.I. 2019/895 (W. 161); S.I. 2019/1094; S.I. 2020/1302 (W. 287); S.I. 2021/9 (W. 4) and S.I. 2021/481 (W. 148).

## CHAPTER 2

### Citizens' rights and residency criteria

#### Amendments to regulations 2 and 3

- 28.** In regulation 2(1), in the definition of “person with protected rights”—
- (a) the existing text after “means—” is numbered as paragraph (1) of that definition;
  - (b) in that paragraph as so numbered, omit the terminal “or” at the end of sub-paragraph (a) (iii), and after sub-paragraph (a)(iv) insert—
    - “(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”
  - (c) after that paragraph as so numbered, insert—
    - “(2) In paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—
      - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”
- 29.** In regulation 3(10)(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

#### Amendments to Schedule 1

- 30.** In Schedule 1—
- (a) in paragraph 2A—
    - (i) in sub-paragraph (1)(a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”;
    - (ii) in sub-paragraph (1)(c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for at least part of that period”, and move the terminal “and” to the end of sub-paragraph (1)(d);
    - (iii) after sub-paragraph (1)(d) insert—
      - “(e) who did not move to Wales from the Islands for the purpose of undertaking the designated course, or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”
  - (b) in paragraph 3(1)(a)(iv)—
    - (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”;
    - (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”;
    - (iii) after sub-paragraph (2) insert—

- “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
  - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
  - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”;
- (c) in paragraph 9C(1), move the terminal “and” at the end of sub-paragraph (c) to the end of sub-paragraph (d), and after that sub-paragraph insert—
- “(e) who did not move to Wales from the Islands for the purpose of undertaking the designated course, or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”

### CHAPTER 3

#### Eligibility of Irish citizens in the EEA and Switzerland

#### **Amendment to regulation 3**

31. In regulation 3(2)(a), after “9B,” insert “9BA,”.

#### **Amendment to Schedule 1**

32. In Schedule 1, after paragraph 9B, insert—

#### **“Irish citizens in the EEA and Switzerland**

##### **9BA.** A person—

- (a) who is an Irish citizen on the first day of the first academic year of the course;
- (b) who was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising the European Economic Area and Switzerland; or
  - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area and Switzerland, and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;
- (c) who is undertaking a designated course in Wales;
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, 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) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (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 United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(4).”

## PART 6

### AMENDMENTS TO THE EDUCATION (STUDENT SUPPORT) (WALES) REGULATIONS 2018

#### CHAPTER 1

##### Introduction

**33.** The Education (Student Support) (Wales) Regulations 2018<sup>(10)</sup> are amended in accordance with this Part.

#### CHAPTER 2

##### Citizens’ rights and residency criteria

#### Amendment to regulation 23

**34.** In regulation 23E(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

#### Amendments to Schedule 1

**35.** In Schedule 1 paragraph 6(1), in the definition of “person with protected rights”—

- (a) the existing text after “means—” is numbered as paragraph (1);
- (b) in that paragraph as so numbered, omit the terminal “or” at the end of sub-paragraph (a) (iii), and after sub-paragraph (a)(iv) insert—
  - “(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”;
- (c) after that paragraph as so numbered, insert—
  - “(2) In paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—
    - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
    - (b) Article 17(2) and (3) (issuance of residence documents during the transition period) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
    - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”

#### Amendments to Schedule 2

**36.** In Schedule 2, in paragraph 1—

- (a) in sub-paragraph (2)(a)(iv)—

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<sup>(10)</sup> S.I. 2018/191 (W. 42), amended by S.I. 2018/813 (W. 164); S.I. 2018/814 (W. 165); S.I. 2019/235 (W. 54); S.I. 2019/1094; S.I. 2019/1192 (W. 209); S.I. 2020/142 (W. 25); S.I. 2020/153 (W. 27); S.I. 2020/708 (W. 159); S.I. 2020/1302 (W. 287); S.I. 2021/9 (W. 4); S.I. 2021/73 (W. 19); S.I. 2021/481 (W. 148) and S.I. 2021/813 (W.192).

- (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (5)”;
- (ii) in paragraph (cc) after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (5)”;
- (b) in sub-paragraph (3)—
  - (i) in paragraph (a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”;
  - (ii) in paragraph (c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for at least part of that period”, and move the terminal “and” to the end of paragraph (d);
  - (iii) after paragraph (d) insert—
    - “(e) who did not move to Wales from the Islands for the purpose of undertaking the current course, or a course which, disregarding any intervening vacation, the person undertook immediately before the current course”.
- (c) after sub-paragraph (4) insert—
  - “(5) For the purposes of sub-paragraph (2)(a)(iv), the citizens’ rights provisions referred to are—
    - (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement,
    - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), or
    - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”

**37.** In Schedule 2, in paragraph 6C move the terminal “and” at the end of sub-paragraph (c) to the end of sub-paragraph (d), and after that sub-paragraph insert—

- “(e) who did not move to Wales from the Islands for the purpose of undertaking the designated course, or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”

#### **Amendment to Schedule 4**

**38.** In Schedule 4, in paragraph 13E(a)(i) for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

### **CHAPTER 3**

#### **Eligibility of Irish citizens in the EEA and Switzerland**

#### **Amendments to regulations 9 and 10**

**39.** In regulation 9(1)(a)(i), after “6B” insert “6BA”.

**40.** In regulation 10(1), in exception 8 after “6B” insert “, 6BA”.

## Amendments to Schedule 2

41. In Schedule 2, after paragraph 6B insert—

### “Irish citizens in the EEA and Switzerland

**6BA.**—(1) A person—

- (a) who is an Irish citizen on the first day of the first academic year of the course,
- (b) who was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising the European Economic Area and Switzerland, or
  - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area and Switzerland,and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course,
- (c) who is—
  - (i) undertaking a designated course in Wales, or
  - (ii) undertaking a designated postgraduate course in Wales,
- (d) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, 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) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (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 United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 9(2).”

## Amendments to Schedule 4

42. In Schedule 4—

- (a) in paragraph 4(1)(a)(i), after “6B,” insert “6BA,”;
- (b) in paragraph 5(1), in exception 7 for “5A or 6B” substitute “5A, 6B or 6BA”.

## PART 7

### AMENDMENTS TO THE EDUCATION (POSTGRADUATE DOCTORAL DEGREE LOANS ) (WALES) REGULATIONS 2018

#### CHAPTER 1

##### Introduction

**43.** The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018<sup>(11)</sup> are amended in accordance with this Part.

#### CHAPTER 2

##### Citizens' rights and residency criteria

#### Amendments to regulations 2 and 3

- 44.** In regulation 2(1), in the definition of “person with protected rights”—
- (a) the existing text after “means—” is numbered as paragraph (1) of the definition;
  - (b) in that paragraph as so numbered, omit the terminal “or” at the end of sub-paragraph (a)(iii), and after sub-paragraph (a)(iv) insert—
    - “(v) otherwise has rights deemed to apply by virtue of any citizens' rights deeming provisions; or”
  - (c) after that paragraph as so numbered, insert—
    - “(2) In paragraph (1)(a)(v) “citizens' rights deeming provisions” means—
      - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement.”
- 45.** In regulation 3(11)(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

#### Amendments to Schedule 1

- 46.** In Schedule 1—
- (a) in paragraph 2A—
    - (i) in sub-paragraph (1)(a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”;
    - (ii) in sub-paragraph (1)(c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for at least part of that period”, and move the terminal “and” to the end of sub-paragraph (1)(d);
    - (iii) after sub-paragraph (1)(d) insert—

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<sup>(11)</sup> S.I. 2018/656 (W. 124), amended by S.I. 2018/814 (W. 165); S.I. 2019/235 (W. 54); S.I. 2019/1192 (W. 209); S.I. 2019/1094; S.I. 2020/153 (W. 27); S.I. 2020/1302 (W. 287); S.I. 2021/9 (W. 4); S.I. 2021/73 (W. 19) and S.I. 2021/481 (W. 148).

- “(e) who did not move to Wales from the Islands for the purpose of undertaking the designated course, or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”
- (b) in paragraph 3(1)(a)(iv)—
- (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in sub-paragraph (3)”;
- (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in sub-paragraph (3)”;
- (iii) after sub-paragraph (2) insert—
- “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”;
- (c) in paragraph 10C(1), move the terminal “and” at the end of paragraph (c) to the end of paragraph (d), and after that paragraph insert—
- “(e) who did not move to Wales from the Islands for the purpose of undertaking the designated course, or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”

## CHAPTER 3

### Eligibility of Irish citizens in the EEA and Switzerland

#### Amendments to regulation 3

47. In regulation 3—
- (a) in paragraph (2)(a), after “10B,” insert “10BA,”;
- (b) in paragraph (2B), for “9A, 10B or 10D” substitute “9A, 10B, 10BA or 10D”.

#### Amendments to Schedule 1

48. In Schedule 1, after paragraph 10B, insert—

##### “Irish citizens in the EEA and Switzerland

##### 10BA.—(1) A person—

- (a) who is an Irish citizen on the first day of the first academic year;
- (b) who was ordinarily resident immediately before IP completion day—
- (i) in the territory comprising the European Economic Area and Switzerland; or



- (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area and Switzerland, and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;
  - (c) who is undertaking a designated course in Wales;
  - (d) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, 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) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (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 United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(4).”

## PART 8

### AMENDMENTS TO THE EDUCATION (STUDENT SUPPORT) (POSTGRADUATE MASTER’S DEGREES) (WALES) REGULATIONS 2019

#### CHAPTER 1

##### Introduction

**49.** The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019(12) are amended in accordance with this Part.

#### CHAPTER 2

##### Citizens’ rights and residency criteria

#### **Amendment to regulation 12**

**50.** In regulation 12A(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

#### **Amendments to Schedule 1**

**51.** In Schedule 1, paragraph 3(1), in the definition of “person with protected rights”—

- (a) the existing text after “means—” is numbered as paragraph (1) of that definition;
- (b) in that paragraph as so numbered, omit the terminal “or” at the end of paragraph (a)(iii), and after paragraph (a)(iv), insert—
  - “(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions, or”;

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(12) S.I. 2019/895 (W. 161), amended by S.I. 2019/1039 (W. 182); S.I. 2019/1192 (W. 209); S.I. 2020/142 (W. 25); S.I. 2020/153 (W. 27); S.I. 2020/918 (W. 206); S.I. 2020/1302 (W. 287); S.I. 2021/9 (W. 4); S.I. 2021/73 (W. 19); S.I. 2021/481 (W. 148) and S.I. 2021/813 (W. 192).

(c) after that paragraph as so numbered, insert—

- “(2) In sub-paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—
- (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement,
  - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), or
  - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”

## **Amendments to Schedule 2**

**52.** In Schedule 2—

(a) in paragraph 1—

(i) in sub-paragraph (2)(a)(iv)—

- (aa) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (5)”;
- (bb) in paragraph (cc) after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in sub-paragraph (5)”;

(ii) in sub-paragraph (3)—

- (aa) in paragraph (a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”;
- (bb) in paragraph (c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for at least part of that period”, and move the terminal “and” to the end of sub-paragraph (1)(d);
- (cc) after paragraph (d) insert—

“(e) who did not move to Wales from the Islands for the purpose of undertaking the designated course, or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”

(iii) after sub-paragraph (4) insert—

“(5) For the purposes of sub-paragraph (2)(a)(iv), the citizens’ rights provisions referred to are—

- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement,
- (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), or
- (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”

**53.** In paragraph 8C, move the terminal “and” at the end of sub-paragraph (c) to the end of sub-paragraph (d), and after that sub-paragraph insert—

- “(e) who did not move to Wales from the Islands for the purpose of undertaking the designated course, or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”

### CHAPTER 3

#### Eligibility of Irish citizens in the EEA and Switzerland

#### Amendments to regulations 9 and 10

54. In regulation 9(1)(a)(i), after “8B,” insert “8BA.”
55. In regulation 10(1), in exception 12 after “8B” insert “, 8BA”.

#### Amendments to Schedule 2

56. In Schedule 2, after paragraph 8B insert—

#### “Irish citizens in the EEA and Switzerland

##### 8BA.—(1) A person—

- (a) who is an Irish citizen on the first day of the first academic year of the course,
- (b) who was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising the EEA and Switzerland, or
  - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the EEA and Switzerland,and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course,
- (c) who is undertaking a designated course in Wales,
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (e) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland has not during any part of the period referred to in paragraph (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 United Kingdom, Gibraltar, the EEA and Switzerland in accordance with paragraph 1(5).”

1 December 2021

*Jeremy Miles*  
Minister for Education and the Welsh Language,  
one of the Welsh Ministers

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

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## EXPLANATORY NOTE

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

These Regulations amend the Education (Student Support) (Wales) Regulations 2017 (“the 2017 Regulations”) and the Education (Student Support) (Wales) Regulations 2018 (“the 2018 Regulations”).

Amendments made by these Regulations ensure that full effect is given to the EU withdrawal agreement as it relates to the rights of those making late applications to the EU Settlement Scheme (EUSS) and to future joining family members who have yet to apply to the EUSS and are still within the deadline for doing so.

Existing provisions relating to eligibility of students to receive Welsh student support are amended so that persons (other than certain Irish citizens) who come to Wales from the Isle of Man and the Channel Islands for the purpose of study are not eligible for tuition fee support.

Amendments are also made to the 2017 Regulations and the 2018 Regulations to make Irish citizens living in the EEA or Switzerland at the end of the transition period eligible for student support if starting courses in Wales on or before 31 December 2027.

These Regulations also make corresponding amendments to—  
The Education (Fees and Awards) (Wales) Regulations 2007;  
The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;  
The Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017;  
The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018;  
The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

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.