
WELSH STATUTORY INSTRUMENTS

2020 No. 1302 (W. 287)

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

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

Made - - - - 17 November 2020

Laid before Senedd Cymru 18 November 2020

*Coming into force in accordance with regulation 1(2)
and (3)*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State under sections 1 and 2 of the Education (Fees and Awards) Act 1983(1) and sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998(2)

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

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- (1) 1983 c. 40; section 1 was amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 19; the Education Act 1994 (c. 30), Schedule 2, paragraph 7; the Education Act 1996 (c. 56), Schedule 37, paragraph 57; the Learning and Skills Act 2000 (c. 21), Schedule 9, paragraphs 1 and 11; the Education Act 2002 (c. 32), Schedule 21, paragraph 5 and Schedule 22; the Education Act 2005 (c. 18), Schedule 14, paragraph 9; S.I. 2005/3238, Schedule 1, paragraph 9; S.I. 2010/1158, Schedule 2, paragraph 1; the Education Act 2011 (c. 21), Schedule 5, paragraph 5 and Schedule 16, paragraph 5; and the Deregulation Act 2015 (c. 20), Schedule 14, paragraph 33. Section 2 was amended by the Teaching and Higher Education Act 1998 (c. 30), section 44 and Schedule 4.
- (2) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7; the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257; the Education Act 2011 (c. 21), section 76; S.I. 2013/1181 and the Higher Education and Research Act 2017 (c. 29), section 88. See section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.
- (3) The functions of the Secretary of State in section 1 of the 1983 Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 2006/1458 with effect from 8 June 2006. The functions of the Secretary of State in section 2 of the 1983 Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 1999/672. The Secretary of State’s functions in section 22(2)(a) to (i) and (k) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with functions under subsection (2)(a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (4) 2015 anaw 1.

PART 1

TITLE, COMMENCEMENT AND APPLICATION

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

(2) This regulation and regulation 2 come into force immediately before implementation period completion day.

(3) The remainder of these Regulations come into force on implementation period completion day.

(4) These Regulations apply in relation to Wales.

PART 2

REVOCATION OF REGULATIONS

2. The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019(5) and the Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019(6) are revoked.

PART 3

AMENDMENT OF REGULATIONS

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

3. The Education (Fees and Awards) (Wales) Regulations 2007(7) are amended as follows.

Amendments to regulation 2

4. In regulation 2 (interpretation)—

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

(b) in paragraph (4)—

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

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

(5) S.I. 2019/424 (W. 98).

(6) S.I. 2019/1039 (W. 182).

(7) S.I. 2007/2310 (W. 181), amended by S.I. 2008/1259 (W. 126), S.I. 2010/1142 (W. 101), S.I. 2011/1978 (W. 218), S.I. 2013/1792 (W. 179), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2019/1192 (W. 209); there are other amending instruments but none is relevant.

- (iii) for “the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland, Turkey and the overseas territories”;
- (c) in paragraph (5)(b) and (c), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (d) in paragraph (6)—
 - (i) for “the territory comprising the European Economic Area and Switzerland” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;
 - (ii) for “the territory comprising the European Economic Area, Switzerland and the overseas territories” substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;
 - (iii) for “the territory comprising the European Economic Area, Switzerland and Turkey” substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area, Switzerland and Turkey”;
- (e) in paragraph (7), after “an area” insert “other than the United Kingdom or Gibraltar”.

Amendments to the Schedule

5.—(1) The Schedule is amended as follows.

(2) In paragraph 1—

(a) at the appropriate place insert—

““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020(8);”;

““EU national” (“*gwladolyn o’r UE*”) means a national of a Member State of the European Union;”;

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

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

(b) omit the definition of “EC national”;

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

(d) in the definition of “family member”, for “EC national” substitute “EU national” in each place it occurs;

(e) for the definition of “right of permanent residence” substitute—

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

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

- (ii) in paragraph (c), after “the territory comprising” insert “the United Kingdom,”;
- (c) for sub-paragraph (1A) substitute—
 - “(1A) Paragraph (c) of sub-paragraph (1) does not apply to a family member of a person who—
 - (a) is—
 - (i) a United Kingdom national who has exercised a right to reside in the territory of a Member State under Article 7(1) of Directive 2004/38; or
 - (ii) an EU national; and
 - (b) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.”;
- (d) after sub-paragraph (2) insert—
 - “(3) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day.”
- (8) In paragraph 10 (EC nationals)—
 - (a) in sub-paragraph (1)(a), for “an EC national other than a United Kingdom national” substitute “an EU national”;
 - (b) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom,”;
 - (c) in sub-paragraph (2), for “an EC national other than a United Kingdom national” substitute “an EU national”.
- (9) For paragraph 11 (children of Swiss nationals) substitute—
 - “**11.**—(1) A person who—
 - (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
 - (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
 - (c) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
 - (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).
 - (2) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day.”
- (10) In paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom,”.

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

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

Amendments to Schedule 1

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

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

(a) in sub-paragraph (1)—

(i) at the appropriate place insert—

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

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

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

(ii) in the definition of “EEA national”, omit “other than the United Kingdom”;

(iii) for the definition of “right of permanent residence” substitute—

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

(b) in the following sub-paragraphs, omit “other than the United Kingdom” in each place it occurs—

(i) sub-paragraph (2)(b);

(ii) sub-paragraph (3)(b);

(iii) sub-paragraph (4)(b);

(iv) sub-paragraph (5)(b);

(c) in sub-paragraphs (7) and (8), after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs.

(3) In Part 2 (categories)—

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

(i) for sub-paragraph (a) substitute—

“(a) who, on the relevant date, either—

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

(ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement

⁽⁹⁾ S.I. 2014/3037 (W. 303), amended by S.I. 2016/211 (W. 84), S.I. 2018/814 (W. 165) and S.I. 2019/235 (W. 54).

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

(iv) after sub-paragraph (4) insert—

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

(f) in paragraph 10 (EU nationals)—

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

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

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

“11.—(1) A person who—

(a) on the relevant date, is the child of a Swiss national who is entitled to support from the Secretary of State by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;

(b) is ordinarily resident in Wales on the relevant date;

(c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

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

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

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

Amendments to Schedule 2

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

(2) In Part 1 (interpretation), paragraph 1(1), in the definition of “taxable income”—

(a) in paragraph (b), for “another EEA State” substitute “an EEA State”;

(b) for paragraph (c) substitute—

“(c) where the legislation of—

(i) the United Kingdom and one or more EEA State or Switzerland;

(ii) more than one EEA State; or

(iii) an EEA State and Switzerland,

applies to the period, the legislation under which the Welsh Ministers consider the person will pay the largest amount of tax in that period (except as otherwise provided in paragraph 4).”.

(3) In Part 2 (calculation of contribution)—

(a) in paragraph 3(1)(b) (calculation of the student’s residual income), for “another Member State” substitute “a Member State”;

- (b) in paragraph 4 (calculation of eligible student's partner's residual income), for "another EEA State" substitute "an EEA State" in each place it occurs.

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

9.—(1) The Schedule to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015⁽¹⁰⁾ is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1)—

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

(ii) at the appropriate place insert—

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

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

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

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

(iv) for the definition of “right of permanent residence” substitute—

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

(b) in sub-paragraph (3)—

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

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

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

(c) in sub-paragraph (4)(b) and (c), after “the territory comprising” insert “the United Kingdom, Gibraltar;”;

(d) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.

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

⁽¹⁰⁾ S.I. 2015/1484 (W. 163), amended by S.I. 2016/276 (W. 100), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2019/1192 (W. 209).

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

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

(a) is—

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

(ii) an EU national; and

(b) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.”;

(c) after sub-paragraph (3) insert—

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

(8) In paragraph 10 (EU nationals)—

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

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

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

(9) For paragraph 11 (children of Swiss nationals) substitute—

“**11.**—(1) A person who—

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

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

(c) has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and

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

(2) Any description of person who would have fallen within this paragraph immediately before implementation period completion day is to be treated as falling within this paragraph on and after implementation period completion day.”

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

Amendments to the Education (Student Support) (Wales) Regulations 2017

10. The Education (Student Support) (Wales) Regulations 2017(**11**) are amended as follows.

(11) S.I. 2017/47 (W. 21), amended by S.I. 2018/191 (W. 42), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54), S.I. 2019/1192 (W. 209) and S.I. 2020/142 (W. 25).

Amendment to regulation 2

11. In regulation 2(1) (interpretation), omit the definition of “right of permanent residence”.

Amendments to regulation 15

12. In regulation 15 (events)—

- (a) in paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;
- (b) for paragraph (e) substitute—
 - “(e) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendment to regulation 23

13. For regulation 23(12)(d) (general qualifying conditions for grants for living costs) substitute—

“(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to regulation 30

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

- (a) in paragraph (ii), for “another Member State” substitute “a Member State”;
- (b) for paragraph (iii) substitute—
 - “(iii) where the legislation of—
 - (aa) the United Kingdom and one or more Member State; or
 - (bb) more than one Member State,applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is greatest,”.

Amendment to regulation 49

15. For regulation 49(2)(d) (students becoming eligible during the course of an academic year) substitute—

“(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to regulation 65

16. In regulation 65(4) (students becoming eligible during the course of the academic year)—

- (a) in sub-paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;
- (b) for sub-paragraph (f) substitute—
 - “(f) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to regulation 82

17. In regulation 82(4) (students becoming eligible during the course of the academic year)—

- (a) in sub-paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;
- (b) for sub-paragraph (f) substitute—
 - “(f) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to regulation 95

- 18.** In regulation 95(1) (part-time grants for dependants – interpretation), in sub-paragraph (o)—
- (a) in paragraph (ii), for “another Member State” substitute “a Member State”;
 - (b) for paragraph (iii) substitute—
 - “(iii) where the legislation of—
 - (aa) the United Kingdom and one or more Member State; or
 - (bb) more than one Member State,applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is the greatest,”.

Amendment to regulation 111

- 19.** For regulation 111(2)(d) (students becoming eligible during the course of an academic year) substitute—
- “(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to Schedule 1

- 20.**—(1) Schedule 1 (eligible students) is amended as follows.
- (2) In Part 1 (interpretation), paragraph 1—
- (a) in sub-paragraph (1)—
 - (i) omit “other than the United Kingdom” in each place it occurs;
 - (ii) at the appropriate place insert—
 - ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
 - ““residence scheme immigration rules” (“*rheolau mewnfudo’r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
 - ““right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”;
 - ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaid*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;

- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar” in each place it occurs;
 - (c) in sub-paragraph (6), after “an area” insert “other than the United Kingdom or Gibraltar”.
- (3) In Part 2 (categories)—
- (a) in paragraph 3 (persons who are settled in the United Kingdom)—
 - (i) for sub-paragraph (a) substitute—
 - “(a) either—
 - (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or
 - (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day.”;
 - (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
 - (b) in paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
 - (c) in paragraph 7 (workers, employed persons, self-employed persons and their family members)—
 - (i) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);
 - (ii) in sub-paragraph (1)(b) as so renumbered, after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
 - (iii) after sub-paragraph (1) as so renumbered insert—
 - “(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
 - (d) in paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
 - (i) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;
 - (ii) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
 - (iii) in sub-paragraph (2)—
 - (aa) for “has a right” substitute “had the right” in each place it occurs;
 - (bb) for “goes” substitute “has gone”;
 - (iv) after sub-paragraph (2) insert—
 - “(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”;
 - (e) in paragraph 9 (EU nationals)—

- (i) for sub-paragraph (1)(a) substitute—
 - “(a) on the first day of the first academic year of the course is—
 - (i) an EU national;
 - (ii) a United Kingdom national who has exercised a right of residence;
or
 - (iii) the family member of a person in sub-paragraph (i) or (ii);”;
 - (ii) in sub-paragraphs (1)(c) and (d) and (2), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (iii) in sub-paragraph (4), after “that person” insert “has resided in Gibraltar or”;
 - (iv) after sub-paragraph (4) insert—
 - “(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (f) in paragraph 10 (EU nationals)—
 - (i) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;
 - (ii) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (iii) in sub-paragraph (2), omit “other than a United Kingdom national”;
- (g) for paragraph 11 (children of Swiss nationals) substitute—
 - “**11.**—(1) A person who—
 - (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
 - (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
 - (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).
 - (2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (h) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

Amendments to Schedule 4

- 21.** In Schedule 4 (college fee loans), paragraph 6—
 - (a) in sub-paragraph (c), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;
 - (b) for sub-paragraph (d) substitute—

“(d) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to Schedule 5

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

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

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

(b) for sub-paragraph (iii) substitute—

“(iii) where the legislation of—

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

(bb) more than one Member State,

applies to the period, a person’s total income from all sources as determined for the purposes of the income tax legislation under which the Welsh Ministers consider that a person’s total income in that period is greatest (except as otherwise provided in paragraph 5),”.

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

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

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

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

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

(ii) sub-paragraph (6), in each place it occurs;

(iii) sub-paragraph (7).

Amendments to Schedule 6

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

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

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

(b) for sub-paragraph (iii) substitute—

“(iii) where the legislation of—

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

(bb) more than one Member State,

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

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

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

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

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

(ii) sub-paragraph (6), in each place it occurs;

(iii) sub-paragraph (7).

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

24. The Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017(12) are amended as follows.

Amendment to regulation 2

25. In regulation 2(1) (interpretation), omit the definition of “right of permanent residence”.

Amendments to regulation 8

26. In regulation 8 (events)—

- (a) in paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 9 of Schedule 1 by virtue of paragraph 9(5) of that Schedule other than as a family member”;
- (b) for paragraph (e) substitute—
 - “(e) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to Schedule 1

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

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

(a) in sub-paragraph (1)—

- (i) omit “other than the United Kingdom” in each place it occurs;
- (ii) at the appropriate place insert—

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

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

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

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

- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;
- (c) in sub-paragraph (6), after “an area” insert “other than the United Kingdom or Gibraltar”.

(3) In Part 2 (categories)—

(12) S.I. 2017/523 (W. 109), amended by S.I. 2017/712 (W. 169), S.I. 2018/277 (W. 53), S.I. 2018/814 (W. 165), S.I. 2019/895 (W. 161), S.I. 2019/1192 (W. 209) and S.I. 2020/142 (W. 25).

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

- (ii) a United Kingdom national who has exercised a right of residence;
or
- (iii) the family member of a person in sub-paragraph (i) or (ii);”;
- (ii) in sub-paragraphs (1)(c) and (d) and (2), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
- (iii) in sub-paragraph (4), after “that person” insert “has resided in Gibraltar or”;
- (iv) after sub-paragraph (4) insert—
 - “(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (f) in paragraph 10 (EU nationals)—
 - (i) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;
 - (ii) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (iii) in sub-paragraph (2), omit “other than a United Kingdom national”;
- (g) for paragraph 11 (children of Swiss nationals) substitute—
 - “11.—(1) A person who—
 - (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
 - (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
 - (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).
 - (2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (h) in paragraph 12(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

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

28. The Education (Student Support) (Wales) Regulations 2018(13) are amended as follows.

Amendments to regulation 80

29. In regulation 80(2)(b) (qualifying for a tuition fee loan during the academic year)—

(13) S.I. 2018/191 (W. 42), amended by S.I. 2018/813 (W. 164), S.I. 2018/814 (W. 165), S.I. 2019/235 (W. 54) and S.I. 2020/142 (W. 25).

- (a) in paragraph (iii), after “EU national” insert “or of a person who is eligible under paragraph 6(1) of Schedule 2 by virtue of paragraph 6(1A) of that Schedule other than as a family member”;
- (b) for paragraph (iv) substitute—
 - “(iv) the student becomes a person described in paragraph 1(2)(a) of Schedule 2;”.

Amendment to regulation 81

30. For regulation 81(3)(b)(iii) (qualifying for grants or maintenance loan during the academic year) substitute—

- “(iii) the student becomes a person described in paragraph 1(2)(a) of Schedule 2;”.

Amendments to Schedule 2

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

- (2) In paragraph 1(2) (category 1 – persons settled in the United Kingdom)—
 - (a) for paragraph (a) substitute—
 - “(a) either—
 - (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence, or
 - (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day;”
 - (b) in paragraph (d), after “territory comprising” insert “the United Kingdom, Gibraltar;”.
- (3) In paragraph 4 (category 4 – workers, employed persons, self-employed persons and their family members)—
 - (a) in sub-paragraphs (1)(b) and (2)(b), after “the territory comprising” insert “the United Kingdom, Gibraltar;”;
 - (b) after sub-paragraph (2) insert—
 - “(2A) Any description of person who would have been eligible under sub-paragraph (2) immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
 - (c) in sub-paragraphs (3) and (4), omit “other than the United Kingdom” in each place it occurs.
- (4) In paragraph 5 (category 5 – persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
 - (a) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;
 - (b) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar;”;
 - (c) in sub-paragraph (3)(c), for “has a right” substitute “had the right”;
 - (d) in sub-paragraph (4)—

- (i) in paragraph (a), for “has a right” substitute “had the right”;
- (ii) in paragraph (b), for “goes” substitute “has gone”;
- (e) after sub-paragraph (5) insert—
 - “(6) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”
- (5) In paragraph 6 (category 6 - EU nationals)—
 - (a) for sub-paragraph (1)(a) substitute—
 - “(a) who, on the first day of the first academic year of the course, is—
 - (i) an EU national,
 - (ii) a United Kingdom national who has exercised a right of residence, or
 - (iii) the family member of a person in sub-paragraph (i) or (ii),”;
 - (b) in sub-paragraph (1)(c) and (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (c) after sub-paragraph (1) insert—
 - “(1A) Any description of person who would have been eligible under sub-paragraph (1) immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
 - (d) in sub-paragraph (2)(a), omit “other than a United Kingdom national”;
 - (e) in sub-paragraph (2)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (f) for sub-paragraph (4) substitute—
 - “(4) For the purpose of sub-paragraph (1)(a), a United Kingdom national has exercised a right of residence if that person has resided in Gibraltar or has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.”
- (6) For paragraph 7 (category 7 - children of Swiss nationals) substitute—

“Category 7 – Children of Swiss nationals

- 7.—(1) A person who—
- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement,
 - (b) is ordinarily resident in Wales on the first day of the first academic year of the course,
 - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
 - (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).
- (2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”

- (7) In paragraph 8(1)(c) (category 8 – children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”
- (8) In paragraph 9 (ordinary residence – additional provision)—
- (a) after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;
- (b) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.
- (9) In paragraph 11 (interpretation)—
- (a) at the appropriate place insert—
- ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020.”;
- ““residence scheme immigration rules” (“*rheolau mewnfudo’r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020.”;
- ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaid*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020.”;
- (b) for the definition of “right of permanent residence” substitute—
- ““right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day.”.

Amendments to Schedule 3

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

- (2) In paragraph 4(1) (independent eligible students), in Case 6, before “the European Union” insert “the United Kingdom, Gibraltar and”.
- (3) In paragraph 9 (taxable income)—
- (a) in sub-paragraph (1)(b), for “another member State” substitute “a member State”;
- (b) for sub-paragraph (2) substitute—
- “(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of—
- (a) the United Kingdom and one or more member State, or
- (b) more than one member State,
- applies to the person in respect of the year under consideration, the person’s total income from all sources is the amount derived from the determination resulting in the greatest amount of total income, including any income which is required to be taken into account under paragraph 18.”
- (4) In the following paragraphs, for “another member State” substitute “a member State”—
- (a) paragraph 11 (deductions for the purpose of calculating residual income of an eligible student), Deduction B;
- (b) paragraph 15 (deductions for the purpose of calculating residual income of persons other than eligible student), Deduction A;

- (c) paragraph 18 (treatment of income not treated as income for income tax purposes), in each place it occurs;
- (d) paragraph 19(1) (P's income in currency other than sterling).

Amendments to Schedule 5

- 33.**—(1) Schedule 5 (Oxbridge college fee loans) is amended as follows.
- (2) In paragraph 4(2) (students becoming eligible during the course of an academic year)—
- (a) in paragraph (c), after “EU national” insert “or of a person who is eligible under paragraph 6(1) of Schedule 2 by virtue of paragraph 6(1A) of that Schedule other than as a family member”;
 - (b) for paragraph (d) substitute—
 - “(d) the student becomes a person described in paragraph 1(2)(a) of Schedule 2;”.

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

34. The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018(14) are amended as follows.

Amendment to regulation 2

- 35.** In regulation 2(1) (interpretation), omit the definition of “right of permanent residence”.

Amendments to regulation 8

- 36.** In regulation 8 (events)—
- (a) in paragraph (d), after “EU national” insert “or of a person who is eligible under paragraph 10 of Schedule 1 by virtue of paragraph 10(5) of that Schedule other than as a family member”;
 - (b) for paragraph (e) substitute—
 - “(e) the student becomes a person described in paragraph 3(a) of Schedule 1;”.

Amendments to Schedule 1

- 37.**—(1) Schedule 1 (eligible students) is amended as follows.
- (2) In Part 1, paragraph 1 (interpretation)—
- (a) in sub-paragraph (1)—
 - (i) omit “other than the United Kingdom” in each place it occurs;
 - (ii) at the appropriate place insert—
 - ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
 - ““residence scheme immigration rules” (“*rheolau mewnfudo'r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;

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

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

- (b) in sub-paragraphs (4) and (5), after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;
 - (c) in sub-paragraph (6), after “an area” insert “other than the United Kingdom or Gibraltar”.
- (3) In Part 2 (categories)—
- (a) in paragraph 3 (persons who are settled in the United Kingdom)—
 - (i) for sub-paragraph (a) substitute—
 - “(a) either—
 - (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; or
 - (ii) falls with Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day;”;
 - (ii) in sub-paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (b) in paragraph 7(1)(c) (workers, employed persons, self-employed persons and their family members), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (c) in paragraph 8 (workers, employed persons, self-employed persons and their family members)—
 - (i) sub-paragraphs (a), (b) and (c) are renumbered as sub-paragraph (1)(a), (b) and (c);
 - (ii) in sub-paragraph (1)(b) as so renumbered, after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (iii) after sub-paragraph (1) as so renumbered insert—
 - “(2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
 - (d) in paragraph 9 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
 - (i) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;

- (ii) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
- (iii) in sub-paragraph (2)—
 - (aa) for “has a right” substitute “had the right” in each place it occurs;
 - (bb) for “goes” substitute “has gone”;
- (iv) after sub-paragraph (2) insert—

“(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”;
- (e) in paragraph 10 (EU nationals)—
 - (i) for sub-paragraph (1)(a) substitute—
 - “(a) who, on the first day of the first academic year of the course, is—
 - (i) an EU national;
 - (ii) a United Kingdom national who has exercised a right of residence;
 - or
 - (iii) the family member of a person in sub-paragraph (i) or (ii);”;
 - (ii) in sub-paragraphs (1)(c) and (d) and (2), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
 - (iii) in sub-paragraph (4), after “that person” insert “has resided in Gibraltar or”;
 - (iv) after sub-paragraph (4) insert—

“(5) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (f) in paragraph 11 (EU nationals)—
 - (i) in sub-paragraph (1)(a), omit “other than a United Kingdom national”;
 - (ii) in sub-paragraph (1)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
 - (iii) in sub-paragraph (2), omit “other than a United Kingdom national”;
- (g) for paragraph 12 (children of Swiss nationals) substitute—

“**12.**—(1) A person who—

 - (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
 - (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course;
 - (d) in a case where the person’s ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

- (2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
- (h) in paragraph 13(c) (children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.

Amendments to the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019

38. The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019(15) are amended as follows.

Amendments to regulation 16

- 39.** In regulation 16(1)(b) (students becoming eligible during a course)—
- (a) in paragraph (iii), after “EU national” insert “or of a person who is eligible under paragraph 8(1) of Schedule 2 by virtue of paragraph 8(1A) of that Schedule other than as a family member”;
- (b) for paragraph (iv) substitute—
- “(iv) the student becomes a person described in paragraph 1(2)(a) of Schedule 2.”.

Amendments to Schedule 2

- 40.**—(1) Schedule 2 (categories of eligible students) is amended as follows.
- (2) In paragraph 1(2) (category 1 – persons settled in the United Kingdom)—
- (a) for paragraph (a) substitute—
- “(a) either—
- (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence, or
- (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before implementation period completion day had the facts pertaining to that person’s right to reside fallen to be considered immediately before implementation period completion day.”;
- (b) in paragraph (d), after “the territory comprising” insert “the United Kingdom, Gibraltar.”.
- (3) In paragraph 6 (category 6 – workers, employed persons, self-employed persons and their family members)—
- (a) in sub-paragraphs (1)(b) and (2)(b), after “the territory comprising” insert “the United Kingdom, Gibraltar.”;
- (b) after sub-paragraph (2) insert—
- “(2A) Any description of person who would have been eligible under sub-paragraph (2) immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;

- (c) in sub-paragraphs (3) and (4), omit “other than the United Kingdom” in each place it occurs.
- (4) In paragraph 7 (category 7 – persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
- (a) in sub-paragraph (1)(b), after “right of residence” insert “before implementation period completion day”;
 - (b) in sub-paragraph (1)(d) and (e), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (c) in sub-paragraph (3)(c), for “has exercised a right of permanent residence” substitute “had the right of permanent residence”;
 - (d) in sub-paragraph (4)—
 - (i) in paragraph (a), for “has a right” substitute “had the right”;
 - (ii) in paragraph (b), for “goes” substitute “has gone”;
 - (e) after sub-paragraph (5) insert—

“(6) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”
- (5) In paragraph 8 (category 8 – EU nationals)—
- (a) for sub-paragraph (1)(a) substitute—

“(a) who, on the first day of the first academic year of the course is—

 - (i) an EU national,
 - (ii) a United Kingdom national who has exercised a right of residence, or
 - (iii) the family member of a person in sub-paragraph (i) or (ii),”;
 - (b) in sub-paragraph (1)(c) and (d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (c) after sub-paragraph (1) insert—

“(1A) Any description of person who would have been eligible under sub-paragraph (1) immediately before implementation period completion day is to be eligible on and after implementation period completion day.”;
 - (d) in sub-paragraph (2)(a), omit “other than a United Kingdom national”;
 - (e) in sub-paragraph (2)(d), after “the territory comprising” insert “the United Kingdom, Gibraltar,”;
 - (f) for sub-paragraph (4) substitute—

“(4) For the purposes of sub-paragraph (1)(a), a United Kingdom national has exercised a right of residence if that person has resided in Gibraltar or has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.”
- (6) For paragraph 9 (category 9 – children of Swiss nationals) substitute—

“Category 9 - Children of Swiss nationals

- 9.—(1)** A person who—
- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement,
 - (b) is ordinarily resident in Wales on the first day of the first academic year of the course,

- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
 - (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).
- (2) Any description of person who would have been eligible under this paragraph immediately before implementation period completion day is to be eligible on and after implementation period completion day."
- (7) In paragraph 10(1)(c) (category 10 – children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.
- (8) In paragraph 11 (ordinary residence – additional provision)—
- (a) after “the territory comprising” insert “the United Kingdom, Gibraltar,” in each place it occurs;
 - (b) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.
- (9) In paragraph 13 (interpretation)—
- (a) at the appropriate place insert—
 - ““EEA EFTA separation agreement” (“*cytundeb gwahanu EFTA yr AEE*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
 - ““residence scheme immigration rules” (“*rheolau mewnfudo'r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
 - ““Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaid*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020.”;
 - (b) for the definition of “right of permanent residence” substitute—
 - ““right of permanent residence” (“*hawl i breswyllo'n barhaol*”) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;”.

Amendments to Schedule 3

- 41.**—(1) Schedule 3 (calculation of income) is amended as follows.
- (2) In paragraph 4(1) (independent eligible students), in Case 6, before “the European Union” insert “the United Kingdom, Gibraltar and”.
- (3) In paragraph 9 (taxable income)—
- (a) in sub-paragraph (1)(b), for “another member State” substitute “a member State”;
 - (b) for sub-paragraph (2) substitute—
 - “(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of—
 - (a) the United Kingdom and one or more member State, or

(b) more than one member State,

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

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

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

17 November 2020

Kirsty Williams
Minister for Education, one of the Welsh
Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to—

- (a) the Education (Fees and Awards) (Wales) Regulations 2007,
- (b) the Education (European University Institute) (Wales) Regulations 2014,
- (c) the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015,
- (d) the Education (Student Support) (Wales) Regulations 2017,
- (e) the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017,
- (f) the Education (Student Support) (Wales) Regulations 2018 (“the Student Support Regulations”),
- (g) the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018, and
- (h) the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

Regulation 2 revokes the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019 which were prepared for a “no-deal” Brexit and do not reflect amendments required to implement the EU withdrawal agreement, EEA EFTA separation agreement and the Swiss citizens’ rights agreement.

The principal amendments which these Regulations make to the Student Support Regulations ensure that the provisions continue to operate effectively following the withdrawal of the United Kingdom from the European Union and are as follows.

Regulations 31 and 32 amend definitions and references relating to the European Economic Area and the European Union used in Schedules 2 and 3 to the Student Support Regulations.

Regulation 32 also amends references to “Member state” in Schedule 3.

Regulation 31(9) amends the definition of “right of permanent residence” in paragraph 11 of Schedule 2 to the Student Support Regulations. The amended definition will capture those who would have had a right of permanent residence under [Directive 2004/38/EC](#) as it had effect immediately before implementation period completion day but who, after implementation period completion day, will instead have such rights under the EU withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens’ rights agreement, as implemented by the residence scheme immigration rules (defined in section 17(1) of the European Union (Withdrawal Agreement) Act 2020).

Regulation 31(2)(a) amends paragraph 1(2) of Schedule 2 to the Student Support Regulations to ensure that students who would have had a right of permanent residence under [Directive 2004/38/EC](#) but who now meet the requirements in Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens’ rights agreement are eligible for student support on the same basis as if they had a right of permanent residence.

Regulation 31(3)(b) amends paragraph 4 of Schedule 2 to ensure that a person who would have been eligible for support under this paragraph before implementation period completion day will continue to be eligible on and after implementation period completion day. Regulation 31(5)

makes equivalent amendments to paragraph 6 of Schedule 2 and regulation 31(6) makes equivalent amendments to paragraph 7 of Schedule 2.

Regulations 29(a) and 33(2)(a) are consequential on regulation 31(5)(c) and amend regulation 80 of, and paragraph 4 of Schedule 5 to, the Student Support Regulations respectively. Regulation 80(2)(a)(iii) and paragraph 4(2)(c) of Schedule 5 provide that a student who becomes a family member of an EU national during the course of an academic year may qualify for support in respect of that academic year. The amendments made by regulations 29 and 33 extend this provision to a student who becomes a family member of a person who is eligible by virtue of the new paragraph 6(1A) of Schedule 2.

Regulations 29(b), 30 and 33(2)(b) are consequential on regulation 31(2)(a) and amend regulations 80 and 81 of, and paragraph 4 of Schedule 2 to, the Student Support Regulations. Where those provisions currently refer to a person acquiring the right of permanent residence, they will instead refer to a student becoming a person described in paragraph 1(2)(a) of Schedule 2.

Regulation 31(4) makes amendments to paragraph 5 of Schedule 2 to the Student Support Regulations to reflect the fact that [Directive 2004/38/EC](#) will no longer have force in the United Kingdom on and after implementation period completion day.

Regulations 3 to 5 make equivalent amendments to the Education (Fees and Awards) (Wales) Regulations 2007.

Regulations 6 to 8 make equivalent amendments to the Education (European University Institute) (Wales) Regulations 2014.

Regulation 9 makes equivalent amendments to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015.

Regulations 10 to 23 make equivalent amendments to the Education (Student Support) (Wales) Regulations 2017.

Regulations 24 to 27 make equivalent amendments to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017.

Regulations 34 to 37 make equivalent amendments to the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018.

Regulations 38 to 41 make equivalent amendments to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

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