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WELSH STATUTORY INSTRUMENTS

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**2008 No. 538 (W.51)**

**EDUCATION, WALES**

**The Assembly Learning Grant  
(Further Education) Regulations 2008**

<i>Made</i>	- - - -	26 February 2008
<i>Laid before the National Assembly for Wales</i>	- -	29 February 2008
<i>Coming into force</i>	- -	1 April 2008

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

**Title, commencement and application**

1.—(1) The title of these Regulations is the Assembly Learning Grant (Further Education) Regulations 2008.

(2) These Regulations come into force on 1 April 2008 and apply in relation to Wales.

**Interpretation**

2. In these Regulations—

“the 2007 Regulations” (“*Rheoliadau 2007*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2007<sup>(3)</sup> as amended or replaced;

“Academic Year 2008/2009” (“*Blwyddyn Academaidd 2008/2009*”) means the period of 12 months beginning on 1 September 2008, 1 January 2009, 1 April 2009 or 1 July 2009, according to whether the academic year of the course in question begins on or after 1 September

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- (1) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), sections 146, 153 and Schedule 11, the Income Tax (Earnings and Pensions) Act 2003 (c. 1), sections 722, 723 and Schedule 6, the Finance Act 2003 (c. 14), section 147 and the Higher Education Act 2004 (c. 8), sections 42, 43, 50, 52 and Schedule 7. Section 42 and section 43 were amended by the Education Act 2002 (c. 32), section 148 and Schedule 12 and the Higher Education Act 2004 (c. 8) section 49 and Schedule 6.
- (2) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004. See the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) Order 2005 (S.I.2005/1833 (W.149)) as amended by the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006 (S.I. 2006/1660 (W.159)). The functions of the National Assembly for Wales were then transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) S.I. 2007/1045 (W.104).

2008 and before 1 January 2009, on or after 1 January 2009 and before 1 April 2009, on or after 1 April 2009 and before 1 July 2009 or on or after 1 July 2009 and before 1 September 2009; “contact hours” (“*oriau cyswllt*”) means the period of time expressed in hours in respect of which an eligible student receives teaching or supervision during periods of study or practice; “designated course” (“*cwrs dynodedig*”) means a course designated as such by the Welsh Ministers for the purposes of these Regulations, such course including education (other than higher education) or training consisting of a course or programme of study—

- (a) which requires attendance at a further education institution or at the premises of another provider of education or training, and
- (b) which is funded by the Welsh Assembly Government or the Learning and Skills Council under the Learning and Skills Act 2000, or is funded by a public authority responsible for the funding of education (other than higher education) and training suitable to the requirements of persons aged 19 or over under the law of Scotland or Northern Ireland;

“eligible student” (“*myfyriwr cymwys*”) has the meaning given in regulation 3;

“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 regulations 9 to 12 is computed for the purposes of the income tax legislation which applies to it;

“higher education” (“*addysg uwch*”) means education provided by means of a course of any description in Schedule 6 to the Education Reform Act 1988(4);

“household income” (“*incwm yr aelwyd*”) has the meaning given in regulation 8;

“independent eligible student” (“*myfyriwr cymwys annibynnol*”) has the meaning given in regulation 13;

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

“parent” (“*rhiant*”) means a natural or adoptive parent;

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

- (i) the spouse of an eligible student;
- (ii) the civil partner of an eligible student;
- (iii) a person ordinarily living with an eligible student as if he or she were his or her civil partner where an eligible student falls within regulation 13(1)(a);
- (iv) a person ordinarily living with an eligible student as if he or she were the eligible student’s spouse;

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

- (i) the spouse of an eligible student’s parent;
- (ii) the civil partner of an eligible student’s parent;
- (iii) a person ordinarily living with the parent of an eligible student as if he or she were his or her spouse;
- (iv) a person ordinarily living with the parent of an eligible student as if he or she were the parent’s civil partner;

“period of full time study” (“*cyfnod astudio llawnamser*”) means a period of study on one or more designated courses comprising 500 or more contact hours during the period of 12 months starting with the first day of the academic year of the course in question;

“period of part-time study” (“*cyfnod astudio rhan-amser*”) means a period of study on one or more designated courses and comprising not less than 275 contact hours nor more than 499 contact hours during the period of 12 months starting with the first day of the academic year of the course in question;

“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 regulation 9 (in the case of an eligible student), regulation 10 (in the case of an eligible student’s parent), regulation 11 (in the case of an eligible student’s partner) or regulation 12 (in the case of the partner of an eligible student’s parent);

“taxable income” (“*incwm trethadwy*”) means, in relation to regulation 9, in respect of the Academic Year 2008/2009 and, in relation to regulation 10, in respect (subject to paragraphs (3), (4) and (5) of regulation 10) of the preceding financial year, a person’s taxable income from all sources computed as for the purposes of—

- (i) the Income Tax Acts;
- (ii) the income tax legislation of another Member State which applies to the person’s income; or
- (iii) where the legislation of more than one Member State 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 regulation 10).

## **Eligibility**

**3.—**(1) An eligible student qualifies for an Assembly Learning Grant in connection with a period of full-time study or a period of part-time study subject to and in accordance with these Regulations.

(2) A person is an eligible student in connection with a designated course if:

- (a) in assessing his or her application for support the Welsh Ministers determine that the person falls within one of the categories set out in Part 2 of Schedule 1 to the 2007 Regulations;
- (b) the person is not excluded by paragraph (3); and
- (c) the person has reached the age of 19 on or before 1 September 2008.

(3) A person shall not be an eligible student if:

- (a) the only paragraph in Part 2 of Schedule 1 of the 2007 Regulations into which he or she falls is paragraph 9;
- (b) the student has, in the opinion of the Welsh Ministers, shown himself or herself by his or her conduct to be unfitted to receive an Assembly Learning Grant;
- (c) the student has already received an Assembly Learning Grant in relation to his or her attendance on any course during an Academic Year 2008/2009; or
- (d) there has been bestowed on, or paid to the person in relation to the person’s attendance on the course—
  - (i) a healthcare bursary;
  - (ii) a Coleg Harlech bursary or an equivalent long course bursary provided by the Residential Colleges Committee or Scottish Further Education Funding Council;
  - (iii) separate funding by the Welsh Assembly Government in respect of a Work Based Learning Programme; or

(iv) such other financial support from public funds as determined by the Welsh Ministers.

### **Academic progression**

4.—(1) Subject to paragraph (2) and regulation 5, the Welsh Ministers must not pay an Assembly Learning Grant to a student in respect of the Academic Year 2008/2009 or part of that academic year unless they are satisfied on reasonable grounds that the period of study concerned involves academic progression for the student in comparison with study undertaken by the student in previous academic years.

(2) The Welsh Ministers may pay an Assembly Learning Grant to a student for a repeated academic year if that year is a repeat of a preceding academic year that the student was unable to complete because of compelling personal reasons.

### **Transfers**

5. Where a student who is entitled to an Assembly Learning Grant in accordance with these Regulations transfers to another designated course comprising a period of full-time study or a period of part-time study during the Academic Year 2008/2009, the Welsh Ministers may pay an Assembly Learning Grant to that student for the remainder of the Academic Year 2008/2009, except that if—

- (a) the Welsh Ministers are satisfied on reasonable grounds that the new course does not involve academic progression for the student as compared to the course from which he or she has transferred; and
- (b) the student enrolls on the course to which he or she is transferring more than 20 weeks after the start of the previous course,

no Assembly Learning Grant is payable.

### **Applications**

6.—(1) A person must apply for support in connection with these Regulations by completing and submitting to the Welsh Ministers an application in such form and accompanied by such documentation and by such time as the Welsh Ministers may require.

(2) The Welsh Ministers may take such steps and make such enquiries as they consider necessary to determine whether the applicant is an eligible student, whether the applicant qualifies for support and the amount of support payable, if any.

(3) The Welsh Ministers must notify the applicant of whether or not the applicant qualifies for support and if the applicant does qualify, the amount of support payable in respect of the Academic Year 2008/2009, if any.

### **Grant entitlement**

7.—(1) An eligible student who qualifies for support in connection with a period of full time study in accordance with these Regulations receives an amount as follows—

- (a) where the household income is £5,745 or less, he or she receives £1,500;
- (b) where the household income exceeds £5,745 but does not exceed £11,490, he or she receives £750; and
- (c) where the household income exceeds £11,490 but does not exceed £17,250, he or she receives £450.

(2) An eligible student who qualifies for support in connection with a period of part—time study in accordance with these Regulations receives an amount as follows—

- (a) where the household income is £5,745 or less, he or she receives £750;
- (b) where the household income exceeds £5,745 but does not exceed £11,490, he or she receives £450; and
- (c) where the household income exceeds £11,490 but does not exceed £17,250, he or she receives £300.

### Household Income

8.—(1) Household income for the purpose of these Regulations is calculated in accordance with this regulation and regulations 9 to 12.

- (2) The household income is—
  - (a) in the case of an eligible student who is not an independent eligible student—
    - (i) the residual income of the eligible student, or
    - (ii) the residual income of the eligible student's parent (subject to regulation 10(9)) aggregated with the residual income of the partner of the student's parent provided that the Welsh Ministers have selected that parent under regulation 10(9),whichever of the two incomes is the higher;
  - (b) in the case of an independent eligible student who has a partner, the residual income of the eligible student or the residual income of the eligible student's partner, whichever of the two incomes is the higher; or
  - (c) in the case of an independent eligible student who does not have a partner, the residual income of the eligible student.

### Calculation of eligible student's residual income

9.—(1) Except where the student is undertaking a designated course comprising a period of part-time study, for the purpose of determining the residual income of an eligible student, there is 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 the relevant year, 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 his or her 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 insurance) in respect of which relief is given under section 273 of the Income and Corporation Taxes Act 1988<sup>(5)</sup>, or under section 188 of the Finance Act 2004<sup>(6)</sup>, or where the eligible student's income is computed for the purposes 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 only paragraph in Part 2 of Schedule 1 to the 2007 Regulations into which an eligible student falls is paragraph 9 and his or her income arises from sources or under legislation different from sources or legislation normally relevant to a person referred to in paragraph 9 of Part 2 of Schedule 1 to the 2007 Regulations, his or her income is not disregarded in accordance with paragraph (1) but is instead disregarded to the extent necessary to ensure that he or she is treated no

(5) 1988 c. 1; section 273 was amended by the Finance Act 1988 (c. 39), section 35 and Schedule 3, paragraph 10; the Income Tax (Trading and Other Income) Act 2005 (c. 5), sections 882 and 883 and Schedule 1, the Finance Act 2004 (c. 12), section 281 and Schedule 35, the Income Tax Act 2007 (c. 3), section 1027 and Schedule 1 and the Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regulations 17 and 59.

(6) 2004 c. 12; section 188 was amended by the Finance Act 2007 (c. 11), sections 68, 69, 114 and Schedules 18 and 19.

less favourably than a person who is referred to in any paragraph of Part 2 of Schedule 1 to the 2007 Regulations would be treated if in similar circumstances and in receipt of similar income.

(3) 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;
- (b) otherwise, the value of the sterling which the income would purchase using the rate for the month in which it is received published by the Office for National Statistics(7).

### **Calculation of parent’s residual income**

**10.**—(1) For the purposes of determining the taxable income of an eligible student’s parent, 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 Member State, any comparable personal reliefs;
- (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 paragraph (2),

are not made or permitted.

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

- (a) the gross amount of any premium or sum relating to a pension (not being a premium 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 section 188 of the Finance Act 2004, or where the income is computed for the purposes of the income tax legislation of another Member State, 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) in any case where income is computed for the purposes of the Income Tax Acts by virtue of paragraph (6) any sums equivalent to the deduction mentioned in paragraph (2)(a), provided that any sums so deducted do not exceed the deductions which would be made if the whole of the eligible student’s parent’s income were in fact income for the purposes of the Income Tax Acts;

(3) Where the Welsh Ministers are satisfied that the income of the parent in the financial year beginning immediately before the relevant year (“the current financial year”) is, as a result of some event beyond his or her control, likely to be less than the sterling value of his or her income in the preceding financial year to such an extent that it would affect the student’s entitlement if entitlement were to be based on the current financial year they may, 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 parent in any financial year is, as a result of some event beyond his or her control, likely to be and to continue after that year to be less than the sterling value of his or her income in the previous financial year to such an extent that it would affect the student’s entitlement if entitlement were to be based on the current financial year they may, for the purpose of enabling the eligible student to attend the course without hardship, ascertain the household income for the academic year of the eligible student’s course in which that

event occurred by taking as the residual income of the parent 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 parent 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 regulation to a preceding financial year means 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 parent is in receipt of any income which does not form part of his or her income for the purposes of the Income Tax Acts or the income tax legislation of another Member State by reason only that—

- (a) he or she is not resident, ordinarily resident or domiciled in the United Kingdom or another Member State;
- (b) the income does not arise in the United Kingdom or another Member State; 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 purposes of these Regulations is computed as though the income under this paragraph were part of his or her income for the purposes of the Income Tax Acts or the income tax legislation of another Member State, as the case may be.

(7) Where the income of the eligible student's parent is computed as for the purposes of the income tax legislation of another Member State, it is computed under the provisions of these Regulations in the currency of that Member State and the income of the eligible student's parent for the purposes of these Regulations 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 one of the eligible student's parents dies either before or during the relevant year and that parent's income has been or would be taken into account for the purpose of determining the household income, the household income is—

- (a) where the parent dies before the relevant year, determined by reference to the income of the surviving parent; or
- (b) where the parent dies during the relevant year, the aggregate of—
  - (i) the appropriate proportion of the household income determined by reference to the income of both parents, being the proportion in respect of that part of the relevant year during which both parents were alive; and
  - (ii) the appropriate proportion of the household income determined by reference to the income of the surviving parent, being the proportion in respect of that part of the relevant year remaining after the death of the other parent.

(9) Where the Welsh Ministers determine that the parents do not ordinarily live together throughout the relevant year, the household income is determined by reference to the income of whichever parent the Welsh Ministers consider the more appropriate under the circumstances.

(10) Where the Welsh Ministers determine that the parents do not ordinarily live together for part only of the relevant year, the household income is determined by reference to the aggregate of—

- (a) the appropriate proportion of the household income determined in accordance with paragraph (9), being the proportion in respect of that part of the relevant year for which the parents do not so live together; and
- (b) the appropriate proportion of the household income determined otherwise in respect of the remainder of the relevant year.

### Calculation of eligible student's partner's residual income

11.—(1) Subject to paragraphs (2), (3) and (4) of this regulation and with the exception of paragraphs (8), (9) and (10) of regulation 10, an eligible student's partner's residual income is determined in accordance with regulation 10, references to the parent being construed as references to the eligible student's partner.

(2) Where the Welsh Ministers determine that the eligible student and his or her partner do not ordinarily live together throughout the relevant year, the partner's income is not taken into account in determining the household income.

(3) Where the Welsh Ministers determine that the eligible student and his or her partner do not ordinarily live together for part only of the relevant year, the partner's residual income is determined by reference to his or her residual income under 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 ordinarily live together.

(4) 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 parent's partner's residual income

12. The residual income of an eligible student's parent's partner whose residual income is part of the household income by virtue of regulation 8(2)(a) is determined in accordance with regulation 11, references to the eligible student's partner being construed as references to the eligible student's parent's partner and references to the eligible student being construed as references to the eligible student's parent.

### Independent eligible student

13.—(1) For the purpose of these Regulations an independent eligible student is an eligible student in every case where—

- (a) he or she is aged 25 or over on the first day of the relevant year;
- (b) he or she is married or is in a civil partnership before the beginning of the relevant year, whether or not the marriage or civil partnership is still subsisting;
- (c) he or she has no parent living;
- (d) the Welsh Ministers are satisfied that neither of his or her parents can be found or that it is not reasonably practicable to get in touch with either of them;
- (e) he or she has communicated with neither of his or her parents for the period of one year before the beginning of the relevant year or, in the opinion of the Welsh Ministers, he or she can demonstrate on other grounds that he or she is irreconcilably estranged from his or her parents;
- (f) he or she was looked after by a local authority within the meaning of section 22 of the Children Act 1989<sup>(8)</sup> throughout any three-month period ending on or after the date on which he or she attained the age of 16 and before the first day of the first academic year of the course ("the relevant period") provided that he or she has not in fact at any time during the relevant period been under the charge or control of his or her parents;
- (g) his or her parents are residing outside the European Community and the Welsh Ministers are satisfied that either—

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<sup>(8)</sup> 1989 c. 41; section 22 was amended by the Local Government Act 2000 (c. 22), section 107 and Schedule 5, the Children (Leaving Care) Act 2000 (c. 35), section 2, the Adoption and Children Act 2002 (c. 38), section 116 and the Children Act 2004 (c. 31), section 52.



- (i) the assessment of the household income by reference to their residual income would place those parents in jeopardy; or
- (ii) it would not be reasonably practicable for those parents as a result of the calculation of any contribution under regulation 8 to send any relevant funds to the United Kingdom;
- (h) regulation 10(9) applies and the parent whom the Welsh Ministers considered the more appropriate for the purposes of that paragraph has died (irrespective of whether the parent in question had a partner);
- (i) he or she is a member of a religious order who resides in a house of that order;
- (j) he or she—
  - (i) has care of a person under 18 years of age on the first day of the relevant year; or
  - (ii) has had care of a person under 18 years of age at any time during the present course prior to the first day of the relevant year;
- (k) he or she has supported himself or herself out of his or her earnings for any period or periods ending before the first academic year of the course which periods together aggregate not less than three years, and for the purposes of this paragraph he or she is treated as supporting himself or herself out of his or her earnings during any period in which—
  - (i) he or she was participating in arrangements for training for the unemployed under any scheme operated by, sponsored or funded by any state authority or agency, whether national, regional or local (“a relevant authority”);
  - (ii) he or she was in receipt of benefit payable by any relevant authority in respect of a person who is available for employment but who is unemployed;
  - (iii) he or she was available for employment and had complied with any requirement of registration imposed by a relevant authority as a condition of entitlement for participation in arrangements for training or receipt of benefit;
  - (iv) he or she held a State Studentship or comparable award;
  - (v) he or she received any pension, allowance or other benefit paid by any person by reason of a disability to which he or she is subject, or by reason of confinement, injury or sickness.

## Attendance

14.—(1) The Welsh Ministers may recalculate an applicant’s entitlement to an Assembly Learning Grant in accordance with paragraph (2) if the applicant’s attendance on the designated course in respect of which he or she has made an application for an Assembly Learning Grant is unsatisfactory.

(2) The formula for re-calculation is—

$$\frac{\text{Actual Attendance}}{\text{Possible Attendance}} \times \text{ALG} = \text{Recalculated Entitlement}$$

(3) In this Regulation—

“actual attendance” (“*mynychu gwir*”) means the number of days attendance by the applicant notified to the Welsh Ministers by the institution delivering the course, excluding any number of days not exceeding 60 on which the applicant was absent due to illness;

“ALG” (“*GDC*”) means the entitlement to Assembly Learning Grant calculated in accordance with regulation 7;

“possible attendance” (“*mynychu posibl*”) means the number of days from the first to last day of required attendance on the course.

### **Payment of Assembly Learning Grant**

**15.**—(1) The Welsh Ministers must pay the grant for which an eligible student qualifies under these Regulations and in such instalments (if any) and at such times as they consider appropriate and in the exercise of their functions under this regulation they may make provisional payments pending the final calculation of the amount of grant for which the student qualifies.

(2) Payments may be made in such manner as the Welsh Ministers consider appropriate and they may make it a condition of entitlement to payment that the eligible student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

### **Overpayments**

**16.** An eligible student must, if so required by the Welsh Ministers, repay any amount paid to the student under these Regulations which for whatever reason exceeds the amount of Assembly Learning Grant to which he or she is entitled under these Regulations.

26 February 2008

*Jane Hutt*  
Minister for Children, Education, Lifelong  
Learning and Skills, one of the Welsh Ministers

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## EXPLANATORY NOTE

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

These Regulations provide for the payment of a means tested grant to help meet the costs of studying, to students in post compulsory education who are ordinarily resident in Wales and who are taking designated further education courses during the academic year beginning on or after 1 September 2008. The grant will be available to eligible students whether they choose to study in Wales or elsewhere in the UK.

The Regulations come into force on 1 April 2008 and apply in respect of grants for the academic year beginning on or after 1 September 2008 but before 1 September 2009.

Detailed guidance has been prepared on the operation of the Regulations. Copies can be obtained from the Welsh Assembly Government, Student Finance Division, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ.