

**The Welsh Government Learning
Grant (Further Education) (Wales)
Scheme 2014**

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme provides for the payment of a means-tested grant (a “Welsh Government Learning Grant”) to help meet the costs of studying, to students aged 19 or over, ordinarily resident in Wales, and who take designated further education courses during the academic year beginning on or after 1 September 2014. The Welsh Government Learning Grant will be available to eligible students whether they choose to study in Wales or elsewhere in the UK.

The Scheme comes into force on 1 September 2014 and applies in respect of the academic year beginning on or after 1 September 2014 but before 1 September 2015.

The Assembly Learning Grant (Further Education) (Wales) Scheme 2013 (2013 No. 16) remains in force in respect of the academic year beginning on or after 1 September 2013 but before 1 September 2014.

2014 No. 21

SUBJECT

The Welsh Government Learning Grant (Further Education) (Wales) Scheme 2014

This scheme operates under section 14 of the Education Act 2002 and applies in relation to the academic year 2014/2015.

Title and application

1.—(1) The title of this Scheme is the Welsh Government Learning Grant (Further Education) (Wales) Scheme 2014.

(2) This Scheme applies in relation to Wales.

Interpretation

2. In this Scheme—

“2014 tax year” (“*blwyddyn dreth 20143*”) means the twelve month period ending 5 April 2014;

“2015 tax year” (“*blwyddyn dreth 2015*”) means the twelve month period ending 5 April 2015;

“Academic Year 2014/2015” (“*Blwyddyn Academaidd 2014/2015*”) means the period of twelve months beginning on—

- (a) 1 September 2014 where the academic year of the designated course in question begins on or after 1 September 2014 and before 1 January 2015;
- (b) 1 January 2015 where the academic year of the designated course in question begins on or after 1 January 2015 and before 1 April 2015;
- (c) 1 April 2015 where the academic year of the designated course in question begins on or after 1 April 2015 and before 1 July 2015;
- (d) 1 July 2015 where the academic year of the designated course in question begins on or after 1 July 2015 and before 1 September 2015;

“applicant” (“*ceisydd*”) means a person who applies for support in accordance with paragraph 6;

“contact hours” (“*oriau cyswllt*”) means the period of time expressed in hours in respect of which an eligible student receives teaching or supervision during periods of study or practice;

“designated course” (“*cwrs dynodedig*”) means a course designated by the Welsh Ministers for the purposes of this Scheme and the Academic Year 2014/2015, being a course of education (other than higher education) or training—

- (a) which requires attendance at a further education institution or at the premises of another provider of education or training, and
- (b) is funded by—
 - (i) the Welsh Government;
 - (ii) the Education Funding Agency;
 - (iii) the Chief Executive of Skills Funding; or
 - (iv) a public authority responsible for the funding of education (other than higher education) and training suitable to the requirements of persons aged 19 or over in Scotland or Northern Ireland;

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

higher education” (“*addysg uwch*”) means education provided by means of a course of any description in Schedule 6 of the Education Reform Act 1988(1);

“household income” (“*incwm yr aelwyd*”) has the meaning given in paragraph 9;

“independent eligible student” (“*myfyriwr cymwys annibynnol*”) has the meaning given in paragraph 14;

“learning grant agreement” (“*cytundeb grant dysgu*”) means a document signed by an applicant containing such acknowledgements and confirmations in relation to the Welsh Government Learning Grant as the Welsh Ministers may require;

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

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

“partner” (“*partner*”) means—

(a) in relation to an eligible student any of the following—

(i) the eligible student’s spouse;

(ii) the eligible student’s civil partner;

(iii) a person ordinarily living with the eligible student as the eligible student’s civil partner;

(iv) a person ordinarily living with the eligible student as the eligible student’s spouse;

(b) in relation to the parent of an eligible student any of the following other than another parent of the eligible student—

(i) the spouse of the eligible student’s parent;

(ii) the civil partner of the eligible student’s parent;

(iii) a person ordinarily living with the eligible student’s parent as the parent’s spouse;

(iv) a person ordinarily living with the eligible student’s parent as the parent’s civil partner;

“period of full-time study” (“*cyfnod o astudio llawnamser*”) means a period of study on one or more designated courses comprising 500 or more contact hours during the Academic Year 2014/2015;

“period of part-time study” (“*cyfnod o astudio rhan-amser*”) means a period of study on one or more designated courses and comprising not less than 275 contact hours nor more than 499 contact hours during the Academic Year 2014/2015;

“residual income” (“*incwm gweddilliol*”) means—

- (a) in respect of persons other than independent eligible students taxable income in respect of the 2014 tax year after the application of paragraph 10 (in the case of an eligible student), paragraph 11 (in the case of an eligible student’s parent and subject to the provisions of paragraphs 11(3) and 11(7)), paragraph 12 (in the case of an eligible student’s partner) or paragraph 13 (in the case of the partner of an eligible student’s parent);
- (b) in respect of independent eligible students, income from all sources in respect of the Academic Year 2014/2015;

“support” (“*cymorth*”) means financial assistance by way of the Welsh Government Learning Grant given by the Welsh Ministers pursuant to this Scheme;

“tax year” (“*blwyddyn dreth*”) means the 2014 tax year or 2015 tax year as the context may require;

“taxable income” (“*incwm trethadwy*”) means a person’s taxable income from all sources as computed for the purposes of—

- (a) the Income Tax Acts(1);
- (b) the income tax legislation of another Member State which applies to the person’s income; or
- (c) where the legislation of more than one Member State applies to the period, the legislation under which the Welsh Ministers consider the person will pay the largest amount of tax in that period (except as otherwise provided in paragraph 11).

(2) Where a person’s taxable income is computed in accordance with income tax legislation of another Member State other than by reference to a twelve month period ending 5 April in any year, “2014 tax year” and “2015 tax year” are deemed to mean whichever twelve month period applicable for the purposes of computing a person’s taxable income under that income tax legislation ends immediately before 1 September 2014 and 1 September 2015 respectively.

(3) Save as provided in paragraph 11(6), where income is received in a currency other than sterling, the value of that income for the purpose of this Scheme is—

- (a) if sterling is purchased with the income, the amount of sterling received;

(1) “The Income Tax Acts” is defined in Schedule 1 to the Interpretation Act 1978 (c.30) and means all enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax.

- (b) otherwise, the value of sterling which the income would purchase using the rate for the month in which it is received published by the Office for National Statistics(1);

“Welsh Government Learning Grant” (“*Grant Dysgu Llywodraeth Cymru*”) means financial assistance by way of grant pursuant to this Scheme.

Eligibility

3.—(1) An eligible student qualifies for support in connection with a period of full-time study or a period of part-time study undertaken during the Academic Year 2014/2015 subject to and in accordance with this Scheme.

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

- (a) in assessing the person’s application for support the Welsh Ministers determine that the person falls within one of the categories set out in Part 2 of the Schedule to this Scheme;
- (b) the person attained the age of 19 on or before 1 September 2014;
- (c) the person is not ineligible by reason of subparagraph (3); and
- (d) the person has signed a learning grant agreement.

(3) A person is ineligible if—

- (a) the person has, in the opinion of the Welsh Ministers, shown themselves by their conduct to be unfit to receive a Welsh Government Learning Grant;
- (b) the person has already received a Welsh Government Learning Grant in relation to attendance on any course during the Academic Year 2014/2015; or
- (c) there has been bestowed on, or paid to the person in relation to the person’s attendance on the course—

- (i) separate funding by the Welsh Government in respect of a work based learning programme(1); or
- (ii) such other financial support from public funds as determined by the Welsh Ministers.

Academic progression

4.—(1) Subject to sub-paragraph (2) and paragraph 5, the Welsh Ministers must not pay a Welsh Government Learning Grant to a student in respect of the Academic Year 2014/2015 or part of that year unless they are satisfied on reasonable grounds that the period of study concerned involves academic progression for the student in comparison with study undertaken by the student in previous academic years.

(2) The Welsh Ministers may pay a Welsh Government Learning Grant to a student for a repeated academic year if that year is a repeat of a preceding academic year that the student was unable to complete for reasons which the Welsh Ministers consider to be compelling.

Transfers

5. Where a student who is entitled to a Welsh Government Learning Grant for a designated course transfers to another designated course comprising a period of full-time study or a period of part-time study during the Academic Year 2014/2015, the Welsh Ministers may pay a Welsh Government Learning Grant to that student for the remainder of the Academic Year 2014/2015, except that no Welsh Government Learning Grant is payable if—

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

Applications

6.—(1) An applicant applies for support by completing and submitting to the Welsh Ministers

(1) Work Based Learning Programmes are delivered under sections 31 to 35 of the Learning and Skills Act 2000 (c.21) section 10 of the Education Act 1996 (c.56) section 2 of the Employment and Training Act 1973 (c.50), and sections 60 and 71 of the Government of Wales Act 2006 (c.32)

- (a) the learning grant agreement; and
- (b) if required by the Welsh Ministers, an application in such form as the Welsh Ministers may require.

(2) The learning grant agreement and any application must be accompanied by such documentation as the Welsh Ministers require and must be submitted by such time as the Welsh Ministers may require.

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

(4) The Welsh Ministers must notify the applicant of whether or not the applicant qualifies for support and if the applicant does qualify, the amount of support payable in respect of the Academic Year 2014/2015, if any.

(5) An applicant may apply for reassessment or the Welsh Ministers may reassess whether the applicant qualifies for support if such of the applicant's circumstances relevant to their application change either before or during the Academic Year 2014/2015.

(6) Sub-paragraphs (3) and (4) apply in relation to such reassessment.

Grant entitlement

7.—(1) (Subject to paragraph 8) an eligible student who qualifies for support in connection with a period of full time study in accordance with this Scheme receives a Welsh Government Learning Grant as follows—

- (a) where the household income is £6,120 or less, the student receives £1,500;
- (b) where the household income exceeds £6,120 but does not exceed £12,235, the student receives £750; and
- (c) where the household income exceeds £12,235 but does not exceed £18,370, the student receives £450.

(2) (Subject to paragraph 8) an eligible student who qualifies for support in connection with a period of part-time study in accordance with this Scheme receives a Welsh Government Learning Grant as follows—

- (a) where the household income is £6,120 or less, the student receives £750;
- (b) where the household income exceeds £6,120 but does not exceed £12,235, the student receives £450; and

- (c) where the household income exceeds £12,235 but does not exceed £18,370, the student receives £300.

Persons leaving custody or detention

8.—(1) This paragraph applies to persons detained following conviction in—

- (a) a prison (within the meaning of the Prison Act 1952(1)); or
- (b) a young offender institution (as mentioned in section 43 of that Act),

and released on temporary licence to attend a designated course (any such person being a “detained person” for the purposes of this paragraph).

(2) A detained person may apply for support in accordance with paragraph 6 at any time prior to completing their custodial sentence in Academic Year 2014/2015, but such application will not be considered by the Welsh Ministers until such time as the person has been released from custody.

(3) A detained person who—

- (a) applies for support for Academic Year 2014/2015 prior to completing their sentence in accordance with paragraph 8(2);
- (b) is an eligible student; and
- (c) qualifies for support in connection with a period of full-time study in accordance with this Scheme,

receives a Welsh Government Learning Grant calculated in accordance with sub-paragraph (5) and subject at all times to the provisions of paragraph 15.

(4) A detained person who—

- (a) applies for support for Academic Year 2014/2015 prior to completing their sentence in accordance with paragraph 8(2);
- (b) is an eligible student; and
- (c) qualifies for support in connection with a period of part-time study in accordance with this Scheme,

receives a Welsh Government Learning Grant calculated in accordance with sub-paragraph (5) and subject at all times to the provisions of paragraph 15.

(5) The Welsh Ministers must calculate an applicant’s entitlement to a Welsh Government Learning Grant in accordance with the following formula;

$$RE = WGLG \times RDF$$

Where—

(1) 1952 c.52.

“WGLG” (“*GDLIC*”) means—

£1,500 in relation to a detained person falling within sub-paragraph (3); and

£750 in relation to a detained person falling within sub-paragraph (4).

“RDF” (“ ”) means

(i) 100% where the applicant completes their custodial sentence in the first term of a designated course which is made up of either one, two or three terms in a single academic year;

(ii) 60% where the applicant completes their custodial sentence in the second term of a designated course which is made up of three terms in a single academic year;

(iii) 50% where the applicant completes their custodial sentence in the second term of a designated course which is made up of two terms in a single academic year;

(iv) 30% where the applicant completes their custodial sentence in the third term of a designated course which is made up of three terms in a single academic year;

“RE” (“*HA*”) means the recalculated entitlement.

Household income

9.—(1) Household income for the purpose of this Scheme is calculated in accordance with this paragraph and paragraphs 10 to 13.

(2) The household income is—

(a) in the case of an eligible student who is not an independent eligible student—

(i) the residual income of the eligible student, or

(ii) the residual income of the eligible student’s parent (subject to paragraphs 11(3) and 11(8)) aggregated with the residual income of the partner of the student’s parent provided that the Welsh Ministers have selected that parent under paragraph 11(8)(a),

whichever of the two incomes is the higher;

(b) in the case of an independent eligible student who has a partner, the residual income of the eligible student or the residual income of the eligible student’s partner, whichever of the two incomes is the higher;

(c) in the case of an independent eligible student who does not have a partner, the residual income of the eligible student; or

- (d) in the case of an eligible student one of whose parents dies on or after 6 April 2014, income calculated in accordance with paragraph 11(7).

Deduction of pension premiums from an eligible student's residual income

10. Where the applicant is undertaking a designated course comprising a period of full-time study, for the purpose of determining the residual income of an eligible student, there is deducted from the applicant's taxable income (unless already deducted in determining taxable income) the gross amount of any premium or other sum paid by the eligible student in relation to a pension (not being a pension payable under a policy of life insurance) in respect of which relief is given under section 188 of the Finance Act 2004⁽¹⁾, or where the eligible student's income is computed for the purposes of the income tax legislation of another Member State, the gross amount of any such premium or sum in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts.

Calculation of parent's residual income

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

- (a) by way of personal reliefs provided for in Chapter 1 of Part VII of the Income and Corporation Taxes Act 1988 or, where the income is computed for the purposes of the income tax legislation of another Member State, any comparable personal reliefs;
- (b) pursuant to any enactment or rule of law under which payments which would otherwise under United Kingdom law form part of a person's income are not treated as such;

are not made or permitted.

(2) For the purposes of determining the residual income of an eligible student's parent, there is to be deducted from their taxable income the aggregate of any amounts falling within any of the following paragraphs—

- (a) the gross amount of any premium or sum relating to a pension (not being a premium payable under a policy of life assurance) in

(1) 2004 c.12; section 188 was amended by the Finance Act 2007 (c.11), sections 68, 69, 114 and Schedules 18 and 19, and the Finance Act 2013 (c.29), sections 52(1), (2) and (3).

respect of which relief is given under section 188 of the Finance Act 2004, or where the income is computed for the purposes of the income tax legislation of another Member State, the gross amount of any such premium in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts;

- (b) where sub-paragraph (5) applies, any sums equivalent to the deduction mentioned in sub-paragraph (2)(a), provided that any sums so deducted do not exceed the deductions which would be made if the whole of the eligible student's parent's income were in fact income for the purposes of the Income Tax Acts.

(3) Where the Welsh Ministers are satisfied that the residual income of the parent in the 2015 tax year is, as a result of some event beyond the parent's control, likely to be less than the parent's residual income in the 2014 tax year to such an extent that it would affect the student's entitlement if entitlement were to be based on the 2015 tax year they must, for the purpose of enabling the eligible student to attend the course without hardship, ascertain the residual income for the 2015 tax year.

(4) Where the eligible student's parent satisfies the Welsh Ministers that their income is wholly or mainly derived from the profits of a business or profession carried on by that parent, then any reference in this paragraph to a tax year means the earliest period of twelve months which ends after the start of the tax year in question and in respect of which accounts are kept relating to that business or profession.

(5) Where an eligible student's parent is in receipt of any income which does not form part of the parent's taxable income by reason only that—

- (a) the parent is not resident, ordinarily resident or domiciled in the United Kingdom or another Member State;
- (b) the income does not arise in the United Kingdom or another Member State; or
- (c) the income arises from an office, service or employment, income from which is exempt from tax in pursuance of any legislation,

the parent's taxable income for the purposes of this Scheme is computed as though such income were part of the parent's taxable income.

(6) Where the income of the eligible student's parent is computed as for the purposes of the income tax legislation of another Member State, it is computed under the provisions of this Scheme in the currency of that Member State and the income of the eligible student's parent for the purposes of this Scheme is the sterling value of that income determined in accordance

with the rate for the month in which the last day of the tax year in question falls, as published by the Office for National Statistics.

(7) Where one of the eligible student's parents dies on or after 6 April 2014 and that parent's income has been or would be taken into account for the purpose of determining the household income, the household income is—

- (a) the appropriate proportion of the household income determined by reference to the income of both parents, being the proportion in respect of that part of the 2015 tax year during which both parents were alive; and
- (b) the appropriate proportion of the household income determined by reference to the income of the surviving parent, being the proportion in respect of that part of the 2015 tax year remaining after the death of the other parent.

(8) Where the Welsh Ministers determine that the parents did not ordinarily live together for the whole of the 2014 tax year, the household income is the aggregate of—

- (a) the income of whichever parent the Welsh Ministers determine the more appropriate under the circumstances for that part of the 2014 tax year for which the parents did not so live together; and
- (b) the appropriate proportion of the household income for that part of the 2014 tax year for which the parents did so live together calculated in accordance with sub-paragraphs (1) to (6).

Calculation of eligible student's partner's residual income

12.—(1) Subject to sub-paragraphs (2) and (3) of this paragraph, an eligible student's partner's residual income is determined in accordance with paragraph 11 with the exception of paragraphs 11(7) and 11(8), references to the parent being construed as references to the eligible student's partner.

(2) Where the Welsh Ministers determine that the eligible student and the eligible student's partner ordinarily lived together throughout the whole of the 2014 tax year, the partner's residual income is taken into account in determining the household income.

(3) Where the Welsh Ministers determine that the eligible student and the eligible student's partner ordinarily lived together for part but not the whole of the 2014 tax year, the partner's residual income is determined by reference to the partner's residual income under sub-paragraph (1) divided by fifty-two and multiplied by the number of complete weeks in the 2014 tax year for which the Welsh Ministers determine

that the eligible student and the eligible student's partner did ordinarily live together.

Calculation of parent's partner's residual income

13. The residual income of an eligible student's parent's partner whose residual income is part of the household income by virtue of paragraph 9(2)(a) is determined in accordance with paragraph 12, references to the eligible student's partner being construed as references to the eligible student's parent's partner and references to the eligible student being construed as references to the eligible student's parent.

Independent eligible student

14. For the purpose of this Scheme an applicant is an independent eligible student in any of the following cases—

- (a) the applicant is aged 25 or over on the first day of the designated course;
- (b) the applicant is married or is in a civil partnership on the first day of the designated course, whether or not the marriage or civil partnership is still subsisting;
- (c) the applicant has no parent living;
- (d) the Welsh Ministers are satisfied that as at the first day of the designated course neither parent of the applicant can be found or that it is not reasonably practicable to get in touch with either of them;
- (e) the applicant has not communicated with either parent during the period of one year before the first day of the designated course or, in the opinion of the Welsh Ministers, the applicant has demonstrated on other grounds that the applicant is irreconcilably estranged from their parents;
- (f) the applicant was looked after by a local authority within the meaning of section 22 of the Children Act 1989(1) throughout any three-month period ending on or after the date on which the applicant attained the age of 16 and before the first day of the designated course and has not at any time during the period from their sixteenth birthday been under the charge or control of their parents;
- (g) the applicant's parents reside outside the European Union and the Welsh Ministers are satisfied that either—

(1) 1989 (c.41) as amended.

- (i) the assessment of the household income by reference to their residual income would place those parents in jeopardy; or
- (ii) it would not be reasonably practicable for those parents as a result of a calculation in relation to paragraph 9 to send any relevant funds to the United Kingdom;
- (h) paragraph 11(8) applies and the parent whom the Welsh Ministers considered the more appropriate for the purposes of that paragraph has died (irrespective of whether the parent in question had a partner);
- (i) the applicant is a member of a religious order and resides in a house of that order on the first day of the designated course;
- (j) the applicant has care of a person who is under 18 years of age on the first day of the designated course or during the Academic Year 2014/2015 acquires care of a person under 18 years of age;
- (k) the applicant (“A” in this sub-paragraph) has supported A out of A’s earnings for any period or periods ending before the first day of the designated course of (in aggregate) not less than three years, and for the purposes of this paragraph A is treated as supporting A out of their earnings during any period in which—
 - (i) A was participating in arrangements for training for the unemployed under any scheme operated by, sponsored or funded by any state authority or agency, whether national, regional or local (“a relevant authority”);
 - (ii) A was in receipt of benefit payable by any relevant authority in respect of a person who is available for employment but who is unemployed;
 - (iii) A was available for employment and had complied with any requirement of registration imposed by a relevant authority as a condition of entitlement for participation in arrangements for training or receipt of benefit;
 - (iv) A held a state studentship or comparable award;
 - (v) A received any pension, allowance or other benefit paid by any person by reason of a disability, confinement, injury or sickness.

Attendance

15.—(1) The Welsh Ministers may recalculate in accordance with sub-paragraph (2) an applicant's entitlement to a Welsh Government Learning Grant if the applicant's attendance on the designated course in respect of which the applicant made an application for a Welsh Government Learning Grant is unsatisfactory.

(2) The formula for re-calculation is—

$$RE = \frac{AA}{PA} \times WGLG$$

Where—

“AA” (“*GB*”) means the number of days attendance by the applicant notified to the Welsh Ministers by the institution delivering the course, attendance being deemed to include absence through illness of periods not exceeding 60 days in total;

“WGLG” (“*GDLIC*”) means the entitlement to the Welsh Government Learning Grant in accordance with paragraph 7 or 8 as appropriate;

“PA” (“*PP*”) means the number of days from the first to last day of required attendance on the course; and

“RE” (“*HA*”) means the recalculated entitlement.

Payment of Welsh Government Learning Grant

16.—(1) The Welsh Ministers must pay (subject to sub-paragraph (3)) the grant for which an eligible student qualifies under this Scheme (as may be reassessed or recalculated as provided for in this Scheme) in such manner, in such instalments (if any) and at such times as they consider appropriate and in the exercise of their functions under this paragraph they may make provisional payments pending the final calculation of the amount of the Welsh Government Learning Grant for which the eligible student qualifies.

(2) The Welsh Ministers may make it a condition of entitlement to payment that the eligible student provides them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(3) The Welsh Ministers may suspend or withhold payment of the Welsh Government Learning Grant or part of it to an eligible student if—

- (a) any information submitted to the Welsh Ministers by or on behalf of the eligible student is incorrect in any material respect; or
- (b) the eligible student becomes bankrupt or suffers any distress, execution, attachment or other process affecting any of the student's assets; or

- (c) the eligible student at any time in the opinion of the Welsh Ministers shows themselves by their conduct to be unfit to receive a Welsh Government Learning Grant.

Overpayments

17. A person must, if so required by the Welsh Ministers, repay any amount paid to that person under this Scheme which for whatever reason exceeds the amount of the Welsh Government Learning Grant to which that person is entitled under this Scheme.

18. The Welsh Ministers may at any time request from a person information which they consider is required to recover a Welsh Government Learning Grant from that person.

19. Where the Welsh Ministers have requested information under paragraph 18, they may withhold any payment of the Welsh Government Learning Grant until the person provides the information requested or provides a satisfactory explanation for not complying with the request.

Name

Minister for Education and Skills, one of the Welsh

Ministers

Date

SCHEDULE Paragraph 3

Eligible Students

PART 1

Interpretation

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

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

“EEA Agreement” (“*Cytundeb yr AEE*”) means the Agreement on the European Economic Area signed at Oporto on 2 May 1992(1), as adjusted by the Protocol signed at Brussels on 17 March 1993(2);

“EEA frontier self-employed person” (“*person hunangyflogedig ffin yr AEE*”) means an EEA national who—

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

“EEA frontier worker” (“*gweithiwr ffin yr AEE*”) means an EEA national who—

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

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

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

“EEA self-employed person” (“*person hunangyflogedig o'r AEE*”) means an EEA national who is a self-employed person, other than

(1) Cm 2073.

(2) Cm 2183.

an EEA frontier self-employed person, in the United Kingdom;

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

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

“European Economic Area” (“*Ardal Economaidd Ewropeaidd*”) means the area comprised by the EEA States;

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

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

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) that person’s spouse or civil partner;
 - (ii) direct descendants of the person or of the person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependents of the person or the person’s spouse or civil partner; or
 - (iii) a dependent direct relative in that person’s ascending line or the ascending line of that person’s spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) that person’s spouse or civil partner; or
 - (ii) that person’s child or the child of that person’s spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
 - (i) the national’s spouse or civil partner; or
 - (ii) direct descendants of the national or the national’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependents of the national or the national’s spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
 - (i) the national’s spouse or civil partner; or

- (ii) direct descendants of the national or the national's spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or the national's spouse or civil partner;
- (iii) a dependent direct relative in the national's ascending line or the ascending line of the national's spouse or civil partner;

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

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

- (a) who has—
 - (i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is considered not to qualify for recognition as a refugee it is thought right to allow P to enter or remain in the United Kingdom on the grounds of humanitarian protection(1) or discretionary leave(2); or
 - (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow P to enter or remain in the United Kingdom on the grounds of discretionary leave;
- (b) who has been granted leave to enter or to remain accordingly;
- (c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002(3)); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since being granted leave to enter or remain;

(1) Humanitarian protection may be granted by the Secretary of State pursuant to Part 11 of the Immigration Rules made under section 3(2) of the Immigration Act 1971 (c.77).

(2) Discretionary leave may be granted by the Secretary of State under section 3(1)(b) of the Immigration Act 1971.

(3) 2002 c.41.

“refugee” (“*ffoadur*”) means a person who is recognised by Her Majesty's Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28 July 1951 as extended by the Protocol thereto which entered into force on 4 October 1967;

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

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

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

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

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

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

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

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

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

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

(2) Cm. 4904.

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

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

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

(3) For the purposes of this Schedule, a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the present course; or
- (b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the present course,

is to be considered to be ordinarily resident in the place from which he or she moved.

(4) For the purposes of this Schedule, a person (“P” in this sub-paragraph) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the European Economic Area, Switzerland and Turkey if P would have been so resident but for the fact that—

- (a) P;
- (b) P’s spouse or civil partner;
- (c) P’s parent; or
- (d) in the case of a dependent direct relative in the ascending line, P’s child or child’s spouse or civil partner,

is or was temporarily employed outside Wales, the United Kingdom and Islands or, as the case may be, outside the territory comprising the European Economic Area, Switzerland and Turkey.

(5) For the purposes of sub-paragraph (4), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising the European Economic Area, Switzerland and Turkey includes—

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

comprising the European Economic Area and Switzerland as members of such forces; and

(c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(6) For the purposes of this Schedule an area which—

- (a) was previously not part of the European Union or the European Economic Area; but
- (b) at any time before or after this Scheme comes into force has become part of one or other or both of these areas,

is to be considered to have always been part of the European Economic Area.

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the designated course—

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

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(4).

3. A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the designated course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-

year period preceding the first day of the first academic year of the designated course; and

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

Refugees and their family members

4.—(1) A person who—

- (a) is a refugee;
- (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being recognised as a refugee; and
- (c) is ordinarily resident in Wales on the first day of the first academic year of the designated course.

(2) A person who—

- (a) is the spouse or civil partner of a refugee;
- (b) was the spouse or civil partner of the refugee on the date on which the refugee applied for asylum;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (d) is ordinarily resident in Wales on the first day of the first academic year of the designated course.

(3) A person who—

- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
- (b) on the date on which the refugee applied for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;
- (c) was under 18 on the date on which the refugee applied for asylum;
- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (e) is ordinarily resident in Wales on the first day of the first academic year of the designated course.

Persons with leave to enter or remain and their family members

5.—(1) A person with leave to enter or remain who—

- (a) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted leave to enter or remain; and
- (b) who is ordinarily resident in Wales on the first day of the first academic year of the designated course.

(2) A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain;
- (b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made—
 - (i) the application for asylum; or
 - (ii) the application for discretionary leave, where no application for asylum was made;
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted leave to enter or remain in the United Kingdom; and
- (d) who is ordinarily resident in Wales on the first day of the first academic year of the designated course.

(3) A person who—

- (a) is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;
- (b) on the date on which the person with leave to enter or remain made—
 - (i) the application for asylum; or
 - (ii) the application for discretionary leave, where no application for asylum was made,

was the child of that person or the child of a person who as the spouse or civil partner of the person with leave to enter or remain on that date;

- (c) was under 18 on the date on which the person with leave to enter or remain made—
 - (i) the application for asylum; or
 - (ii) the application for discretionary leave, where no application for asylum was made;

- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (e) is ordinarily resident in Wales on the first day of the first academic year of the designated course.

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

6.—(1) A person who—

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

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

7. A person who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the designated course;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the designated course; and
- (c) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No 1612/68 on the

freedom of movement of workers(1), as extended by the EEA Agreement.

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

8.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year of the designated course actually begins;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the designated course; and
- (e) in a case where the ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if:

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

(1) OJ No L257, 19.10.1968, p.2 (OJ/SE 1968 (II) p.475).

EU Nationals

9.—(1) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the designated course;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the designated course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the designated 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national other than a United Kingdom national on the first day of the first academic year of the designated course is treated as being satisfied.

Children of Swiss nationals

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

Children of Turkish workers

11.—(1) A person who—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the designated course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the designated course.

(2) In this paragraph “Turkish worker” (“*gweithiwr Twrcaidd*”) means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands; and
- (b) is, or has been, lawfully employed in the United Kingdom.