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WELSH STATUTORY INSTRUMENTS

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**2018 No. 656**

The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018

**PART 2**

ELIGIBILITY

**Eligible students**

**3.—**(1) An eligible student qualifies for a postgraduate doctoral degree loan in connection with a designated course subject to and in accordance with these Regulations.

(2) Subject to paragraphs (3) to (9), a person is an eligible student in connection with a designated course if in assessing the person's application for a postgraduate doctoral degree loan under regulation 9 the Welsh Ministers determine that the person falls within one of the categories set out in Part 2 of Schedule 1.

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

- (a) A has reached the age of 60 on the first day of the academic year in which the designated course starts;
- (b) A is in breach of any obligation to repay any loan;
- (c) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18;
- (d) A has, in the opinion of the Welsh Ministers, shown by A's conduct that A is unfitted to receive a postgraduate doctoral degree loan;
- (e) A is a prisoner, unless A is an eligible prisoner;
- (f) A is enrolled on a course which is—
  - (i) a designated course under regulation 5 (designated courses), 66 (designated distance learning courses) or 83 (designated part-time courses) of the 2017 Student Support Regulations and is receiving support under those Regulations for that course;
  - (ii) a designated course under regulation 4 (designated courses) of the 2017 Master's Degree Loans Regulations and is receiving support under those Regulations for that course;
  - (iii) a designated course under regulation 5 (designated courses) of the 2018 Student Support Regulations and is receiving support under those Regulations for that course;
- (g) A has already obtained an equivalent or higher qualification;
- (h) A is already enrolled on a designated course and is in receipt of a postgraduate doctoral degree loan under these Regulations for that course;
- (i) subject to paragraph (9), A has previously received a postgraduate doctoral degree loan under these Regulations;

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- (j) there has been bestowed on or paid to A in relation to A undertaking the course—
- (i) a healthcare bursary;
  - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 <sup>M1</sup>;
  - (iii) any allowance, bursary or award of similar description made under section 67(4)(a) of the Care Standards Act 2000 <sup>M2</sup> save to the extent that A is eligible for such a payment in respect of travel expenses;
  - (iv) any allowance, bursary or award of similar description made under section 116(2)(a) of the Regulation and Inspection of Social Care (Wales) Act 2016 <sup>M3</sup> save to the extent that A is eligible for such a payment in respect of travel expenses;
- (k) subject to paragraph (9), A has previously received a loan in respect of a course other than under these Regulations, where that loan was provided out of funds provided by a government authority within the United Kingdom;
- (l) A is, in relation to the course, in receipt of any allowance, bursary or award paid out of funds provided—
- (i) by a Research Council;
  - (ii) by, or on behalf of, United Kingdom Research and Innovation <sup>M4</sup>; or
- (m) there has been bestowed on or paid to A, in relation to the course, any allowance, bursary or award made under the KESS 2 Scheme.
- (4) Where the eligible student is undertaking a designated course which is a distance learning course, the student does not qualify for support in respect of that course unless the Welsh Ministers consider that the student is undertaking the course in Wales on the first day of the first academic year of the course, whether the course is a designated course at that date or is designated on a later date.
- (5) For the purposes of paragraph (4), a person (“A”) is to be treated as undertaking the course in Wales for any period during which—
- (a) A would have been undertaking the course in Wales but for the fact that—
    - (i) A,
    - (ii) A's spouse or civil partner,
    - (iii) A's parent,
    - (iv) where A is a dependent direct relative in the ascending line, A's child or child's spouse or civil partner,
 is or was temporarily employed in England, Scotland or Northern Ireland as a member of the regular naval, military or air forces of the Crown; or
  - (b) A is treated as ordinarily resident in Wales by virtue of paragraph 1(4) of Schedule 1 on the basis of temporary employment falling within paragraph 1(5)(a) of Schedule 1.
- (6) An eligible student ceases to be eligible for a postgraduate doctoral degree loan in respect of a distance learning course if the Welsh Ministers consider that the student is undertaking the course outside the United Kingdom notwithstanding whether that student has previously been considered by the Welsh Ministers to be undertaking their course within the United Kingdom.
- (7) Paragraph (6) does not apply to a person who is treated as being ordinarily resident in the United Kingdom by virtue of paragraph 1(4) of Schedule 1 on the basis of temporary employment falling within paragraph 1(5)(a) of Schedule 1.
- (8) For the purposes of paragraph (3)(b) and (c), “loan” means a loan made under any provision of the student loans legislation.

(9) The Welsh Ministers may deem a person described in paragraph (3)(i) or (3)(k) to be an eligible student where the Welsh Ministers are of the view that the person had not been able to complete the course to which the previous loan related due to compelling personal reasons.

(10) The Welsh Ministers may only exercise their discretion under paragraph (9) once in respect of a particular student.

#### Marginal Citations

- M1** S.S.I. 2007/151, as amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82 and S.S.I. 2017/180.
- M2** 2000 c. 14. Section 67(4)(a) was amended by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), section 185, Schedule 3, Part 2, paragraphs 40 and 43(d).
- M3** 2016 anaw 2.
- M4** United Kingdom Research and Innovation is a body corporate established by section 91 of the Higher Education and Research Act 2017 (c. 29). Sections 95 to 98 of that Act provide for United Kingdom Research and Innovation to make arrangements for the exercise of its functions on its behalf.

#### Designated courses

4.—(1) Subject to paragraphs (4) and (5), a course is a designated course for the purposes of section 22(1) of the 1998 Act and regulation 3 if —

- (a) the duration of the ordinary period of registration for the course is—
- (i) not less than three academic years; and
  - (ii) not more than eight academic years;
- (b) it is one of the following—
- (i) wholly provided by a publicly funded institution;
  - (ii) provided by a publicly funded institution situated in the United Kingdom on behalf of a publicly funded institution; or
  - (iii) provided by a publicly funded institution in conjunction with an institution which is situated outside the United Kingdom;
- (c) it is substantially provided in the United Kingdom; and
- (d) it is a course which—
- (i) leads to a doctoral degree granted or to be granted by a body falling within section 214(2)(a) or (b) of the Education Reform Act 1988<sup>M5</sup>; and
  - (ii) the teaching and supervision which comprise the course has been approved by that body.

(2) For the purposes of paragraph (1)(b) and (c)—

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
- (b) a course is substantially provided in the United Kingdom where at least half of the teaching and supervision which comprise the course is provided in the United Kingdom;
- (c) a university and any constituent college or institution in the nature of a college of a university is to be regarded as publicly funded if either the university or the constituent college or institution is publicly funded;

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- (d) an institution is not to be regarded as publicly funded by reason only that it receives public funds from the governing body of—
- (i) a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992 <sup>M6</sup>;
  - (ii) an eligible higher education provider as a qualifying connected institution in accordance with section 39 of the Higher Education and Research Act 2017 <sup>M7</sup>; and
- (e) a course is not to be regarded as provided on behalf of a publicly funded educational institution where a part of the course is provided by a private institution.
- (3) The designated course may, but need not, be a distance learning course.
- (4) A course is not a designated course for the purposes of regulation 3 if it is recognised as a designated course for the purposes of—
- (a) regulations 5 or 83 of the 2017 Student Support Regulations;
  - (b) regulation 4 of the 2017 Master's Degree Loans Regulations;
  - (c) regulation 5 of the 2018 Student Support Regulations.
- (5) For the purposes of section 22 of the 1998 Act <sup>M8</sup> and regulation 3, the Welsh Ministers may designate courses of higher education which are not designated under paragraph (1).
- (6) The Welsh Ministers may revoke or suspend the designation of a course which is designated under paragraph (5).

#### Marginal Citations

- M5** 1988 c. 40; section 214(2) was amended by the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8 and the Higher Education and Research Act 2017 (c. 29), section 53.
- M6** 1992 c. 13; section 65(3A) was inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27 and amended by the Higher Education and Research Act 2017 (c. 29), section 122(1) and Schedule 11, paragraph 15(1) and (6). Despite that amendment, S.I. 2018/245 provides that, for the period which begins 1 April 2018 and ends 31 July 2019, section 65(1) to (4) of the Further and Higher Education Act 1992 continues to apply as if paragraph 15 of the Higher Education and Research Act 2017 had not been commenced but as if the reference to “matters within the responsibility of the Higher Education Funding Council for England” in section 62(6)(a) of that 1992 Act were a reference to “matters within the responsibility of the Office for Students and, where applicable, United Kingdom Research and Innovation”. The Office for Students is body corporate established by section 1 of the Higher Education and Research Act 2017.
- M7** 2017 c. 29. This provision is not yet in force.
- M8** 1998 c. 30.

#### Period of eligibility

- 5.—(1) A student's status as an eligible student is retained in connection with a designated course until the status terminates in accordance with this regulation or regulation 3.
- (2) The period for which an eligible student retains the status referred to in paragraph (1) is the “period of eligibility”.
- (3) Subject to the following paragraphs and regulation 3, an eligible student's (“A's”) period of eligibility terminates—
- (a) at the end of the academic year in which the ordinary period of registration of A's designated course ends; or

(b) when A's initial thesis in relation to that course is submitted to the relevant academic authority,

whichever is the earlier.

(4) A's period of eligibility terminates when—

(a) A withdraws from A's designated course in circumstances where the Welsh Ministers are not obliged under regulation 6 to transfer A's status as an eligible student to another course; or

(b) A abandons or is expelled from A's designated course.

(5) The Welsh Ministers may terminate the period of eligibility where A has shown by A's conduct that A is unfitted to receive a postgraduate doctoral degree loan.

(6) If the Welsh Ministers are satisfied that A has failed to comply with any requirement to provide information under these Regulations or has provided information which is inaccurate in a material particular, the Welsh Ministers may take such of the following actions as they consider appropriate in the circumstances—

(a) terminate A's period of eligibility;

(b) determine that A no longer qualifies for a postgraduate doctoral degree loan;

(c) treat any postgraduate doctoral degree loan paid to the student as an overpayment which may be recovered under regulation 18.

(7) Where the period of eligibility terminates before the end of the academic year in which a student completes the designated course, the Welsh Ministers may, at any time, renew the period of eligibility for such period as they determine.

### **Transfer of status**

**6.—**(1) Where an eligible student (“A”) transfers from a designated course (“the old course”) to another designated course (“the new course”), the Welsh Ministers must transfer A's status as an eligible student to the new course where—

(a) the Welsh Ministers receive a request from the eligible student to do so;

(b) the Welsh Ministers are satisfied that one or more of the grounds for transfer in paragraph (2) applies; and

(c) the period of eligibility has not terminated.

(2) The grounds for transfer are—

(a) on the recommendation of the academic authority A ceases the old course and starts to undertake the new course at the same institution; or

(b) A starts to undertake the new course at another institution.

(3) Where A transfers under paragraph (1), A is entitled to receive in connection with the new course, the remainder of the postgraduate doctoral degree loan, if any, in accordance with regulation 14 and, where relevant, regulation 17, in respect of the old course.

### **Students becoming eligible during a course**

**7.** Where one of the events listed in regulation 8 occurs during the currency of a student's course, a student may qualify for a postgraduate doctoral degree loan, provided the student complies with the application provisions set out in Part 3.

### **Events**

**8.** The events are—

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- (a) the student's course becomes a designated course;
- (b) the student or the student's spouse, civil partner, parent, parent's spouse or parent's civil partner is recognised as a refugee or becomes a person granted stateless leave or a person with leave to enter or remain;
- (c) a state accedes to the EU where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the student acquires the right of permanent residence;
- (f) the student becomes the child of a Turkish worker;
- (g) the student becomes a person described in paragraph 7(1)(a) of Schedule 1;
- (h) the student becomes the child of a Swiss national; or
- (i) the student commences a designated course after the start date of the designated course as the relevant academic authority has permitted the student to commence the course at this later start date.

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