

2009 No.3359(W.295)

EDUCATION, WALES

**The Assembly Learning Grants
(European University Institute)
(Wales) Regulations 2009**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for support for one eligible student taking a designated higher education course at the European University Institute in respect of an academic year beginning on or after 1 September 2010.

Grants for living and other costs, a disabled student's allowance and a grant for dependants are available for the eligible student.

These Regulations set out the eligibility criteria for the grants, the application procedure and the method for calculating the amount of grant payable. The Regulations also set out the arrangements for payment of the grants and recovery of any overpayments.

These Regulations revoke the Assembly Learning Grants (European Institutions) (Wales) 2008 to the extent set out in regulations 4 and 5.

2009 No. 3359 (W. 295)

EDUCATION, WALES

**The Assembly Learning Grants
(European University Institute)
(Wales) Regulations 2009**

Made 17 December 2009

Laid before the National Assembly for Wales
21 December 2009

Coming into force 21 January 2010

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998(1), and now exercisable by them(2) make the following Regulations:

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- (1) 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 and the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7.
- (2) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 (except so far as they relate to the making of any provision authorised by subsection (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22) were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004 and the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) Order 2005 (S.I. 2005/1833 (W.149)(C.79)) as amended by the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006 (S.I. 2006/1660 (W.159) (C.56)). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(a) of Schedule 11 to the Government of Wales Act 2006 (c.32).

PART 1

GENERAL

Title, commencement, application and interpretation

1. The title of these Regulations is the Assembly Learning Grants (European University Institute) (Wales) Regulations 2009 and they come into force on 21 January 2010.

2. These Regulations apply in relation to Wales.

3. In these Regulations—

“1998 Act” (“*Deddf 1998*”) means the Teaching and Higher Education Act 1998;

“the 2008 Regulations” (“*Rheoliadau 2008*”) means the Assembly Learning Grants (European Institutions) (Wales) Regulations 2008(1);

“academic authority” (“*awdurdod academaidd*”) means in, relation to the Institute, the governing body or other body having the functions of a governing body and includes a person acting with the authority of that body;

“current course” (“*cwrs cyfredol*”) means the designated course in respect of which a person is applying for support or to be recognised as an eligible student;

“electronic signature” (“*llofnod electronig*”) is so much of anything in electronic form as—

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible student” (“*myfyriwr cymwys*”) has the meaning given by regulation 8;

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

“grants for living and other costs” (“*grantiau at gostau byw a chostau eraill*”) means the grants payable under regulation 16;

“the Institute” (“*yr Athrofa*”) means the European University Institute;

(1) S.I. 2008/18 (W.7); amended by S.I. 2008/1324 (W.137); S.I. 2008/3114 (W.276); and S.I. 2009/2157 (W.181).

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

- (a) who has been informed by a person acting under the authority of the Secretary of State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom;
- (b) who has been granted leave to enter or remain accordingly;
- (c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002⁽¹⁾); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since he or she was granted leave to enter or remain;

“qualifying course” (“*cwrs cymwys*”) means a course—

- (a) which is—
 - (i) a postgraduate or comparable course; and
 - (ii) of at least two academic years’ duration; and
- (b) in respect of which the student received, for at least two academic years of the course, a statutory award other than an award intended to assist with additional expenditure that the student was obliged to incur in connection with his or her attendance on the course by reason of a disability to which he or she is or was subject;

“refugee” (“*ffoadur*”) means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28 July 1951⁽²⁾ as extended by the

(1) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (c.19), Schedules 2 and 4 and the Immigration, Asylum and Nationality Act 2006 (c.13), section 9.

(2) Cmnd. 9171.

Protocol thereto which entered into force on 4 October 1967(1);

“relevant date” (“*dyddiad perthnasol*”) means 31 January 2010;

“statutory award” (“*dyfarniad statudol*”) means any award bestowed, grant paid or other support provided by virtue of the 1998 Act or the Education Act 1962(2), or any comparable award, grant or other support in respect of undertaking a course which is paid out of public funds;

“student loans legislation” (“*y ddeddfwriaeth ar fenthyciadau i fyfyrwyr*”) means the Education (Student Loans) Act 1990(3), the Education (Student Loans) (Northern Ireland) Order 1990(4), the Education (Scotland) Act 1980(5) and regulations made thereunder, the Education (Student Support) (Northern Ireland) Order 1998(6) and regulations made thereunder or the 1998 Act and regulations made thereunder;

“supplementary grants” (“*grantiau atodol*”) means the grants payable under Chapter 2 of Part 4.

Revocation and saving provisions

4. Subject to regulation 5, the following regulations are revoked on 1 September 2010—

- (a) the 2008 Regulations;
- (b) the Assembly Learning Grants (European Institutions) (Wales) (Amendment) Regulations 2008(7);

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- (1) Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Support Division, Department for Business, Innovation and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).
 - (2) 1962 c.12; sections 1 to 4 and Schedule 1 were substituted by the provisions set out in Schedule 5 to the Education Act 1980 (c.20). Section 1(3)(d) was amended by the Education (Grants and Awards) Act 1984 (c.11), section 4. Section 4 was amended by the Education Act 1994 (c.30), Schedule 2, paragraph 2. The entire Act was repealed by the Teaching and Higher Education Act 1998 (c.30), section 44(2) and Schedule 4, subject to the transitional provisions and savings set out in the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order 1998 (S.I. 1998/3237), article 3.
 - (3) 1990 c.6; repealed by the Teaching and Higher Education Act 1998 (c.30), Schedule 4.
 - (4) S.I. 1990/1506 (N.I. 11); amended by S.I. 1996/1274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No.306.
 - (5) 1980 c.44; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
 - (6) S.I. 1998/1760 (N.I. 14), to which there have been amendments not relevant to these Regulations.
 - (7) S.I. 2008/1324 (W.137).

- (c) the Assembly Learning Grants (European Institutions) (Wales) (Amendment) (No. 2) Regulations 2008(1);
- (d) the Assembly Learning Grants (European Institutions) (Wales) (Amendment) Regulations 2009(2).

5. The 2008 Regulations continue to apply to the provision of support to students in relation to an academic year beginning on or after 1 September 2009 but before 1 September 2010.

6. These Regulations apply in relation to the provision of support to an eligible student in relation to an academic year which begins on or after 1 September 2010 whether anything done under these Regulations is done before, on or after 1 September 2010.

PART 2

APPLYING FOR SUPPORT AND ELIGIBILITY

Applications

7.—(1) Unless a person seeking support under these Regulations is already an eligible student by virtue of regulation 8(9), he or she must submit an application to be considered as an eligible student and an application for support in such form as the Welsh Ministers may require to the Institute by the application deadline.

(2) Where a person seeking support under these Regulations is already an eligible student by virtue of regulation 8(9), he or she must notify the Welsh Ministers in writing by the application deadline that he or she wishes to apply for support under these Regulations.

(3) The application deadline in relation to an academic year beginning on or after 1 September 2010 is 31 January 2010.

(4) The Welsh Ministers may extend the application deadline if they consider that the circumstances of the case warrant it.

Eligible students

8.—(1) An eligible student qualifies for financial support in connection with his or her attendance on a designated course subject to and in accordance with these Regulations.

(1) S.I. 2008/3114 (W.276).
(2) S.I. 2009/2157 (W.181).

(2) Subject to paragraphs (3) and (7), a person is an eligible student in connection with a designated course at the Institute if—

- (a) the academic authority notifies the Welsh Ministers in writing that the person has a reasonable chance of being offered a place on that course by the academic authority; and
- (b) the Welsh Ministers determine in connection with an application for support under these Regulations that he or she falls within one of the categories in Part 2 of Schedule 1.

(3) A person is not an eligible student if—

- (a) subject to paragraph (4), he or she has attended a qualifying course;
- (b) he or she is in breach of an obligation to repay any loan;
- (c) he or she has reached the age of 18 and not ratified any agreement for a loan made with him or her when he or she was under the age of 18; or
- (d) he or she has, in the opinion of the Welsh Ministers, shown himself or herself by his or her conduct to be unfitted to receive support.

(4) Paragraph (3)(a) does not apply where the person has attended a qualifying course but the Welsh Ministers have determined that having regard to the particular circumstances of that person's case it is appropriate to pay him or her support in connection with the current course.

(5) For the purposes of paragraph (3)(b) and (c), "loan" means a loan made under the student loans legislation.

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

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

(7) The number of eligible students must not exceed one.

(8) An eligible student in respect of whom the first academic year of the course begins on or after 1 September 2000 shall not, at any one time, qualify for support for more than one designated course.

(9) Despite paragraphs (2) and (3) and subject to paragraphs (7), (10) and (11), a person is an eligible student in connection with a designated course at the Institute if—

- (a) he or she qualified as an eligible student in connection with—

- (i) an earlier academic year of the current course; or
 - (ii) a designated course that he or she attended at the Institute and from which his or her status as an eligible student was transferred to the current course; and
- (b) his or her status as an eligible student has not terminated.

(10) Where—

- (a) the Welsh Ministers determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person (“A”) was an eligible student in connection with an application for support for an earlier year of the current course or in connection with an application for support for a designated course at the Institute from which his or her status as an eligible student has been transferred to the current course; and
- (b) the refugee status of A or of his or her spouse, civil partner, parent or step-parent, as the case may be, is due to expire before the first day of the academic year in respect of which A is applying for support and, as at the day before that academic year begins, no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A’s status as an eligible student terminates on the day before the first day of the academic year in respect of which he or she is applying for support.

(11) Where—

- (a) the Welsh Ministers determined that, by virtue of being a person with leave to enter or remain or the spouse, civil partner, child or step-child of such a person, a person (“A”) was an eligible student in connection with an application for support for an earlier year of the current course or in connection with an application for support for a designated course at the Institute from which his or her status as an eligible student has been transferred to the current course; and
- (b) the period for which the person with leave to enter or remain is allowed to stay in the United Kingdom is due to expire before the first day of the academic year in respect of which A is applying for support and, as at the day before that academic year begins, no further leave to remain has been granted and no appeal is pending (within the meaning of

section 104 of the Nationality, Immigration and Asylum Act 2002),

A's status as an eligible student terminates on the day before the first day of the academic year in respect of which he or she is applying for support.

(12) Paragraphs (10) and (11) do not apply where the student began the course in connection with which the Welsh Ministers determined that he or she was an eligible student before 1 September 2007.

(13) The Welsh Ministers may take such steps and make such inquiries as they consider necessary to determine whether a person is an eligible student.

(14) The Welsh Ministers must inform a person who has been notified to them under paragraph (2)(a) whether he or she qualifies as an eligible student.

(15) A person who has received notification from the Welsh Ministers under paragraph (14) that he or she is an eligible student in connection with a course at the Institute and a person who is an eligible student at the Institute by virtue of paragraph (9) must, by the deadline for receipt of financial information, provide the Welsh Ministers with any information or documentation that they request in order to determine the amount of support payable under these Regulations in respect of the academic year.

(16) The deadline for receipt of financial information in relation to an academic year beginning on or after 1 September 2010, is 31 January 2010 or, in the case of grants payable under regulation 16(6), 31 January 2011.

(17) The Welsh Ministers must notify an eligible student of the amount of support payable in respect the academic year, if any.

Designated courses

9. A course is designated for the purposes of section 22(1) of the 1998 Act and regulation 8 if it is—

- (a) a postgraduate or comparable course;
- (b) a full-time course;
- (c) of at least one academic year's duration; and
- (d) provided by the Institute.

Period of eligibility

10.—(1) Subject to the following paragraphs and regulation 8, a student's status as an eligible student in connection with a designated course will terminate at the end of the academic year in which the Institute would ordinarily expect the student to complete the course ("period of eligibility").

(2) The student's period of eligibility terminates when the student—

- (a) withdraws from his or her designated course in circumstances in which the Welsh Ministers will not transfer his or her status as an eligible student in accordance with regulation 11; or
- (b) abandons or is expelled from his or her designated course.

(3) The Welsh Ministers may terminate the student's period of eligibility if they are satisfied that the conduct of the student has shown that he or she is unfitted to receive support.

(4) Where the student's period of eligibility will terminate before the end of the academic year in which the student will actually complete the course, the Welsh Ministers may, at any time, extend or renew the period of eligibility for such period as they determine.

(5) If the Welsh Ministers are satisfied that an eligible student has failed to comply with any requirement to provide information under these Regulations or has provided information which is inaccurate in a material particular, the Welsh Ministers may do one or more of the following—

- (a) terminate the student's period of eligibility;
- (b) determine that the student no longer qualifies for any particular type of support or particular amount of support;
- (c) treat any support already paid to the student as an overpayment which may be recovered in accordance with regulation 31.

Transfer of eligibility

11.—(1) Where an eligible student transfers to another designated course at the Institute, the Welsh Ministers must transfer the student's status as an eligible student where—

- (a) they receive a request from the eligible student to do so;
- (b) they are satisfied that the eligible student has begun to attend that other course on the recommendation of the academic authority; and
- (c) the student's status as an eligible student has not terminated.

(2) An eligible student who transfers under paragraph (1) is to receive in connection with the academic year of the course to which he or she transfers the remainder of the support assessed by the Welsh Ministers in respect of the academic year of the course from which he or she transfers.

(3) An eligible student who transfers under paragraph (1) after the Welsh Ministers have assessed support in connection with the academic year of the course from which the student is transferring but before the student completes that year may not, in connection with the academic year of the course to which he or she transfers, apply for another grant of a kind that he or she has already applied for under these Regulations in connection with the academic year of the course from which he or she is transferring.

PART 3

PROVISION OF INFORMATION

Information

12. Every applicant and eligible student must, as soon as reasonably practicable after he or she is requested to do so, provide the Welsh Ministers with such information as the Welsh Ministers consider they require for the purposes of these Regulations.

13. Every applicant and eligible student must immediately inform the Welsh Ministers and provide the Welsh Ministers with particulars if—

- (a) he or she withdraws from, abandons or is expelled from the course;
- (b) he or she transfers to another course at the Institute;
- (c) he or she ceases to attend the course and does not intend to or is not permitted to continue it for the remainder of the academic year;
- (d) he or she is absent from the course for more than 60 days due to illness or for any period for any other reason;
- (e) the month for the start or the completion of the course changes;
- (f) his or her home or term-time address changes.

14. Information provided to the Welsh Ministers pursuant to these Regulations must be in the format required by the Welsh Ministers and, if the Welsh Ministers require the information to be signed by the person providing it, an electronic signature in such form as they may specify satisfies this requirement.

PART 4

FINANCIAL SUPPORT

General

15.—(1) Subject to paragraph (2), the general rule is that an eligible student who is attending a designated course provided by the Institute qualifies in connection with an academic year for—

- (a) grants for living and other costs in accordance with Chapter 1; and
- (b) supplementary grants in accordance with Chapter 2.

(2) If the academic year in respect of which the eligible student has applied for support is a year of repeat study the Welsh Ministers may determine that—

- (a) the student does not qualify for a particular type or amount of support in respect of the year of repeat study; or
- (b) the student does not qualify for any support in respect of the year of repeat study.

(3) In determining whether an eligible student should not qualify for some or any support in accordance with paragraph (2) the Welsh Ministers must have regard to the circumstances of the case and in particular the reasons for which the student has been required to repeat an academic year.

(4) For the purposes of this regulation, “year of repeat study” means an academic year which the student has previously attended but is required by the Institute to attend again.

CHAPTER 1

GRANTS FOR LIVING AND OTHER COSTS

Grants for living and other costs

16.—(1) Subject to paragraph (2), an eligible student qualifies in respect of an academic year for the grants for living and other costs specified in and calculated in accordance with paragraphs (3) to (7).

(2) An eligible student does not qualify for any of the grants payable under this regulation if paragraph 9 of Part 2 of Schedule 1 is the only paragraph of Part 2 of that Schedule into which the student falls.

(3) An eligible student qualifies for a grant for living costs of 18,099 euro in relation to an academic year beginning on or after 1 September 2010.

(4) An eligible student qualifies for a grant for travel home of the amount determined by the Welsh Ministers to be the reasonable cost of one return journey from the student’s home address to the Institute.

(5) An eligible student qualifies for a grant for college travel of the amount determined by the Welsh Ministers to be the reasonable cost of travel from the student's residence whilst attending the Institute to the Institute.

(6) Subject to the prior agreement of the Welsh Ministers before costs are incurred, an eligible student qualifies for a grant for research travel of the amount determined by the Welsh Ministers to be the reasonable cost of travel incurred for the purposes of completing periods of research authorised by the Institute during the academic year in respect of which support is being applied for.

(7) An eligible student qualifies for a grant for medical insurance of the amount determined by the Welsh Ministers to be the reasonable cost of insuring the student against liability for the cost of medical treatment provided outside the United Kingdom where the ordinary duration of the course is more than one academic year.

17. A deduction may be made in accordance with Part 5 from the amount payable in respect of any of the grants calculated under paragraphs (3) to (6) of regulation 16.

CHAPTER 2

SUPPLEMENTARY GRANTS

Disabled student's allowance

18.—(1) Subject to paragraph (2), an eligible student qualifies for a disabled student's allowance to assist with the additional expenditure which the Welsh Ministers are satisfied that the student is obliged to incur by reason of a disability to which he or she is subject in respect of his or her attendance at a designated course.

(2) An eligible student does not qualify for a disabled student's allowance if paragraph 9 of Part 2 of Schedule 1 is the only paragraph of Part 2 of that Schedule into which the student falls.

Amount of disabled student's allowance

19.—(1) Subject to paragraph (2), the amount of the disabled student's allowance is the amount that the Welsh Ministers consider appropriate in accordance with the student's circumstances to assist with one or more types of eligible expenditure.

(2) The amount of disabled student's allowance must not exceed £10,260 in respect of an academic year.

(3) The "types of eligible expenditure" are—

(a) expenditure on a non-medical personal helper;

- (b) expenditure on major items of specialist equipment;
- (c) any additional expenditure incurred—
 - (i) in Italy for the purpose of attending the Institute; and
 - (ii) within or outside the United Kingdom for the purpose of travelling to the Institute in order to attend the relevant course.

Grant for dependants

20.—(1) The grant for dependants consists of the following elements—

- (a) adult dependants' grant; and
- (b) parents learning allowance.

(2) The qualifying conditions for each element and the amounts payable are set out in regulations 21 to 25.

Adult dependants' grant

21.—(1) Subject to paragraph (3), an eligible student qualifies for an adult dependants' grant in connection with his or her attendance on a designated course in accordance with this regulation.

(2) The adult dependants' grant is available in respect of one dependant of an eligible student who is either—

- (a) the student's partner; or
- (b) an adult dependant of the student whose net income does not exceed, £3,801.

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

22. The amount of adult dependants' grant payable in respect of an academic year is calculated in accordance with regulation 24, the basic amount being—

- (a) in respect of the current academic year, £2,647; or
- (b) where the person in respect of whom the student is applying for adult dependants' grant is ordinarily resident outside of the United Kingdom, such amount not exceeding £2,647 as the Welsh Ministers consider reasonable in the circumstances.

Parents' learning allowance

23.—(1) Subject to paragraph (2), an eligible student qualifies in connection with his or her attendance on a designated course for the parents' learning allowance if he or she has one or more dependent children.

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

(3) The amount of parents' learning allowance payable in respect of an academic year is calculated in accordance with regulation 24, the basic amount being, £1,508.

Calculations

24.—(1) Subject to the following paragraphs, the amount payable in respect of a particular element of the grant for dependants for which an eligible student qualifies under regulations 21 to 23 is the amount of that element remaining after applying, until it is extinguished or no element remains payable under regulations 21 to 23, an amount equal to **(A – B)** as follows and in the following order—

- (a) to reduce the basic amount of the adult dependants' grant where the eligible student qualifies for that element under regulation 21; and
- (b) to reduce the basic amount of parents' learning allowance where the eligible student qualifies for that element under regulation 23.

(2) Subject to paragraphs (4) and (5), where **B** is greater than or equal to **A**, the basic amount of each element of the grant for dependants for which the eligible student qualifies is payable.

(3) Where **(A – B)** is equal to or exceeds the aggregate of the basic amounts of the elements of the grant for dependants for which the eligible student qualifies, the amount payable in respect of each element is nil.

(4) The amount of adult dependants' grant calculated under paragraph (1) is reduced in respect of an adult dependant by one half where—

- (a) the student's partner—
 - (i) is an eligible student; or
 - (ii) holds a statutory award; and
- (b) account is taken of that partner's dependants in calculating the amount of support for which that partner qualifies or the payment to which he or she is entitled under the statutory award.

(5) Where the amount of the parents' learning allowance calculated under paragraph (1) is £0.01 or more but less than £50, the amount of parents' learning allowance payable is £50.

(6) For the purposes of this regulation—

A is the aggregate of the net income of each of the eligible student's dependants; and

B is—

- (a) £1,159 where the student has no dependent child;
- (b) £3,473 where the student is not a lone parent and has one dependent child;
- (c) £4,632 where the student is not a lone parent and has more than one dependent child;
- (d) £4,632 where the student is a lone parent and has one dependent child;
- (e) £5,797 where the student is a lone parent and has more than one dependent child.

25. A deduction may be made in accordance with Part 5 from the amount payable in respect of a particular element of the grant for dependants calculated in accordance with regulations 21 to 24.

Interpretation

26.—(1) For the purposes of regulations 21 to 25—

- (a) “adult dependant” (“*dibynnydd mewn oed*”) means, in relation to an eligible student, an adult person dependent on the student other than his or her child, his or her partner (including a spouse or civil partner from whom the Welsh Ministers consider the student is separated) or his or her former partner;
- (b) “child” (“*plentyn*”) in relation to an eligible student includes any child of the student’s partner who is dependent on the student and any child for whom the student has parental responsibility who is dependent on him or her;
- (c) “dependant” (“*dibynnydd*”) means, in relation to an eligible student, the student’s partner, his or her dependent child or an adult dependant, who in each case is not an eligible student and does not hold a statutory award;
- (d) “dependent” (“*dibynnol*”) means wholly or mainly financially dependent;
- (e) “dependent child” (“*plentyn dibynnol*”) means, in relation to an eligible student, a child dependent on the student;
- (f) “lone parent” (“*rhiant unigol*”) means an eligible student who does not have a partner and who has a dependent child or dependent children;
- (g) “net income” (“*incwm net*”) has the meaning given in paragraph (2);
- (h) subject to sub-paragraphs (i), (j), (k) and (l) “partner” (“*partner*”) means any of the following—

- (i) the spouse of a student;
- (ii) the civil partner of a student;
- (iii) a person ordinarily living with a student as if that person were his or her spouse where that student—
 - (aa) was aged 25 or over at the start of the academic year in respect of which the student’s contribution falls to be assessed; and
 - (bb) started the designated course on or after 1 September 2000;
- (iv) a person ordinarily living with a student as if that person were his or her civil partner where that student—
 - (aa) was aged 25 or over at the start of the academic year in respect of which the student’s contribution falls to be assessed; and
 - (bb) started the designated course on or after 1 September 2005;
- (i) unless otherwise indicated, a person who would otherwise be a partner under sub-paragraph (h) is not to be treated as a partner if—
 - (i) in the opinion of the Welsh Ministers, that person and the student are separated; or
 - (ii) the person is ordinarily living outside the United Kingdom and is not maintained by the student;
- (j) for the purposes of the definition of “adult dependant”, a person is to be treated as a partner if the person would be a partner under sub-paragraph (h) but for the fact that the student with whom he or she is living was not aged 25 or over at the start of the academic year in respect of which the student’s contribution falls to be assessed;
- (k) for the purposes of the definitions of “child” and “lone parent”, a person is to be treated as a partner if the person would be a partner under sub-paragraph (h) but for the date on which the student began the designated course or the fact that the student with whom he or she is ordinarily resident was not aged 25 or over at the start of the academic year in respect of which the student’s contribution falls to be assessed.
- (l) subject to sub-paragraph (m), for the purposes of the definition of “adult dependant”, the Welsh Ministers may treat an adult person or child as dependent on an eligible student if

they are satisfied that the adult person or child—

- (i) is not dependent on—
 - (aa) the eligible student; or
 - (bb) his or her partner; but
- (ii) is dependent on the eligible student and his or her partner together;
- (m) the Welsh Ministers must not treat an adult person (“A”) as dependent on an eligible student in accordance with sub-paragraph (l), if A is—
 - (i) the spouse or civil partner of the eligible student’s partner (including a spouse or civil partner from whom the Welsh Ministers consider the eligible student’s partner is separated); or
 - (ii) the former partner of the eligible student’s partner.
- (n) for the purposes of determining whether a person is the former partner of an eligible student’s partner, “partner” in relation to an eligible student’s partner means—
 - (i) the spouse of an eligible student’s partner;
 - (ii) the civil partner of an eligible student’s partner;
 - (iii) where the eligible student began the specified designated course on or after 1 September 2000, a person ordinarily living with an eligible student’s partner as if he or she were his or her spouse;
 - (iv) where the eligible student began the specified designated course on or after 1 September 2005, a person ordinarily living with an eligible student’s partner as if he or she were his or her civil partner.

(2) Subject to paragraph (3), a dependant’s net income is his or her income from all sources for the academic year in question reduced by the amount of income tax and social security contributions payable in respect of it but disregarding—

- (a) any pension, allowance or other benefit paid by reason of a disability or incapacity to which the dependant is subject;
- (b) child benefit payable under Part IX of the Social Security Contributions and Benefits Act 1992⁽¹⁾;

(1) 1992 c. 4 to which there are amendments not relevant to these Regulations.

- (c) any financial support payable to the dependant by a local authority in accordance with regulations made under sections 2, 3 and 4 of the Adoption and Children Act 2002⁽¹⁾;
- (d) any guardian's allowance to which the dependant is entitled under section 77 of the Social Security Contributions and Benefits Act 1992
- (e) in the case of a dependant with whom a child being looked after by a local authority is boarded out, any payment made to that dependant for the purposes of section 23 of the Children Act 1989⁽²⁾;
- (f) any payment made to the dependant under section 23C(5A) of the Children Act 1989⁽³⁾;
- (g) any payments made to the dependant under section 15 of and Schedule 1 to the Children Act 1989 in respect of a person who is not the dependant's child or any assistance given by a local authority pursuant to section 24 of that Act⁽⁴⁾; and
- (h) any child tax credit to which the dependant is entitled under Part 1 of the Tax Credits Act 2002⁽⁵⁾.

(3) Where an eligible student or his or her partner makes any recurrent payments which were previously made by the student in pursuance of an obligation incurred before the first academic year of the student's course, the partner's net income is net income calculated in accordance with paragraph (2) reduced by—

- (a) an amount equal to the payments in question for the academic year, if in the opinion of the Welsh Ministers the obligation has been reasonably incurred; or
- (b) such lesser amount, if any, as the Welsh Ministers consider appropriate if, in their opinion, a lesser obligation could reasonably have been incurred.

(4) For the purposes of paragraph (2), where—

- (a) the dependant is a dependent child; and

(1) 2002 c. 38.

(2) 1989 c. 41. Section 23 was amended by the Courts and Legal Services Act 1990 (c.41), Schedule 16, paragraph 12, the Care Standards Act 2000 (c.14), Schedule 4, paragraph 14, the Children Act 2004 (c.31), section 49(3) and the Children and Young Persons Act 2008 (c.23), Schedule 3, paragraphs 1 and 7.

(3) Subsections (5A) to (5C) of section 23C of the Children Act 1989 were inserted, in relation to England, by section 21 of the Children and Young Persons Act 2008 and S.I. 2009/268 and S.I. 2009/2273 refer.

(4) There are amendments to sections 15 and 24 and Schedule 1 which are not relevant to these Regulations.

(5) 2002 c.21 to which there are amendments not relevant to these Regulations.

- (b) payments are made to the student towards the child's maintenance;

those payments are to be treated as the child's income.

PART 5 CONTRIBUTIONS

Student's contribution

27.—(1) An eligible student's contribution in respect of an academic year is the amount, if any, calculated under Schedule 2.

(2) For the purposes of the exercise of the Welsh Ministers' functions under these Regulations the Welsh Ministers may require a student to provide from time to time such information as they require in order to assess the student's contribution.

Application of the student's contribution

28. The contribution calculated in accordance with regulation 27 must be applied in accordance with regulation 29.

29.—(1) The Welsh Ministers must apply the eligible student's contribution—

- (a) first, to reduce the amount of grant for living costs calculated in accordance with regulation 16(3);
- (b) second—
 - (i) in the case of a student who is eligible for the grant for dependants, to reduce in the following order—
 - (aa) the amount of any adult dependants' grant calculated in accordance with regulation 24;
 - (bb) the amount of any parents' learning allowance calculated in accordance with regulation 24; and
 - (cc) the amount of any grant for travel home calculated in accordance with regulation 16(4);
 - (ii) in any other case, to reduce the amount of grant for travel home calculated in accordance with regulation 16(4);
- (c) third, to reduce the amount of grant for college travel calculated in accordance with regulation 16(5).
- (d) fourth, subject to paragraph (2), to reduce the amount of grant for research travel calculated in accordance with regulation 16(6).

(2) Where the contribution available to reduce the amount of grant for research travel in accordance with paragraph (1)(d) exceeds the amount of that grant calculated under regulation 16(6), the amount of that grant payable to the student is nil.

PART 6 PAYMENTS

Payment of grants for living and other costs and supplementary grants

30.—(1) The Welsh Ministers may pay the grants for living and other costs and the supplementary grants for which an eligible student qualifies in such instalments and at such times as they consider appropriate.

(2) The Welsh Ministers may, if they consider it appropriate to do so, pay the grant payable under regulation 16(3) to the academic authority for the authority to pay the grant on their behalf.

(3) Where a final assessment of the amount of grants for living and other costs or supplementary grants payable to an eligible student cannot be made on the basis of the information provided by the student, the Welsh Ministers may make provisional payments of those grants pending the final assessment.

(4) The Welsh Ministers may, if they consider it appropriate to do so, make a payment of disabled student's allowance before the start of the academic year in respect of which that payment is due.

(5) Where the circumstances in regulation 13(a) or regulation 13(c) apply, the Welsh Ministers must not make any payments of support to a student after the date on which he or she stops attending his or her course unless they consider it appropriate to do so taking into account the circumstances of the student's case.

(6) The Welsh Ministers must not make any payments of support to a student who is absent from the course—

- (a) for more than 60 days due to illness; or
- (b) for any period for any other reason,

unless they consider that it is appropriate to do so taking into account the circumstances of the student's case.

Overpayments

31. An eligible student must, if required to do so by the Welsh Ministers, repay any amount paid to that student under Part 4 which for whatever reason exceeds the amount of support to which he or she is entitled under Part 4.

Leighton Andrews

Minister for Children, Education and Lifelong Learning, one of the Welsh Ministers.

17 December 2009

SCHEDULE 1

Regulation 8

ELIGIBLE STUDENTS

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

“Directive 2004/38” (“*Cyfarwydddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States⁽¹⁾;

“EEA Agreement” (“*Cytundeb yr AEE*”) means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽²⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽³⁾;

“EEA frontier self-employed person” (“*person hunangyflogedig y ffin o’r AEE*”) has the meaning given by sub-paragraph (2);

“EEA frontier worker” (“*gweithiwr y ffin o’r AEE*”) has the meaning given by sub-paragraph (3);

“EEA migrant worker” (“*gweithiwr mudol o’r AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” (“*gwladolyn yr AEE*”) means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” (“*person hunangyflogedig o’r AEE*”) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

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

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

(1) OJ L158, 30.04.2004, pp77-123.

(2) Cm. 2073.

(3) Cm. 2183.

“EU national” (“*Gwladolyn yr UE*”) means a national of a Member State of the European Union;

“European Economic Area” (“*Ardal Economaidd Ewropeaidd*”) means the area comprised by the European Union, the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

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

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) his or her spouse or civil partner;
 - (ii) his or her child or the child of his or her spouse or civil partner; or
 - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) his or her spouse or civil partner; or
 - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to an EU national who falls within article 7(1) (c) of Directive 2004/38—
 - (i) his or her spouse or civil partner; or
 - (ii) direct descendants of his or hers or of his or her spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or hers or of his or her spouse or civil partner;
- (d) in relation to an EU national who falls within article 7(1) (b) of Directive 2004/38—
 - (i) his or her spouse or civil partner; or
 - (ii) direct descendants of his or hers or of his or her spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or hers or of his or her spouse or civil partner;
 - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
 - (i) his or her spouse or civil partner; or

(ii) direct descendants of his or hers or of his or her spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of his or hers or of his or her spouse or civil partner;

“right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” (*“person hunangyflogedig”*) means—

(a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or

(b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” (*“wedi setlo”*) has the meaning given by section 33(2A) of the Immigration Act 1971(1);

“Swiss Agreement” (*“Cytundeb y Swistir”*) means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999(2) and which came into force on 1 June 2002;

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

“Swiss frontier employed person” (*“person cyflogedig Swisaidd y ffin”*) has the meaning given in sub-paragraph (4);

“Swiss frontier self-employed person” (*“person hunangyflogedig Swisaidd y ffin”*) has the meaning given in sub-paragraph (5);

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

“Turkish worker” (*“gweithiwr Twrcaidd”*) means a Turkish national who on the relevant date—

(a) was ordinarily resident in the United Kingdom and Islands; and

(b) was, or had been, lawfully employed in the United Kingdom.

(1) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(2) Cm. 4904.

“United Kingdom national” (“*gwladolyn y Deyrnas Unedig*”) means a person who falls to be treated as a national of the United Kingdom for the purposes of the EU Treaties;

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

(2) “EEA frontier self-employed person” (“*person hunangyflogedig y ffin o’r AEE*”) means an EEA national who—

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

(3) “EEA frontier worker” (“*gweithiwr y ffin o’r AEE*”) means an EEA national who—

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

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

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

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

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

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

(7) For the purposes of this Schedule, a person is to be treated as ordinarily resident in Wales, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area,

Switzerland and Turkey if he or she would have been so resident but for the fact that——

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

is or was temporarily employed outside the area in question.

(8) For the purposes of sub-paragraph (7), temporary employment outside of Wales, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey includes——

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

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who——

- (a) is settled in the United Kingdom on the relevant date other than by reason of having acquired a right of permanent residence;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) had been ordinarily resident throughout the three-year period preceding the relevant date in the United Kingdom and Islands; and
- (d) subject to paragraph (2), had not during any part of the period referred to in paragraph (c) been ordinarily resident in the United Kingdom and Islands wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(7).

3. A person—

- (a) who is settled in the United Kingdom on the relevant date by reason of having acquired the right of permanent residence;
- (b) who is ordinarily resident in Wales on the relevant date;
- (c) who had been ordinarily resident in the United Kingdom throughout the three-year period preceding the relevant date; and
- (d) who, in a case where his or her ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Refugees and persons with leave to enter or remain

4.—(1) A person—

- (a) who is a refugee;
- (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was recognised as a refugee; and
- (c) who is ordinarily resident in Wales on the relevant date.

(2) A person—

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

(3) A person—

- (a) who is the child of a refugee or the child of the spouse or civil partner of a refugee;
- (b) who, on the date on which the refugee made his or her application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;

- (c) who was under 18 on the date on which the refugee made his or her application for asylum;
- (d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was given leave to remain in the United Kingdom; and
- (e) who is ordinarily resident in Wales on the relevant date.

5.—(1) A person—

- (a) with leave to enter or remain;
- (b) who is ordinarily resident in Wales on the relevant date; and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.

(2) A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain;
- (b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made his or her application for asylum;
- (c) who is ordinarily resident in Wales on the relevant date; and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.

(3) A person—

- (a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;
- (b) who, on the date on which the person with leave to enter or remain made his or her application for asylum, was the child of that person or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;
- (c) who was under 18 on the date on which the person with leave to enter or remain made his or her application for asylum;
- (d) who is ordinarily resident in Wales on the relevant date; and
- (e) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.

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

6.—(1) A person who—

- (a) on the relevant date, is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in paragraph (i) or (ii);
 - (iv) an EEA frontier worker or an EEA frontier self-employed person;
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
 - (vi) a family member of a person in (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in Wales on the relevant date;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

7. A person who—

- (a) is ordinarily resident in Wales on the relevant date;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (c) is entitled to support by virtue of article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽¹⁾, as extended by the EEA Agreement.

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

8.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;

(1) OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (ii) p475).

- (c) is ordinarily resident in the United Kingdom on the relevant date;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (e) in a case where his or her ordinary residence referred to in paragraph (b) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if he or she is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has the right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if he or she goes to the state within the territory comprising the European Economic Area and Switzerland of which he or she is a national or of which the person in relation to whom he or she is a family member is a national.

EU nationals

9.—(1) A person who—

- (a) on the relevant date, is either—
 - (i) an EU national; or
 - (ii) a family member of such a person;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European

Economic Area and Switzerland in accordance with paragraph 1(7).

10. A person who—

- (a) on the relevant date, is an EU national other than a United Kingdom national;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the relevant date; and
- (d) in a case where his or her ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Children of Swiss nationals

11. 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 European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where his or her ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

12. A person who—

- (a) on the relevant date, was the child of a Turkish worker;
- (b) is ordinarily resident in Wales on the relevant date; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-

year period preceding the first day of the first academic year of the course.

SCHEDULE 2

Regulation 27

STUDENT'S CONTRIBUTION

PART 1

Interpretation

1.—(1) In this Schedule—

“EEA State” (“*Gwladwriaeth yr AEE*”) has the meaning given by paragraph 1 of Part 1 of Schedule 1;

“financial year” (“*blwyddyn ariannol*”) means the period of twelve months in respect of which the income of a person whose residual income is calculated under the provisions of Part 2 of this Schedule is computed for the purposes of the income tax legislation which applies to it;

“household income” (“*incwm yr aelwyd*”) has the meaning given in paragraph 2;

“Member State” (“*Aelod-wladwriaeth*”) means a Member State of the European Union;

“parent” (“*rhiant*”) means a natural or adoptive parent and “child” (“*plentyn*”), “mother” (“*mam*”) and “father” (“*tad*”) are to be construed accordingly;

“partner” (“*partner*”) in relation to an eligible student means any of the following—

- (i) the spouse of the eligible student;
- (ii) the civil partner of the eligible student;
- (iii) a person ordinarily living with the eligible student as if he or she were the spouse of the student where the eligible student is aged 25 or over on the first day of the relevant year and he or she begins the designated course on or after 1 September 2000;
- (iv) a person ordinarily living with the student as if that person were the student's civil partner where the eligible student is aged 25 or over on the first day of the relevant year and he or she begins the designated course on or after 1 September 2005;

“preceding financial year” (“*blwyddyn ariannol flaenorol*”) means the financial year immediately preceding the relevant year;

“relevant year” (“*blwyddyn berthnasol*”) means the academic year in respect of which the household income falls to be assessed;

“residual income” (“*incwm gweddilliol*”) means taxable income after the application of paragraph 3 (in the case of an eligible student) and paragraph 4 (in the case of a student’s partner);

“taxable income” (“*incwm trethadwy*”) means, in relation to paragraph 3, in respect of an academic year for which support is sought and, in relation to paragraph 4, in respect (subject to sub-paragraphs (3), (4) and (5) of paragraph 4) of the preceding financial year, a person’s taxable income from all sources computed as for the purposes of—

- (a) the Income Tax Acts;
- (b) the income tax legislation of another EEA State or Switzerland which applies to the person’s income;
- (c) where the legislation of more than one EEA State or of 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),

except that no account is taken of income referred to in sub-paragraph (2) paid to another party.

(2) The income referred to in this sub-paragraph is any benefits under a pension arrangement pursuant to an order made under section 23 of the Matrimonial Causes Act 1973⁽¹⁾ which includes provision made by virtue of sections 25B(4) and 25E(3) of that Act or pension benefits under Part 1 of Schedule 5 to the Civil Partnership Act 2004⁽²⁾ which includes provision made by virtue of Parts 6 and 7 of that Schedule.

PART 2

Calculation of contribution

Household income

2.—(1) The amount of an eligible student’s contribution depends on the household income.

(1) 1973 c.18; section 23 was amended by the Administration of Justice Act 1982 (c.53), section 18. Section 25B was inserted by the Pensions Act 1995 (c.26), section 116(1) and was amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 4. Section 25E was inserted by the Pensions Act 2004 (c.35), section 319(1), Schedule 12, paragraph 3.

(2) 2004 c.33, paragraph 25 of Schedule 5 was modified by S.I. 2006/1934.

(2) The household income is—

- (a) in the case of an eligible student who has a partner, the residual income of the student aggregated with the residual income of that student's partner; or
- (b) in the case of an eligible student who does not have a partner, the residual income of that student.

(3) In determining the household income under subparagraph (2), the sum of £1,130 is deducted for each child wholly or mainly financially dependent on the eligible student or his or her partner.

Calculation of the student's residual income

3.—(1) For the purpose of determining the residual income of an eligible student, there is to be deducted from his or her taxable income (unless already deducted in determining taxable income) the aggregate of any amounts falling within any of the following sub-paragraphs—

- (a) any remuneration for work done during any academic year of the eligible student's course, provided that such remuneration does not include any sums paid in respect of any period for which he or she has leave of absence or is relieved of normal duties for the purpose of attending that course;
- (b) the gross amount of any premium or other sum paid by the eligible student in relation to a pension (not being a pension payable under a policy of life assurance) in respect of which relief is given under section 273 of the Income and Corporation Taxes Act 1988⁽¹⁾ or under section 188 of the Finance Act 2004⁽²⁾, or where the student's income is computed for the purpose of the income tax legislation of another Member State, the gross amount of any such premium or sum in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts.

(2) Where the eligible student receives income in a currency other than sterling, the value of that income for the purpose of this paragraph is—

- (a) if the student purchases sterling with the income, the amount of sterling the student so receives; or
- (b) otherwise, the value of the sterling the income would purchase using the rate for the month

(1) 1988 c. 1.
(2) 2004 c. 12.

in which it is received published by the Office for National Statistics⁽¹⁾.

Calculation of eligible student's partner's residual income

4.—(1) For the purposes of determining the taxable income of an eligible student's partner, any deductions which fall to be made or exemptions which are permitted—

- (a) by way of personal reliefs provided for in Chapter 1 of Part VII of the Income and Corporation Taxes Act 1988, or where the income is computed for the purposes of the income tax legislation of another EEA State or Switzerland, the gross amount of any such premium in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts;
- (b) pursuant to any enactment or rule of law under which payments which would otherwise under United Kingdom law form part of a person's income are not treated as such; or
- (c) under sub-paragraph (2),

are not to be made or permitted.

(2) For the purpose of determining the residual income of an eligible student's partner, there is to be deducted from the taxable income determined under sub-paragraph (1) the aggregate of any amounts falling within any of the following sub-paragraphs—

- (a) the gross amount of any premium or other sum paid by the student in relation to a pension (not being a pension payable under a policy of life assurance) in respect of which relief is given under section 273 of the Income and Corporation Taxes Act 1988 or under section 188 of the Finance Act 2004, or where the student's income is computed for the purpose of the income tax legislation of another EEA State or Switzerland, the gross amount of any such premium or sum in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts;
- (b) in any case where income is computed in accordance with sub-paragraph (6) any sums equivalent to the deduction mentioned in paragraph (a) of this sub-paragraph, provided that any sums so deducted are not to exceed the deductions which would be made if the whole of the eligible student's partner's

(1) "Financial Statistics" (ISSN 0015-203X).

income were in fact income for the purposes of the Income Tax Acts; and

- (c) in the case of an eligible student's partner who holds a statutory award, £1,130.

(3) Where the Welsh Ministers are satisfied that the income of the eligible student's partner in the financial year beginning immediately before the relevant year ("the current financial year") is likely to be not more than 85 per cent of the sterling value of his or her income in the preceding financial year the Welsh Ministers must, for the purpose of enabling the eligible student to attend the course without hardship, ascertain the household income for the current financial year.

(4) Where the Welsh Ministers are satisfied that the income of the eligible student's partner in any financial year is, as a result of any event, likely to be and to continue after that year to be not more than 85 per cent. of the sterling value of his or her income in the previous financial year the Welsh Ministers must, for the purpose of enabling the eligible student to attend the course without hardship, ascertain the household income for the academic year of the student's course in which that event occurred by taking as the residual income of the partner the average of his or her residual income for each of the financial years in which that academic year falls.

(5) Where the eligible student's partner satisfies the Welsh Ministers that his or her income is wholly or mainly derived from the profits of a business or profession carried on by him or her, then any reference in this Part of the Schedule to a preceding financial year is to be read as a reference to the earliest period of twelve months which ends after the start of the preceding financial year and in respect of which accounts are kept relating to that business or profession.

(6) Where an eligible student's partner is in receipt of any income which does not form part of that partner's income for the purposes of the Income Tax Acts or the income tax legislation of another EEA State or Switzerland by reason only that—

- (a) the partner is not resident, ordinarily resident or domiciled in the United Kingdom, or where his or her income is computed as for the purposes of the income tax legislation of another EEA State or Switzerland, not so resident, ordinarily resident or domiciled in that EEA State or Switzerland;
- (b) the income does not arise in the United Kingdom, or where the partner's income is computed for the purposes of the income tax legislation of another EEA State or Switzerland, does not arise in that EEA State or Switzerland; or

- (c) the income arises from an office, service or employment, income from which is exempt from tax in pursuance of any legislation,

his or her taxable income for the purpose of this Schedule is to be computed as though the income under this sub-paragraph were part of his or her income for the purpose of the Income Tax Acts or the income tax legislation of another EEA State or Switzerland, as the case may be.

(7) Where the income of the eligible student's partner is computed as for the purposes of the income tax legislation of another EEA State or Switzerland, it is to be computed under the provisions of this Schedule in the currency of that EEA State or Switzerland and the income of the eligible student's partner for the purposes of this Schedule is the sterling value of that income determined in accordance with the rate for the month in which the last day of the financial year in question falls, as published by the Office for National Statistics.

(8) Where the Welsh Ministers determine that the eligible student and his or her partner were separated for the duration of the relevant year, the partner's income is not taken into account in determining the household income.

(9) Where the Welsh Ministers determine that the eligible student and his or her partner separated in the course of the relevant year, the partner's income is determined by reference to his or her income under sub-paragraph (1) divided by fifty-two and multiplied by the number of complete weeks in the relevant year for which the Welsh Ministers determine that the eligible student and his or her partner were not separated.

(10) Where an eligible student has more than one partner in any one academic year, the provisions of this paragraph apply in relation to each.

Calculation of contribution

5.—(1) An eligible student's contribution is to be calculated in accordance with this regulation.

(2) In relation to an eligible student who has a partner, the contribution is—

- (a) where the household income is £23,680 or more, £45 with the addition of £1 for every complete £9.27 by which the household income exceeds £23,680; and
- (b) in any case where the household income is less than £23,680, nil.

(3) In relation to an eligible student who does not have a partner, the contribution is—

- (a) where the household income is £11,025 or more, £45 with the addition of £1 for every

complete £9.27 by which the household income exceeds £11,025; and

(b) where the household income is less than £11,025, nil.

(4) The amount of contribution is not to exceed £7,992.