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WELSH STATUTORY INSTRUMENTS

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**2020 No. 1302**

**The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020**

**PART 3**

**AMENDMENT OF REGULATIONS**

**Amendments to Schedule 1**

**20.**—(1) Schedule 1 (eligible students) is amended as follows.

(2) In Part 1 (interpretation), paragraph 1—

(a) in sub-paragraph (1)—

(i) omit “other than the United Kingdom” in each place it occurs;

(ii) at the appropriate place insert—

““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

““residence scheme immigration rules” (“*rheolau mewnfudo'r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;

““right of permanent residence” (“*hawl i breswyllo'n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A's right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”;

““Swiss citizens' rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaid*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

(b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar” in each place it occurs;

(c) in sub-paragraph (6), after “an area” insert “other than the United Kingdom or Gibraltar”.

(3) In Part 2 (categories)—

(a) in paragraph 3 (persons who are settled in the United Kingdom)—

(i) for sub-paragraph (a) substitute—

“(a) either—

(i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or

- (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens' rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person's right to reside fallen to be considered immediately before implementation period completion day";
- (ii) in sub-paragraph (d), after "the territory comprising" insert "the United Kingdom, Gibraltar,";
- (b) in paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members), after "the territory comprising" insert "the United Kingdom, Gibraltar,";
- (c) in paragraph 7 (workers, employed persons, self-employed persons and their family members)—
  - (i) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);
  - (ii) in sub-paragraph (1)(b) as so renumbered, after "the territory comprising" insert "the United Kingdom, Gibraltar,";
  - (iii) after sub-paragraph (1) as so renumbered insert—
    - “(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (d) in paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
  - (i) in sub-paragraph (1)(b), after "right of residence" insert "before implementation period completion day";
  - (ii) in sub-paragraph (1)(d) and (e), after "the territory comprising" insert "the United Kingdom, Gibraltar,";
  - (iii) in sub-paragraph (2)—
    - (aa) for "has a right" substitute "had the right" in each place it occurs;
    - (bb) for "goes" substitute "has gone";
  - (iv) after sub-paragraph (2) insert—
    - “(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”;
- (e) in paragraph 9 (EU nationals)—
  - (i) for sub-paragraph (1)(a) substitute—
    - “(a) on the first day of the first academic year of the course is—
      - (i) an EU national;
      - (ii) a United Kingdom national who has exercised a right of residence;
      - or
      - (iii) the family member of a person in sub-paragraph (i) or (ii);”;
  - (ii) in sub-paragraphs (1)(c) and (d) and (2), after "the territory comprising" insert "the United Kingdom, Gibraltar,";
  - (iii) in sub-paragraph (4), after "that person" insert "has resided in Gibraltar or";

(iv) after sub-paragraph (4) insert—

“(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

(f) in paragraph 10 (EU nationals)—

(i) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;

(ii) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

(iii) in sub-paragraph (2), omit “other than a United Kingdom national”;

(g) for paragraph 11 (children of Swiss nationals) substitute—

“11.—(1) A person who—

(a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;

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

(c) has been ordinarily resident in the territory comprising the 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

(d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

(h) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.