

2021 No. WG21 – 68

The Welsh Government Learning Grant (Further Education) (Wales) Scheme 2021

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 eligible students aged 19 or over who take designated further education courses during the academic year beginning on or after 1 September 2021. The Welsh Government Learning Grant is available to eligible students whether they choose to study in Wales or elsewhere in the UK.

The Scheme comes into force on 1 September 2021 and applies in respect of the academic year beginning on or after 1 September 2021 but before 1 September 2022.

The Welsh Government Learning Grant (Further Education) (Wales) Scheme 2020 (2020 No. WG20-50) remains in force in respect of the academic year beginning on or after 1 September 2020 but before 1 September 2021.

2021 No. WG21 – 68

The Welsh Government Learning Grant (Further Education) (Wales) Scheme 2021

This Scheme operates under sections 14, 15 and 16 of the Education Act 2002 and applies in relation to academic year 2021/2022.

PART 1

GENERAL

Title and application

1.—(1) The title of this Scheme is the Welsh Government Learning Grant (Further Education) (Wales) Scheme 2021.

(2) This Scheme applies in relation to Wales.

Interpretation

2.—(1) In this Scheme—

“2020 tax year” (“*blwyddyn dreth 2020*”) means the twelve month period ending 5 April 2020;

“2022 tax year” (“*blwyddyn dreth 2022*”) means the twelve month period ending 5 April 2022;

“Academic Year 2021/2022” (“*Blwyddyn Academaidd 2021/2022*”) means the period of twelve months beginning on—

- (a) 1 September 2021 where the academic year of the designated course in question begins on or after 1 September 2021 and before 1 January 2022;
- (b) 1 January 2022 where the academic year of the designated course in question begins on or after 1 January 2022 and before 1 April 2022;

- (c) 1 April 2022 where the academic year of the designated course in question begins on or after 1 April 2022 and before 1 July 2022;
- (d) 1 July 2022 where the academic year of the designated course in question begins on or after 1 July 2022 and before 1 September 2022;

“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 for the purposes of this Scheme and Academic Year 2021/2022, a course of education (other than higher education) or training which—

- (a) leads either to qualifications up to and including National Qualifications Level 3 issued by a recognised awarding body, or to the achievement of a personalised learning programme funded by the Welsh Government under the Preparation for Life and Work programme area;
- (b) is provided by (or delivered by) a further education institution or another provider of education or training; and
- (c) is funded by—
 - (i) the Welsh Government;
 - (ii) the Education and Skills Funding Agency⁽¹⁾; or
 - (iii) 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;

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

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

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

(1) <https://www.gov.uk/government/organisations/education-and-skills-funding-agency>.

“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);

“HMRC” (“*CThEM*”) means Her Majesty’s Revenue and Customs;

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

“Income Tax Acts” (“...”) means all enactments relating to income tax, including any provisions of any enactments relating to the taxation of the income and chargeable gains of companies and of company distributions which relate to income tax;

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

“learning grant agreement” (“*cytundeb grant dysgu*”) means a document 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 independent eligible student any of the following—
 - (i) the independent eligible student’s spouse;
 - (ii) the independent eligible student’s civil partner;
 - (iii) a person ordinarily living with the independent eligible student as their civil partner;
 - (iv) a person ordinarily living with the independent eligible student as their 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;

(1) 1988 c. 40.

(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 Academic Year 2021/2022;

“period of part-time study” (“*cyfnod o astudio rhan-amser*”) means a period of study on one or more designated courses comprising not less than 275 contact hours nor more than 499 contact hours during Academic Year 2021/2022;

“recognised awarding body” (“*corff dyfarnu cydnabyddedig*”) means the Scottish Qualifications Authority⁽¹⁾, an awarding body approved and regulated by the Scottish Qualifications Authority in accordance with the Education (Scotland) Act 1996⁽²⁾, the Northern Ireland Council for the Curriculum, Examinations and Assessment⁽³⁾, bodies recognised under section 132 of the Apprenticeships, Skills, Children and Learning Act 2009⁽⁴⁾ and bodies or persons recognised under section 30(1)(e) of the Education Act 1997⁽⁵⁾ or Part 3 of the Qualifications Wales Act 2015⁽⁶⁾;

“residual income” (“*incwm gweddilliol*”) is calculated in accordance with paragraphs 10 to 13;

“signed” (“*llofnodi*”) may include signed by way of electronic signature in such form as the Welsh Ministers may require;

“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 2020 tax year or 2022 tax year as the context may require;

“taxable income” (“*incwm trethadwy*”) means the total income on which that person is charged to income tax as determined—

(i) at Step 1 of the calculation in section 23 of the Income Tax Act 2007⁽⁷⁾;

(1) The Scottish Qualifications Authority was established by the Scottish Qualifications Authority (Establishment) (Scotland) Order 1996/2248.

(2) 1996 c. 43.

(3) The Northern Ireland Council for the Curriculum, Examinations and Assessment was established by Article 73 of the Education (Northern Ireland) Order 1998/1759.

(4) 2009 c. 22.

(5) 1997 c. 44 (now repealed, subject to savings and transitional provisions).

(6) 2015 anaw 5.

(7) 2007 c. 3; section 23 was amended by the Finance Act 2009 (c. 10), Schedule 1, paragraph 6(o)(i), the Finance Act 2013 (c. 29), Schedule 3, paragraph 2(2), and the Finance Act 2014 (c. 26) Schedule 17(3), paragraph 19.

- (ii) in accordance with the income tax legislation of a Member State which applies to the person's income, prior to the application of any deductions or reliefs, and not including the first £30,000 of any redundancy payments received; or
- (iii) where the legislation of—
 - (aa) the United Kingdom and one or more Member States; or
 - (bb) more than one Member State, applies to the period, the legislation in accordance with which the Welsh Ministers consider the person will pay the largest amount of tax in that period prior to the application of any deductions or reliefs, and not including the first £30,000 of any redundancy payments received (except as otherwise provided in paragraph 12) applies; and

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

(2) Where a person's taxable income is computed in accordance with income tax legislation of a Member State other than by reference to a twelve month period ending 5 April in any year, “2020 tax year” and “2022 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 which ends immediately before 1 September 2020 and 1 September 2022 respectively.

(3) Save as provided in paragraph 12(5), 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;
- (b) otherwise, the value of sterling which the income would purchase using the average rate for the month in which it is received published by HMRC for the calendar year which ends before the start of the year in respect of which the household income falls to be assessed⁽¹⁾.

(1) <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>.

PART 2

ELIGIBILITY

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 Academic Year 2021/2022 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—
 - (i) paragraph 1, 2, 3, 4, 5, 6, 7, 9, 11, 13, 14, 16, 18 or 20 of Part 2 of the Schedule to this Scheme; or
 - (ii) paragraph 8, 10, 12, 15, 17 or 19 of Part 2 of the Schedule to this Scheme where sub-paragraph (3) applies;
- (b) the person attained the age of 19 on or before 1 September 2021;
- (c) the person is not ineligible by reason of sub-paragraph (4); and
- (d) the person has signed a learning grant agreement.

(3) This paragraph applies where—

- (a) in connection with a designated course, the Welsh Ministers—
 - (i) in assessing an application for support by a person ("A") determined that A fell within one of the categories set out in paragraph 8, 10, 12, 15, 17 or 19 of Part 2 of the Schedule in relation to an academic year of the course beginning before 1 September 2021; or
 - (ii) would have so determined had A made an application for support in accordance with this Scheme in relation to an academic year of the course beginning before that date; and
- (b) A applies for support in connection with that course or a course to which A transfers in accordance with paragraph 5.

(4) 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 Academic Year 2021/2022; 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;
- (d) the designated course begins on or after 1 January 2028 and the only paragraph or paragraphs in Part 2 of the Schedule into which the person falls is one or more of paragraphs 13 or 14.

Academic progression

4.—(1) Subject to sub-paragraph (2) and paragraph 5, the Welsh Ministers must not pay a Welsh Government Learning Grant to an eligible student in respect of Academic Year 2021/2022 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 an eligible student for a repeated academic year if that year is a repeat of a preceding academic year of a designated course 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 in connection with a designated course transfers to another designated course comprising a period of full-time study or a period of part-time study during Academic Year 2021/2022, the Welsh Ministers may pay a Welsh Government Learning Grant to that student for the remainder of Academic Year 2021/2022, 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

(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 58A of the Government of Wales Act 2006 (c. 32).

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.

PART 3

APPLICATIONS AND ENTITLEMENT

Applications

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

- (a) the learning grant agreement signed by the applicant; 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 may 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 Academic Year 2021/2022, 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 Academic Year 2021/2022.

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

(7) Where a reassessment is carried out under sub-paragraph (5) and the Welsh Ministers make a subsequent notification under sub-paragraph (4) that the applicant qualifies for support the Welsh Ministers may—

- (a) back-date the payment to the date on which they received the applicant's application for a reassessment; or
- (b) back-date the payment to the date on which the applicant's circumstances changed.

Grant entitlement

7.—(1) (Subject to paragraph 8 and 15) an eligible student who qualifies for support in connection with a period of full-time study in accordance with this Scheme is entitled to receive a Welsh Government Learning Grant as follows—

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

(2) (Subject to paragraph 8 and 15) an eligible student who qualifies for support in connection with a period of part-time study in accordance with this Scheme is entitled to receive a Welsh Government Learning Grant as follows—

- (a) where the household income is £6,120 or less or where the student is a care leaver, the student is entitled to receive £750;
- (b) where the household income exceeds £6,120 but does not exceed £12,235, the student is entitled to receive £450; and
- (c) where the household income exceeds £12,235 but does not exceed £18,370, the student is entitled to receive £300.

(3) For the purposes of this paragraph, an eligible student is a “care leaver” if the student—

- (a) starts the designated course in academic year 2021/2022;
- (b) is under the age of 25 on the first day of the first academic year of the designated course;
- (c) is, or has been, a category of young person defined in, or by virtue of, section 104 of the Social Services and Well-being (Wales) Act 2014⁽¹⁾; and
- (d) between the student’s fourteenth birthday and the first day of the first academic year of the designated course, the student—
 - (i) was looked after, fostered or accommodated (within the meaning of sections 74 and 104 of the Social Services and Well-being (Wales) Act 2014) for an aggregate period of 13 weeks or more, or

(1) 2014 anaw 4.

- (ii) was a person with respect to whom a special guardianship order (within the meaning given by section 14A of the Children Act 1989⁽¹⁾) was in force for a period of 13 weeks or more.

PART 4

PERSONS LEAVING CUSTODY OR DETENTION

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⁽²⁾); 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 2021/2022, 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 2021/2022 prior to completing their sentence in accordance with sub-paragraph (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,

is entitled to receive 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 2021/2022 prior to completing their sentence in accordance with sub-paragraph (2);
- (b) is an eligible student; and

⁽¹⁾ 1989 c. 41; section 14A was inserted by the Adoption and Children Act 2002 (c. 38) and amended by the Children and Families Act 2014 (c. 6) and the Children and Young Persons Act 2008 (c. 23).

⁽²⁾ 1952 c. 52.

- (c) qualifies for support in connection with a period of part-time study in accordance with this Scheme,

is entitled to receive 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 eligible student's entitlement to a Welsh Government Learning Grant under this paragraph in accordance with the following formula—

$$RE = WGLG \times RDF$$

Where—

“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” (“*FfDRh*”) means—

(i) 100% where the eligible student 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 eligible student 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 eligible student 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 eligible student completes their custodial sentence in the third term of a designated course which is made up of three terms in a single academic year; and

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

PART 5

FINANCIAL ASSESSMENT

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 (calculated in accordance with paragraph 11), or
 - (ii) the residual income of the eligible student's parents (calculated in accordance with paragraph 12), aggregated with the residual income of the partner of the student's parent (calculated in accordance with paragraph 13), provided that the Welsh Ministers have selected that parent under paragraph 12(7),
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 independent eligible student (calculated in accordance with paragraph 10(1)), or the residual income of the independent eligible student's partner (calculated in accordance with paragraph 10), 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 independent eligible student (calculated in accordance with paragraph 10(1)).

Residual income of independent eligible students and their partners

10.—(1) The residual income of an independent eligible student is that student's income from all sources in respect of the 2022 tax year, minus any amounts described in sub-paragraph (4) (unless already deducted in calculating the student's taxable income).

(2) The residual income of the partner of an independent eligible student is determined in accordance with paragraph 12, with the exception of sub-paragraphs (6) to (8) of paragraph 12, references to the eligible student's parent being construed as the independent eligible student's partner.

(3) Where the Welsh Ministers determine that the independent eligible student and their partner have separated in the course of Academic Year 2021/2022, the partner's income is determined by reference to the partner's income, divided by fifty-two and multiplied by the number of complete weeks in Academic Year 2021/2022 in respect of which the Welsh Ministers determine that the independent eligible student and their partner are not separated.

(4) For the purpose of determining the residual income of an independent eligible student, there may

be deducted from the independent eligible student's taxable income (unless already deducted in calculating the taxable income)—

- (a) the gross amount of—
 - (i) any premium or other sum paid during the tax year by the independent eligible student in relation to a pension (not being a premium payable under a policy of life insurance) in respect of which relief is given under section 188 of the Finance Act 2004⁽¹⁾; or
 - (ii) where the independent eligible student's income is computed for the purposes of the income tax legislation of a Member State, the gross amount of any such premium or sum in respect of which relief would be given during the tax year if that legislation made provision equivalent to the Income Tax Acts;
- (b) the amount of any redundancy payment received during the tax year, up to a maximum of £30,000;
- (c) the gross amount of wages paid during the tax year in connection with domestic help due to the eligible student's incapacity, or the eligible student's partner's incapacity; and
- (d) the gross amount of expenses in connection with employment during the tax year, for which tax relief was claimed.

Residual income of an eligible student who is not an independent eligible student

11.—(1) The residual income of an eligible student who is not an independent eligible student is that student's taxable income for the 2020 tax year.

(2) Where the Welsh Ministers are satisfied that the residual income of the eligible student in the 2022 tax year is, as a result of some event beyond the student's control, likely to be less than the eligible student's residual income in the 2020 tax year to such an extent that it would affect the student's entitlement if entitlement were to be based on the 2022 tax year they must, for the purpose of enabling the student to attend the course without hardship, ascertain the residual income for the 2022 tax year.

Residual income of parents of eligible students

12.—(1) Subject to the provisions of subparagraphs (2), (6), (7) and (8), the residual income of the parent of an eligible student is that parent's taxable

(1) 2004 c. 12.

income in respect of the 2020 tax year after the application of sub-paragraphs (3), (4), (5) and (9).

(2) Where the Welsh Ministers are satisfied that the residual income of the parent in the 2022 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 2020 tax year to such an extent that it would affect the student's entitlement if entitlement were to be based on the 2022 tax year they must, for the purpose of enabling the eligible student to attend the course without hardship, ascertain the residual income for the 2022 tax year.

(3) 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.

(4) 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 a Member State;
- (b) the income does not arise in the United Kingdom or a 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.

(5) Where the income of the eligible student's parent is computed as for the purposes of the income tax legislation of a 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 average rate published by HMRC from time to time⁽¹⁾.

(6) Where one of the eligible student's parents dies either before or during Academic Year 2021/2022 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—

(1) <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>.

- (a) where the parent dies before Academic Year 2021/2022, determined by reference to the income of the surviving parent; or
- (b) where the parent dies during Academic Year 2021/2022, the aggregate of—
 - (i) the appropriate proportion of the household income determined by reference to the income of both parents, being the proportion in respect of that part of Academic Year 2021/2022 during which both parents were alive; and
 - (ii) the appropriate proportion of the household income determined by reference to the income of the surviving parent, being the proportion in respect of that part of Academic Year 2021/2022 remaining after the death of the other parent.

(7) Where the Welsh Ministers determine that the parents of the eligible student are separated for the duration of Academic Year 2021/2022, the household income is determined by reference to the income of whichever parent the Welsh Ministers consider the more appropriate under the circumstances.

(8) Where the Welsh Ministers determine that the parents have separated in the course of Academic Year 2021/2022, the household income is determined by reference to the aggregate of—

- (a) the appropriate proportion of the household income determined in accordance with subparagraph (7), being the proportion in respect of that part of Academic Year 2021/2022 during which the parents are separated; and
- (b) the appropriate proportion of the household income determined otherwise in respect of the remainder of Academic Year 2021/2022.

(9) For the purpose of determining the residual income of an eligible student's parent, there may be deducted from the parent's taxable income (unless already deducted in calculating the taxable income)—

- (a) the gross amount of—
 - (i) any premium or other sum paid during the tax year by the eligible student's parent in relation to a pension (not being a premium payable under a policy of life insurance) in respect of which relief is given under section 188 of the Finance Act 2004, or
 - (ii) where the eligible student's parent's income is computed for the purposes of the income tax legislation of a Member State, the gross amount of any such premium or sum in respect of which relief would be given during the tax year

- if that legislation made provision equivalent to the Income Tax Acts;
- (b) the gross amount of wages paid during the tax year in connection with domestic help due to the incapacity of—
 - (i) the eligible student;
 - (ii) the eligible student's parent; or
 - (iii) the eligible student's parent's partner;and
- (c) the gross amount of expenses in connection with employment during the tax year, for which tax relief was claimed.

Residual income of the partner of an eligible student's parent

13.—(1) The residual income of the partner of an eligible student's parent, whose residual income is part of the household income by virtue of paragraph 9(2)(a), is determined in accordance with paragraph 12, (other than sub-paragraphs (6) to (8) of paragraph 12), references to the eligible student's parent being construed as references to the eligible student's parent's partner.

(2) Where the Welsh Ministers determine that the eligible student's parent and the eligible student's parent's partner are separated for the duration of Academic Year 2021/2022, the partner's income is not taken into account in determining household income.

(3) Where the Welsh Ministers determine that the eligible student's parent and the eligible student's parent's partner have separated in the course of Academic Year 2021/2022, the partner's income is determined by reference to the partner's income under sub-paragraph (1) divided by fifty-two and multiplied by the number of complete weeks in Academic Year 2021/2022 in which the Welsh Ministers determine that the eligible student's parent and the eligible student's parent's partner are not separated.

(4) Where an eligible student's parent has more than one partner in Academic Year 2021/2022, the provisions of this paragraph apply in relation to each.

Independent eligible student

14. For the purpose of this Scheme an eligible student who falls in any one or more of the following cases is an independent eligible student—

- (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 74 of the Social Services and Well-Being (Wales) Act 2014 or as the case may be section 22 of the Children Act 1989 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 territory comprising the United Kingdom, Gibraltar and the European Union and the Welsh Ministers are satisfied that either—
 - (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 12(7) applies and the parent whom the Welsh Ministers considered the more appropriate for the purposes of those paragraphs 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 Academic Year 2021/2022 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 received any pension, allowance or other benefit paid by any person by reason of a disability, confinement, injury or sickness.

PART 6 PAYMENTS

Attendance

15.—(1) The Welsh Ministers may recalculate in accordance with sub-paragraph (2) an eligible student’s entitlement to a Welsh Government Learning Grant if the student’s attendance on the designated course in respect of which the student 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 student notified to the Welsh Ministers by the institution (or provider) 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 a student if—

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

Jeremy Miles MS

Minister for Education and Welsh Language, one of
the Welsh Ministers

Date: 28 July 2021

Eligible Students

PART 1

Interpretation

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

“the 2020 Citizens’ Rights Regulations” (“*Rheoliadau Hawliau Dinasyddion 2020*”) means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(1);

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004(2) 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” (“*AEE*”) means the European Economic Area, that is to say the territory comprised by the EEA States;

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

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State 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 trawsffiniol AEE*”) means an EEA national who—

- (a) is a worker in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State 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 AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” (“*gwladolyn AEE*”) means a national of an EEA State;

“EEA self-employed person” (“*person hunangyflogedig AEE*”) means an EEA national

(1) S.I. 2020/1209, amended by S.I. 2020/1309.

(2) OJ L158, 30.04.2004, pp. 77-123.

who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

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

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

“EU national” (“*gwladolyn 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, an EEA self-employed person or a relevant person of Northern Ireland who is treated as an EEA migrant worker or an EEA self-employed person by virtue of paragraph 9(3)—
 - (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) dependants 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;

- (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; or
 - (iii) a dependent direct relative in the national's ascending line or the ascending line of the national's spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 14—
- (i) the national's spouse or civil partner; or
 - (ii) direct descendants of the national or of the national's spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national's spouse or civil partner;

“grace period” (“*cyfnod gras*”) has the meaning given by regulation 3 of the 2020 Citizens’ Rights Regulations;

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

“immigration rules” (“*rheolau mewnfudo*”) means the rules laid before Parliament by the Secretary of State under section 3(2) of the Immigration Act 1971(1);

“person granted leave to remain as a protected partner” (“*person y rhoddwyd caniatâd iddo aros fel partner a ddiogelir*”) means a person with extant leave to remain in the United Kingdom as either a victim of domestic violence or domestic abuse or as a bereaved partner under any of the following provisions of the immigration rules—

- (a) paragraphs 289B and 289D (victims of domestic violence);
- (b) paragraphs D-DVILR.1.1. and D-DVILR.1.2. of Appendix FM (victims of domestic abuse);
- (c) paragraphs 40 and 41 of Appendix Armed Forces (victims of domestic violence who are partners of members of the armed forces);
- (d) paragraph 288, as a person in relation to whom the requirements in paragraph 287(b) of those rules are met (bereaved spouses or civil partners);

(1) 1971 c. 77.

- (e) paragraphs D-BPILR.1.1. and D-BPILR.1.2. of Appendix FM (bereaved partners);
- (f) paragraphs 36 and 37 of Appendix Armed Forces (bereaved partners); or
- (g) paragraph 295N, as a person in relation to whom the requirements in paragraph 295M of those rules are met (bereaved unmarried or same sex partners);

“person granted stateless leave” (*“person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth”*) means a person who—

- (a) has extant leave to remain as a stateless person under the immigration rules; and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;

“person with Calais leave” (*“person sydd â chaniatâd Calais”*) means a person with extant leave to remain under paragraphs 352J, 352K, 352L or 352T of the immigration rules (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave);

“person with protected rights” (*“person sydd â hawliau gwarchoddedig”*) means—

- (a) a person within the personal scope of the citizens’ rights provisions who—
 - (i) has extant leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules;
 - (ii) is an Irish citizen who, pursuant to section 3ZA of the Immigration Act 1971⁽¹⁾, does not require leave to enter or remain in the United Kingdom;
 - (iii) is a relevant person for the purposes of regulation 3 of the Citizens’ Rights Regulations where the grace period has not ended; or
 - (iv) is an applicant for the purposes of regulation 4 of the 2020 Citizens’ Rights Regulations where the relevant period has not expired; or
- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;

(1) 1971 c. 77, section 3ZA inserted by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

“person with section 67 leave to remain” (“*person sydd â chaniatâd i aros o dan adran 67*”) means a person who—

- (a) has extant leave to remain in the United Kingdom under section 67 of the Immigration Act 2016⁽¹⁾ and in accordance with the immigration rules; and
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the period since the person was granted such leave;

“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;

“relevant period” (“*cyfnod perthnasol*”) has the meaning given by regulation 4 of the 2020 Citizens' Rights Regulations;

“relevant person of Northern Ireland” (“*person perthnasol o Ogledd Iwerddon*”) has the meaning given by residence scheme immigration rules;

“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⁽²⁾;

“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⁽³⁾;

“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⁽⁴⁾ and which came into force on 1 June 2002;

(1) 2016 c. 19.

(2) 2020 c. 1.

(3) 1971 c. 77. Sub-section (2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(4) Cm. 4904 and OJ No L114, 30.04.02, p. 6.

“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;

“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 trawsffiniol Swisaidd*”) means a Swiss national who—

- (a) is an employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State 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 trawsffiniol Swisaidd*”) means a Swiss national who—

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

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

“Turkish worker” (“*gweithiwr Twrcaidd*”) means a Turkish national who—

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

“United Kingdom national” (“*gwladolyn o’r Deyrnas Unedig*”) has the meaning given by Article 2(d) of the EU withdrawal agreement;

“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” includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” 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, in the territory comprising the United Kingdom, Islands and the Republic of Ireland, in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland, or in the territory comprising the United Kingdom, Gibraltar, the EEA, 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, the territory comprising the United Kingdom, Islands and the Republic of Ireland, the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland, or the territory comprising the United Kingdom, Gibraltar, the EEA, Switzerland and Turkey.

(5) For the purposes of sub-paragraph (4), temporary employment outside Wales, the United Kingdom and Islands, the territory comprising the United Kingdom, Islands and the Republic of Ireland, the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland, or the territory comprising the United Kingdom, Gibraltar, the EEA, Switzerland and Turkey includes—

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

- (d) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the United Kingdom, Gibraltar, the EEA, Switzerland and Turkey as members of such forces.

(6) For the purposes of this Schedule an area other than the United Kingdom or Gibraltar which—

- (a) was previously not part of the European Union or the EEA; 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 EEA.

(7) For the purposes of this Schedule, a reference to a “Member State” or “State” in Article 7 of Directive 2004/38 is to be read as including the United Kingdom.

(8) For the purposes of this Schedule, a person is within the personal scope of the citizens’ rights provisions if that person falls within—

- (a) Article 10 (personal scope) of the EU withdrawal agreement;
- (b) Article 9 (personal scope) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 10 (personal scope) of the Swiss citizens’ rights agreement.

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 and does not fall within paragraph 3;
- (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.—(1) A person who—

(a) meets one of the following conditions on the first day of the first academic year of the course—

(i) the person is within the personal scope of the citizens' rights provisions and is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules;

(ii) the person—

(aa) is within the personal scope of the citizens' rights provisions;

(bb) is an Irish citizen settled in the United Kingdom who, pursuant to section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom; and

(cc) would meet the eligibility requirements for indefinite leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules if that person were to make an application for such leave;

(iii) the person—

(aa) is within the personal scope of the citizens' rights provisions;

(bb) is a relevant person for the purposes of regulation 3 of the 2020 Citizens' Rights Regulations; and

(cc) has, or is treated as having, a right of permanent residence for the purposes of the Immigration (EEA) Regulations 2016(1), as those Regulations continue to have effect by virtue of the 2020 Citizens' Rights Regulations in relation to that person during the grace period;

(iv) the person—

(1) S.I. 2016/1052, amended by S.I. 2017/1, S.I. 2017/1242, S.I. 2018/801, S.I. 2019/468, S.I. 2019/1155. S.I. 2016/1052 was revoked on implementation period completion day by paragraph 2(2) of Schedule 1 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20), subject to the savings in S.I. 2020/1309.

- (aa) is within the personal scope of the citizens' rights provisions;
- (bb) is an applicant for the purposes of regulation 4 of the 2020 Citizens' Rights Regulations; and
- (cc) has, or is treated as having, a right of permanent residence for the purposes of the Immigration (EEA) Regulations 2016, as those Regulations continue to have effect by virtue of the 2020 Citizens' Rights Regulations in relation to that person during the relevant period; or
- (v) the person is a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules;
- (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 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 United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence referred to in sub-paragraph (c).

(2) For the purposes of sub-paragraph (1)(a)(ii)(cc), "eligibility requirements for indefinite leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules" means the eligibility requirements for such leave in accordance with paragraph EU11 of Appendix EU to the immigration rules.

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.

Protected persons and their family members

- 5.—(1) A person—
- (a) granted leave to enter or remain as a protected person;
 - (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted such leave; and
 - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course.
- (2) A person who—
- (a) is a protected spouse or civil partner;
 - (b) on the leave application date, was the spouse or civil partner of a person granted leave to enter or remain as a protected person (by virtue of humanitarian protection under paragraph 339C of the immigration rules or as a stateless person under the immigration rules);

- (c) 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;
 - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (3) A person who—
- (a) is a protected child;
 - (b) on the leave application date was—
 - (i) under 18 years old; and
 - (ii) was the child of a person granted leave to enter or remain as a protected person or, as the case may be, the child of a person who was the spouse or civil partner of the person granted leave to enter or remain as a protected person on that date (by virtue of humanitarian protection under paragraph 339C of the immigration rules, stateless leave under the immigration rules or section 67 of the Immigration Act 2016 and the immigration rules, as the case may be);
 - (c) 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;
 - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (4) In this paragraph—
- (a) “leave application date” means the date on which a person (“P”) made an application for leave to enter or remain in the United Kingdom that results in P becoming a person granted leave to enter or remain as a protected person;
 - (b) “leave to enter or remain as a protected person” means—
 - (i) a person granted leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules;
 - (ii) a person granted stateless leave;
 - (iii) a person with section 67 leave to remain; or
 - (iv) a person with Calais leave;
 - (c) “protected child” means—
 - (i) a child of—
 - (aa) a person who has extant leave to enter or remain on the grounds of humanitarian protection under

- paragraph 339C of the immigration rules;
- (bb) a person granted stateless leave; or
- (cc) a person with section 67 leave to remain;
- (ii) a child of the spouse or civil partner of—
 - (aa) a person who has extant leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules; or
 - (bb) a person granted stateless leave;
- (d) “protected spouse or civil partner” means a spouse or civil partner of—
 - (i) a person who has extant leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules; or
 - (ii) a person granted stateless leave.

Persons granted leave to remain as a protected partner and their children

- 6.—(1) A person—
- (a) granted leave to remain as a protected partner;
 - (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted such leave; and
 - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course.
- (2) A person who—
- (a) is the child of a person granted leave to remain as a protected partner;
 - (b) on the leave application date was under 18 years old and was the child of a person granted leave to remain as a protected partner;
 - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted leave to remain in the United Kingdom;
 - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (3) In this paragraph, “leave application date” means the date on which a person (“P”) made an application for leave to enter or remain in the United Kingdom that results in P becoming a person granted leave to remain as a protected partner.

Persons with leave to enter or remain and their family members

7.—(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) 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 leave application date;
- (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 leave application date was under 18 years old and was the child of the person with leave to enter or remain or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or 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.

(4) In this paragraph, a “person with leave to enter or remain” means a person (“P”)—

- (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 discretionary leave⁽¹⁾, and who has been granted leave to enter or remain accordingly;
- (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 that person to enter or remain in the United Kingdom on the grounds of discretionary leave, and who has been granted leave to enter or remain accordingly;
 - (iii) been granted leave to remain on the grounds of private or family life under the immigration rules; or
 - (iv) been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is not considered to qualify for leave to remain on the grounds of private or family life under the immigration rules, P has been granted leave to remain outside the rules⁽²⁾ on the grounds of Article 8 of the European Convention on Human Rights;
- (b) 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
 - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since they were granted leave to enter or remain.

(5) In this paragraph, “leave application date” means the date on which the person with leave to enter or remain made the application that led to that person being granted leave to enter or remain in the United Kingdom.

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

(2) Paragraph 276BE(2) of the immigration rules refers.

(3) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19), Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c. 13), the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), Schedule 1 and the Immigration Act 2014 (c. 22).

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

8.—(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 United Kingdom, Gibraltar, the EEA 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).

9.—(1) A person with protected rights or a frontier worker within the meaning of regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020⁽¹⁾ 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);

(1) S.I. 2020/1213.

- (b) subject to sub-paragraph (2), is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (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.

(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).

(3) In this paragraph, a description of a person in sub-paragraph (1)(a)(i) is to be read as if it includes a relevant person of Northern Ireland who would, if that person were an EEA national or solely an EEA national, be an EEA migrant worker or an EEA self-employed person.

10.—(1) 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 United Kingdom, Gibraltar, the EEA 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 10 of Council Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on the freedom of movement for workers within the Union (1) (“the Workers Regulation”), as it had effect immediately before IP completion day, as extended by the EEA Agreement(2), as it had effect immediately before IP completion day.

(2) For the purposes of sub-paragraph (1)(c), in Article 10 of the Workers Regulation the reference to “another Member State” is to be read as including the United Kingdom and the references to “that State” construed accordingly.

(3) Any description of a person who would have been eligible under this paragraph immediately before

(1) OJ No L141, 27.05.2011, p.1, amended by Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 (OJ L 107, 22.4.2016, p.1) and Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 (OJ L 186, 11.7.2019, p.21).

(2) Annex V of the EEA Agreement refers to Regulation (EU) No. 492/2011, with modifications that are not relevant for these purposes. Section 3(1) and (2)(b) of the European Union (Withdrawal) Act 2018 (c. 18) make provision for incorporation of Annexes to the EEA Agreement into domestic law.

IP completion day is to be eligible on and after IP completion day.

11.—(1) A person with protected rights who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (b) 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
- (c) is entitled to support by virtue of Article 10 of the Workers Regulation, as it had effect immediately before IP completion day, as extended by the EEA Agreement, as it had effect immediately before IP completion day.

(2) For the purposes of sub-paragraph (1)(c), in Article 10 of the Workers Regulation—

- (a) the reference to a “national of a Member State” is to be read as including a relevant person of Northern Ireland; and
- (b) the reference to “another Member State” is to be read as including the United Kingdom, and the references to “that State” construed accordingly.

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

12.—(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 before IP completion day;
- (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 United Kingdom, Gibraltar, the EEA 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 United Kingdom, Gibraltar, the EEA 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 sub-paragraph (3) or (4) applies to the person.

(3) This sub-paragraph applies to a person who is—

- (a) a United Kingdom national;
- (b) 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
- (c) a person who had the right of permanent residence,

who 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.

(4) This paragraph applies to a person—

- (a) who is settled in the United Kingdom and had the right of permanent residence; and
- (b) who has gone to the state within the territory comprising the EEA 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.

(5) 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.

13.—(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 before IP completion day;
- (c) was ordinarily resident immediately before IP completion day—
 - (i) in the territory comprising Gibraltar, the EEA and Switzerland; or
 - (ii) in the United Kingdom where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising Gibraltar, the EEA and Switzerland,

and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the period beginning on IP completion day and ending immediately

before the first day of the first academic year of the course;

- (d) 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;
- (e) 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 designated course; and
- (f) in a case where the person's ordinary residence referred to in paragraph (e) 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 (e).

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

(3) For the purposes of sub-paragraph (2), 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.

United Kingdom nationals

14.—(1) A person—

- (a) who is—
 - (i) a United Kingdom national on the first day of the first academic year of the course; or
 - (ii) a family member of a person mentioned in sub-paragraph (i);
- (b) who was ordinarily resident immediately before IP completion day—

(i) in the territory comprising the EEA and Switzerland; or

(ii) in the United Kingdom, where that residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the EEA and Switzerland,

and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;

(c) who is attending a designated course;

(d) who 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

(e) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland has not during any part of the period referred to in paragraph (d) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland in accordance with paragraph 1(4).

(3) Where a person (“P”) falls within sub-paragraph (1)(a)(ii), the person in relation to whom P is a family member must also meet the requirements of sub-paragraph (1)(b) and (d).

EU Nationals ordinarily resident in the United Kingdom and Islands

15.—(1) A person who—

(a) is an EU 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 United Kingdom, Gibraltar, the EEA 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 on the first day of the first academic year of the designated course is treated as being satisfied.

16. A person with protected rights who—

- (a) is an EU national on the first day of the first academic year of the course;
- (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 United Kingdom and Islands 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 sub-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 prior to the period of ordinary residence referred to in sub-paragraph (c).

Children of Swiss nationals

17.—(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 designated 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 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 United Kingdom, Gibraltar, the EEA and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

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

18. A person with protected rights who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss citizens' rights 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 sub-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 prior to the period of ordinary residence referred to in sub-paragraph (c).

Children of Turkish workers

19. 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 United Kingdom, Gibraltar, the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the designated course.

20. A person who—

- (a) is the child of a Turkish worker ("T") where T was ordinarily resident in the United Kingdom immediately before IP completion day;
- (b) immediately before IP completion day—
 - (i) was the child of T; and
 - (ii) was ordinarily resident in the United Kingdom;
- (c) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (d) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.