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WELSH STATUTORY INSTRUMENTS

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**2019 No. 1039 (W. 182)**

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

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019

*Made* - - - - 20 June 2019  
*Laid before the National  
Assembly for Wales* - - 24 June 2019  
*Coming into force in accordance with regulation 1(2)*

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

PART 1

TITLE AND COMMENCEMENT

**Title and commencement**

1.—(1) The title of these Regulations is the Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

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- (1) 1998 c. 30; section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6; the Finance Act 2003 (c. 14), section 147; the Higher Education Act 2004 (c. 8), sections 42 and 43 and Schedule 7; the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257; the Education Act 2011 (c. 21), section 76; S.I. 2013/1181 and the Higher Education and Research Act 2017 (c. 29), section 88. See section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.
- (2) The Secretary of State's functions in section 22(2)(a) to (i) and (k) of the Teaching and Higher Education Act 1998 were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with functions under subsections (a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State's function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

## PART 2

### AMENDMENTS

2. The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019(3) are amended in accordance with regulations 3 to 5.

#### Amendment to regulation 16

3. In regulation 16(1)(b)(iii) (students becoming eligible during a course), after "EU national" insert ", a person described in paragraph 8(1)(a)(ii) of Schedule 2 or of a person who is eligible other than as a family member under paragraph 8(1) of Schedule 2 by virtue of paragraph 8(1A) of that Schedule".

#### Amendments to Schedule 2

4.—(1) Schedule 2 (categories of eligible students) is amended as follows.

(2) In paragraph 1(2)(d) (category 1 – persons settled in the United Kingdom), after "the territory comprising" insert "the United Kingdom, Gibraltar,".

(3) In paragraph 6 (category 6 – workers, employed persons, self-employed persons and their family members)—

(a) in sub-paragraphs (1)(b) and (2)(b), after "the territory comprising" insert "the United Kingdom, Gibraltar,";

(b) in sub-paragraphs (3) and (4), omit "other than the United Kingdom" each time it occurs.

(4) In paragraph 7(1)(d) and (e) (category 7 – persons who are settled in the United Kingdom and have exercised a right of residence elsewhere), after "the territory comprising" insert "the United Kingdom, Gibraltar,".

(5) In paragraph 8 (category 8 – EU nationals)—

(a) for sub-paragraph (1)(a) substitute—

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

(i) an EU national,

(ii) a United Kingdom national who has exercised a right of residence, or

(iii) the family member of a person in sub-paragraph (i) or (ii),”;

(b) in sub-paragraph (1)(c) and (d), after "the territory comprising" insert "the United Kingdom, Gibraltar,";

(c) after sub-paragraph (1) insert—

“(1A) Any description of person who would have been eligible under sub-paragraph (1) immediately before exit day is to be eligible on and after exit day.”;

(d) in sub-paragraph (2)(a), omit "other than a United Kingdom national";

(e) in sub-paragraph (2)(d), after "the territory comprising" insert "the United Kingdom, Gibraltar,";

(f) for sub-paragraph (4) substitute—

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

(6) For paragraph 9 (category 9 – children of Swiss nationals) substitute—

**“Category 9 – Children of Swiss nationals**

9.—(1) A person who—

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

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

(7) In paragraph 10(1)(c) (category 10 – children of Turkish workers), after “the territory comprising” insert “the United Kingdom, Gibraltar,”.

(8) In paragraph 11 (ordinary residence – additional provision)—

- (a) after “the territory comprising” insert “the United Kingdom, Gibraltar,” each time it occurs;
- (b) in sub-paragraph (5), after “an area” insert “other than the United Kingdom or Gibraltar”.

**Amendments to Schedule 3**

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

(2) In paragraph 4(1) (independent eligible students), in Case 6, before “the European Union” insert “the United Kingdom, Gibraltar and”.

(3) In paragraph 9 (taxable income)—

- (a) in sub-paragraph (1)(b), for “another member State” substitute “a member State”;
- (b) for sub-paragraph (2) substitute—

“(2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of—

- (a) the United Kingdom and one or more member State, or
- (b) more than one member State,

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

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

- (a) paragraph 11 (deductions for the purpose of calculating residual income of an eligible student), Deduction B;
- (b) paragraph 15 (deductions for the purpose of calculating residual income of persons other than eligible student), Deduction A;

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

20 June 2019

*Kirsty Williams*  
Minister for Education, one of the Welsh  
Ministers

## EXPLANATORY NOTE

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

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("the 2019 Regulations") provide for the making of grants and loans to students who are ordinarily resident in Wales for postgraduate master's degree courses that begin on or after 1 August 2019.

These Regulations make amendments to the 2019 Regulations to reflect the withdrawal of the United Kingdom from the European Union and to ensure that students who would have been eligible for support immediately before exit day will continue to be eligible for support.

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