
WELSH STATUTORY INSTRUMENTS

2019 No. 424 (W. 98)

**EXITING THE EUROPEAN UNION, WALES
EDUCATION, WALES**

**The Education (Student Finance) (Miscellaneous
Amendments) (Wales) (EU Exit) Regulations 2019**

Made - - - - 4 March 2019
*Laid before the National
Assembly for Wales* - - 5 March 2019
Coming into force in accordance with Regulation 1 (2)

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State under sections 1 and 2 of the Education (Fees and Awards) Act 1983⁽¹⁾ and sections 22 and 42(6) of the Teaching and Higher Education Act 1998⁽²⁾

now exercisable by them⁽³⁾ and powers conferred on them under sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015⁽⁴⁾ make the following Regulations.

-
- (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. 2005/3238, Schedule 1, paragraph 9; 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 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7; the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257; the Education Act 2011 (c. 21), section 76; S.I. 2013/1181 and the Higher Education and Research Act 2017 (c. 29), section 88. See section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.
- (3) The functions of the Secretary of State in section 1 of the 1983 Act 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 the 1983 Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 1999/672. The Secretary of State’s functions in section 22(2)(a) to (i) and (k) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with functions under subsections (a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (4) 2015 anaw 1.

PART 1

TITLE, COMMENCEMENT AND APPLICATION

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day and apply in relation to Wales.

PART 2

AMENDMENTS TO REGULATIONS

Amendments to the Education (Fees and Awards) (Wales) Regulations 2007

2. The Education (Fees and Awards) (Wales) Regulations 2007⁽⁵⁾ are amended as follows.

Amendment to regulation 2

3. In regulation 2 (interpretation)—

(a) in paragraph (1), in the definition of “overseas territories”, after “French Southern and Antarctic Territories” insert “Gibraltar”;

(b) in paragraph (4)—

(i) for “the territory comprising the European Economic Area and Switzerland” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;

(ii) for “the territory comprising the European Economic Area, Switzerland and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;

(iii) for “the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland, Turkey and the overseas territories”;

(c) in paragraph (5)(b) and (c), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;

(d) in paragraph (6)—

(i) for “the territory comprising the European Economic Area and Switzerland” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;

(ii) for “the territory comprising the European Economic Area, Switzerland and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;

(iii) for “the territory comprising the European Economic Area, Switzerland and Turkey” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area, Switzerland and Turkey”;

(5) [S.I. 2007/2310 \(W. 181\)](#) as amended by [S.I. 2010/1142 \(W. 101\)](#), [S.I. 2011/1978 \(W. 218\)](#) and [S.I. 2018/814 \(W. 165\)](#); there are other amending instruments but none is relevant.

- (e) in paragraph (7), after “an area” insert “other than the United Kingdom or Gibraltar”.

Amendments to the Schedule

- 4.—(1) The Schedule is amended as follows.
- (2) In paragraph 1—
- (a) omit the definition of “EC national”;
 - (b) omit “other than the United Kingdom” each time it occurs;
 - (c) after the definition of “employed person”, insert—
 - ““EU national” (“*gwladolyn o’r UE*”) means a national of a Member State of the European Union;”;
 - (d) in the definition of “family member”, for “EC national” substitute “EU national” each time it occurs.
- (3) In the following paragraphs, after “the territory comprising” insert “the United Kingdom,”—
- (a) paragraph 3(d) (persons who are settled in the United Kingdom);
 - (b) paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members);
 - (c) paragraph 7(b) (workers, employed persons, self-employed persons and their family members).
- (4) In paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
- (a) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom,”;
 - (b) in sub-paragraph (1)(e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.
- (5) In paragraph 9 (EC nationals)—
- (a) in the heading, for “EC nationals” substitute “EU nationals”;
 - (b) in sub-paragraph (1)—
 - (i) in paragraph (a)(i), for “EC national” substitute “EU national”;
 - (ii) in paragraph (c), after “the territory comprising” insert “the United Kingdom,”;
 - (c) for sub-paragraph (1A), substitute—
 - “(1A) Paragraph (c) of sub-paragraph (1) does not apply to a family member of a person who—
 - (a) is—
 - (i) a United Kingdom national who has exercised a right to reside in the territory of a Member State under article 7 of Directive 2004/38; or
 - (ii) an EU national; and
 - (b) 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.”
 - (d) after sub-paragraph (2), insert—
 - “(3) Any description of person who would have fallen within this paragraph immediately before exit day is to be treated as falling within this paragraph on and after exit day.”

- (6) In paragraph 10 (EC nationals)—
- (a) in sub-paragraph (1)(a), for “an EC national other than a United Kingdom national” substitute “an EU national”;
 - (b) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom,”;
 - (c) in sub-paragraph (2), for “an EC national other than a United Kingdom national”, substitute “an EU national”.
- (7) 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 the United Kingdom on the first day of the first academic year of the course;
 - (c) has been ordinarily resident in the territory comprising the 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
 - (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 fallen within this paragraph immediately before exit day is to be treated as falling within this paragraph on and after exit day.”
- (8) In paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom,”.

Amendments to the Education (European University Institute) (Wales) Regulations 2014

5. The Education (European University Institute) (Wales) Regulations 2014(6) are amended as follows.

Amendments to Schedule 1

- 6.—(1) Schedule 1 (eligible students) is amended as follows.
- (2) In Part 1 (interpretation), paragraph 1—
- (a) omit “other than the United Kingdom”, each time it occurs;
 - (b) in sub-paragraphs (7) and (8), after “the territory comprising” insert “the United Kingdom, Gibraltar,” each time it occurs.
- (3) In Part 2 (categories)—
- (a) in the following paragraphs, after “the territory comprising” insert “the United Kingdom, Gibraltar,”—
 - (i) paragraph 3(d) (persons who are settled in the United Kingdom);
 - (ii) paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members);

- (iii) paragraph 7(b) (workers, employed persons, self-employed persons and their family members);
- (iv) paragraph 8(1)(d) and (e) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere);
- (b) in paragraph 9 (EU nationals)—
 - (i) for sub-paragraph (1)(a), substitute—
 - “(a) on the relevant date 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 “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 exit day is to be eligible on and after exit day.”;
- (c) in paragraph 10 (EU nationals)—
 - (i) in sub-paragraph (a), omit “other than a United Kingdom national”;
 - (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar”;
- (d) for paragraph 11 (children of Swiss nationals), substitute—
 - “11.—(1) A person who—
 - (a) on the relevant date, is the child of a Swiss national who is entitled to support from the Secretary of State by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
 - (b) is ordinarily resident in Wales on the relevant date;
 - (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 exit day is to be eligible on and after exit day.”;
- (e) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

Amendments to Schedule 2

- 7.—(1) Schedule 2 (student’s contribution) is amended as follows.

- (2) In Part 1 (interpretation), paragraph 1(1), in the definition of “taxable income”—
- (a) in paragraph (b), for “another EEA State” substitute “an EEA State”;
 - (b) for paragraph (c), substitute—
 - where the legislation of—
 - (i) the United Kingdom and one or more EEA State or Switzerland;
 - (ii) more than one EEA State; or
 - (iii) an EEA State and Switzerland
 applies to the period, the legislation under which the Welsh Ministers consider the person will pay the largest amount of tax in that period (except as otherwise provided in paragraph 4),”.
- (3) In Part 2 (calculation of contribution)—
- (a) in paragraph 3(1)(b) (calculation of the student’s residual income), for “another Member State” substitute “a Member State”;
 - (b) in paragraph 4 (calculation of eligible student’s partner’s residual income), for “another EEA State” substitute “an EEA State”, each time it occurs.

Amendments to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015

8.—(1) The Schedule to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015(7) is amended as follows.

- (2) In paragraph 1—
- (a) in sub-paragraph (1)—
 - (i) omit “other than the United Kingdom” each time it occurs;
 - (ii) in the definition of “overseas territory”, after “French Southern and Antarctic Territories” insert “Gibraltar”;
 - (b) in sub-paragraph (3)—
 - (i) for “the territory comprising the European Economic Area and Switzerland” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;
 - (ii) for “the territory comprising the European Economic Area, Switzerland and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;
 - (iii) for “the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland, Turkey and the overseas territories”;
 - (c) in sub-paragraph (4)(b) and (c), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (d) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.
- (3) In the following paragraphs, after “the territory comprising” insert “the United Kingdom,”—
- (a) paragraph 3(d) (persons who are settled in the United Kingdom);
 - (b) paragraph 6(1)(c) (workers, employed persons, self-employed persons and their families);
 - (c) paragraph 7(b) (workers, employed persons, self-employed persons and their families).

(4) In paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—

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

(5) In paragraph 9 (EU nationals)—

- (a) in sub-paragraph (1)(c), after “territory comprising” insert “the United Kingdom,”;
- (b) for sub-paragraph (2), substitute—

“(2) Paragraph (c) of sub-paragraph (1) does not apply to a family member of a person who—

(a) is—

- (i) a United Kingdom national who has exercised a right to reside in the territory of a Member State under Article 7(1) of Directive 2004/38; or
- (ii) an EU national, and

(b) 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.”;

(c) after sub-paragraph (3), insert—

“(4) Any description of person who would have fallen within this paragraph immediately before exit day is to be treated as falling within this paragraph on and after exit day.”

(6) In paragraph 10 (EU nationals)—

- (a) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;
- (b) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom,”;
- (c) in sub-paragraph (2), omit “other than a United Kingdom national”.

(7) 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 the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the 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
- (d) in a case where the 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 fallen within this paragraph immediately before exit day is to be treated as falling within this paragraph on and after exit day.”

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

Amendments to the Education (European University Institute) (Wales) Regulations 2014

9. The Education (European University Institute) (Wales) Regulations 2014(8) are amended as follows.

Amendment to regulation 2

10. In regulation 2(1) (interpretation), in the definition of “Erasmus year” (“*blwyddyn Erasmus*”)

- (a) after “year of a course” insert “, whether or not that academic year began before exit day,”;
- (b) after “during which a student is”, insert “or was, immediately before exit day,”;
- (c) in sub-paragraph (c)—
 - (i) in paragraph (ii)(aa), before “in respect of” insert “subject to paragraph (iii);
 - (ii) after paragraph (ii), insert—
 - “(iii) in respect of an academic year beginning before 1 August 2019, any one or more periods of full-time study at the institution in the United Kingdom after exit day will not be counted for the purposes of paragraph (ii)(aa),”.

Amendment to regulation 15

11. In regulation 15(d) (events), after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule”.

Amendments to regulation 30

12. In regulation 30(1) (grants for dependants – interpretation), in sub-paragraph (o)—

- (a) in paragraph (ii), for “another Member State” substitute “a Member State”;
- (b) for paragraph (iii), substitute—

“(iii) where the legislation of—

- (aa) the United Kingdom and one or more Member State; or
- (bb) more than one Member State

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is greatest,”.

Amendment to regulation 65

13. In regulation 65(4)(d) (students becoming eligible during the course of the academic year), after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule”.

Amendment to regulation 82

14. In regulation 82(4)(d) (students becoming eligible during the course of the academic year), after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule”.

Amendments to regulation 95

15. In regulation 95(1) (part-time grants for dependants – interpretation), in sub-paragraph (o)—

(a) in paragraph (ii) for “another Member State” substitute “a Member State”;

(b) for paragraph (iii), substitute—

“(iii) where the legislation of—

(aa) the United Kingdom and one or more Member State; or

(bb) more than one Member State

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is the greatest.”

Amendments to Schedule 1

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

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

(a) in sub-paragraph (1), omit “other than the United Kingdom” each time it occurs;

(b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar” each time 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 the following paragraphs, after “the territory comprising” insert “the United Kingdom, Gibraltar,”—

(i) paragraph 3(d) (persons who are settled in the United Kingdom);

(ii) paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members);

(iii) paragraph 7(b) (workers, employed persons, self-employed persons and their family members);

(iv) paragraph 8(1)(d) and (e) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere);

(b) 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 exit day is to be eligible on and after exit day.”;
- (c) 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”;
- (d) 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 exit day is to be eligible on and after exit day.”;
- (e) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

Amendment to Schedule 4

17. In Schedule 4 (college fee loans), paragraph 6(c) after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule”.

Amendments to Schedule 5

18.—(1) Schedule 5 (financial assessment) is amended as follows.

(2) In paragraph 1(1) (definitions), paragraph (n)—

- (a) in sub-paragraph (ii), for “another Member State” substitute “a Member State”;
- (b) for sub-paragraph (iii), substitute—
 - “(iii) where the legislation of—

- (aa) the United Kingdom and one or more Member State; or

- (bb) more than one Member State

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers

consider that a person's total income in that period is greatest (except as otherwise provided in paragraph 5);”;

(3) In paragraph 2(1)(g) (independent eligible student), before “the European Union” insert “the United Kingdom, Gibraltar and”.

(4) In the following paragraphs, for “another Member State” substitute “a Member State”—

(a) paragraph 4(1)(b) (calculation of eligible student's residual income);

(b) paragraph 5 (calculation of parent's residual income)—

(i) sub-paragraph (1)(a);

(ii) sub-paragraph (6) each time it appears;

(iii) sub-paragraph (7).

Amendments to Schedule 6

19.—(1) Schedule 6 (financial assessment – part-time grants for dependants) is amended as follows.

(2) In paragraph 1(1) (definitions), sub-paragraph (j)—

(a) in paragraph (ii), for “another Member State” substitute “a Member State”;

(b) for paragraph (iii), substitute—

“(iii) where the legislation of—

(aa) the United Kingdom and one or more Member State; or

(bb) more than one Member State

applies to the period, a person's total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person's total income in that period is greatest (except as otherwise provided in paragraph 4);”.

(3) In the following paragraphs, for “another Member State” substitute “a Member State”—

(a) paragraph 3(1) (calculation of eligible part-time student's residual income);

(b) paragraph 4 (calculation of eligible part-time student's partner's residual income)—

(i) sub-paragraph (1)(a);

(ii) sub-paragraph (6) each time it occurs;

(iii) sub-paragraph (7).

Amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017

20. The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017(9) are amended as follows.

Amendment to regulation 8

21. In regulation 8(d) (events), after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule”.

Amendments to Schedule 1

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

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

- (a) in sub-paragraph (1), omit “other than the United Kingdom” each time it occurs;
- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar,” each time 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 the following paragraphs, after “the territory comprising” insert “the United Kingdom, Gibraltar,”—

- (i) paragraph 3(d) (persons who are settled in the United Kingdom);
- (ii) paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members);
- (iii) paragraph 7(b) (workers, employed persons, self-employed persons and their family members);
- (iv) paragraph 8(1)(d) and (e) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere);

(b) in paragraph 9 (EU nationals)—

(i) for sub-paragraph (1)(a), substitute—

“(a) who, 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 exit day is to be eligible on and after exit day.”;

(c) 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”;

(d) 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 resident 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 exit day is to be eligible on and after exit day.”;
- (e) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

Amendments to the Education (Student Support) (Wales) Regulations 2018

23. The Education (Student Support) (Wales) Regulations 2018(10) are amended as follows.

Amendment to regulation 80

24. In regulation 80(2)(b)(iii) (qualifying for a tuition fee loan during the academic year), after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 6(1) of Schedule 2 by virtue of paragraph 6(1A) of that Schedule”.

Amendment to Schedule 1

25. In paragraph 4 (meaning of Erasmus year)—

- (a) in sub-paragraph (1), after “academic year” insert “, whether or not that academic year began before exit day,”;
- (b) in sub-paragraph (2), Condition B—
 - (i) in paragraph (c)—
 - (aa) before “during that academic year” insert “subject to paragraph (d)”;
 - (bb) at the end, for “.” substitute “,”;
 - (ii) after paragraph (c), insert—
 - “(d) in respect of an academic year beginning before 1 August 2019, any one or more periods of full-time study at the institution in England, Scotland or Wales after exit day will not be counted for the purposes of paragraph (c).”

Amendments to Schedule 2

26.—(1) Schedule 2 (categories of eligible student) is amended as follows.

(2) In paragraph 1(2)(d) (category 1 – persons settled in the United Kingdom), after “territory comprising” insert “the United Kingdom, Gibraltar,”.

(3) In paragraph 4 (category 4 – workers, employed persons, self-employed persons and their family members)—

- (a) in sub-paragraphs (1)(b) and (2)(b), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (b) in sub-paragraphs (3) and (4), omit “other than the United Kingdom” each time it occurs.
- (4) In paragraph 5(1)(d) and (e) (category 5 – persons who are settled in the United Kingdom and have exercised a right of residence elsewhere), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.
- (5) In paragraph 6 (category 6 - EU nationals)—
 - (a) for sub-paragraph (1)(a), substitute—
 - “(a) who, 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),”;
 - (b) in sub-paragraphs (1)(c) and (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (c) after sub-paragraph (1), insert—
 - “(1A) Any description of person who would have been eligible under sub-paragraph (1) immediately before exit day is to be eligible on and after exit day.”;
 - (d) in sub-paragraph (2)(a), omit “other than a United Kingdom national”;
 - (e) in sub-paragraph (2)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (f) for sub-paragraph (4), substitute—
 - “(4) For the purpose of sub-paragraph (1)(a), a United Kingdom national has exercised a right of residence if that person has resided in Gibraltar or has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.”
- (6) For paragraph 7 (category 7 - children of Swiss nationals), substitute—

“Category 7 – Children of Swiss nationals

- 7.—(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 exit day is to be eligible on and after exit day.”
- (7) In paragraph 8(1)(c) (category 8 – children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

- (8) In paragraph 9 (ordinary residence – additional provision)—
- (a) after “the territory comprising” insert “the United Kingdom, Gibraltar,” each time it occurs;
 - (b) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.

Amendments to Schedule 3

27.—(1) Schedule 3 (calculation of income) is amended as follows.

(2) In paragraph 4(1) (independent eligible students), in Case 6, before “the European Union” insert “the United Kingdom, Gibraltar and”.

(3) In paragraph 9 (taxable income)—

- (a) in sub-paragraph (1)(b) for “another member State” substitute “a member State”;
- (b) for sub-paragraph (2), substitute—

“(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of—

- (a) the United Kingdom and one or more member State, or
- (b) more than one member State

applies to the person in respect of the year under consideration, the person’s total income from all sources is the amount derived from the determination resulting in the greatest amount of total income, including any income which is required to be taken into account under paragraph 18.”

(4) In the following paragraphs, for “another member State” substitute “a member State”—

- (a) paragraph 11 (deductions for the purpose of calculating residual income of an eligible student), Deduction B;
- (b) paragraph 15 (deductions for the purpose of calculating residual income of persons other than eligible student), Deduction A;
- (c) paragraph 18 (treatment of income not treated as income for income tax purposes), each time it occurs;
- (d) paragraph 19(1) (P’s income in currency other than sterling).

Amendment to Schedule 5

28.—(1) Schedule 5 (Oxbridge college fee loans) is amended as follows.

(2) In paragraph 4(2)(c) (students becoming eligible during the course of an academic year), after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 6(1) of Schedule 2 by virtue of paragraph 6(1A) of that Schedule”.

Amendments to the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018

29. The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018(11) are amended as follows.

Amendment to regulation 8

30. In regulation 8(d) (events), after “EU national” insert “or of a person who is eligible other than as a family member under paragraph 10 of Schedule 1 by virtue of paragraph 10(5) of that Schedule”.

Amendments to Schedule 1

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

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

- (a) in sub-paragraph (1), omit “other than the United Kingdom” each time it occurs;
- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar,” each time 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 the following paragraphs, after “the territory comprising” insert “the United Kingdom, Gibraltar,”—
 - (i) paragraph 3(d) (persons who are settled in the United Kingdom);
 - (ii) paragraph 7(1)(c) (workers, employed persons, self-employed persons and their family members);
 - (iii) paragraph 8(b) (workers, employed persons, self-employed persons and their family members);
 - (iv) paragraph 9(1)(d) and (e) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere);

(b) in paragraph 10 (EU nationals)—

(i) for sub-paragraph (1)(a), substitute—

“(a) who, 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 exit day is to be eligible on and after exit day.”;

(c) in paragraph 11 (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”;

(d) for paragraph 12 (children of Swiss nationals), substitute—

“**12.**—(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;
 - (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 residence 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 exit day is to be eligible on and after exit day.”;
- (e) in paragraph 13(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

4 March 2019

Kirsty Williams
Minister for Education, one of the Welsh
Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend—

- (a) the Education (Fees and Awards) (Wales) Regulations 2007;
- (b) the Education (European University Institute) (Wales) Regulations 2014;
- (c) the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;
- (d) the Education (Student Support) (Wales) Regulations 2017;
- (e) the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017;
- (f) the Education (Student Support) (Wales) Regulations 2018 (“the Student Support Regulations”); and
- (g) the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018.

The principal amendments which these Regulations make to the Student Support Regulations are as follows.

Regulation 25 amends the definition of “Erasmus year” in paragraph 4(1) of Schedule 1 to the Student Support Regulations so that this definition applies in relation to academic years beginning before or after exit day.

Regulation 26(5)(a) and (c) amends paragraph 6 of Schedule 2 to ensure that a person who would have been eligible for support under this paragraph before exit day will continue to be eligible on and after exit day. Regulation 26(6) makes equivalent provision in relation to any person who would have been eligible under paragraph 7 of Schedule 2 immediately before exit day.

Regulations 24 and 28 are consequential on regulation 26(5)(c) and amend regulation 80 of and paragraph 4(2)(c) of Schedule 5 to the Student Support Regulations respectively.

The remainder of regulation 26 and regulation 27 amend references to “Member State” and “the territory comprising the EEA” to reflect the withdrawal of the United Kingdom from the European Union.

Regulations 2 to 4 make equivalent amendments to the Education (Fees and Awards) (Wales) Regulations 2007.

Regulations 5 to 7 make equivalent amendments to the Education (European University Institute) (Wales) Regulations 2014.

Regulation 8 makes equivalent amendments to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015.

Regulations 9 to 19 make equivalent amendments to the Education (Student Support) (Wales) Regulations 2017.

Regulations 20 to 22 make equivalent amendments to the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017.

Regulations 29 to 31 make equivalent amendments to the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018.

The Welsh Ministers Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.