WELSH STATUTORY INSTRUMENTS

2011 No. 1978 (W.218)

EDUCATION, WALES

The Education (Student Fees, Awards and Support) (Wales) Regulations 2011

Made - - - -	*9 August 2011*
Laid before the National Assembly for Wales - -	*10 August 2011*
Coming into force - -	*31 August 2011*

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 22 and 43(1) of the Teaching and Higher Education Act 1998(**1**) and sections 1 and 2 of the Education (Fees and Awards) Act 1983(**2**) and now exercisable by them(**3**) and in exercise of the powers conferred upon the National Assembly for Wales by section 28(6) of the Higher Education Act 2004(**4**) and now exercisable by them(**5**) make the following Regulations:

(**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 and the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 257.

(**2**) 1983 c. 40; section 1 was amended by the Education Reform Act 1988 (c. 40), section 237 and Schedule 12; the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8; the Education Act 1994 (c. 30), section 24 and Schedule 2; the Education Act 1996 (c. 56), section 582(1) and Schedule 37; the Learning and Skills Act 2000 (c. 21) section 149 and Schedule 9; the Education Act 2002 (c. 32), section 215 and Schedule 21; the Education Act 2005 (c. 18) section 98 and Schedule 14; the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3238), article 9 and Schedule 1; the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010 (S.I. 2010/1080), article 2 and Schedule 1 and the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), article 5 and Schedule 2. Section 2 was amended by the Teaching and Higher Education Act 1998 (c. 30), section 44 and Schedule 4.

(**3**) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 (except so far as they relate to the making of any provision authorised by subsection (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22) were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004 and the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) Order 2005 (S.I. 2005/1833 (W.149) (C.79)) as amended by the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006 (S.I. 2006/1660 (W.159) (C.56)). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006 (c. 32). The functions of the Secretary of State under section 1 of the Education (Fees and Awards) Act 1983, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458) with effect from 8 June 2006. The functions of the Secretary of State under section 2 of the Education (Fees and Awards) Act 1983, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales in relation to sections 1 and 2 of the Education (Fees and Awards) Act 1983 were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(d) of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**4**) 2004 c. 8; section 28 was amended by the Education Act 2005 (c. 18), section 98 and Schedule 14.

(**5**) The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Student Fees, Awards and Support) (Wales) Regulations 2011.

(2) These Regulations come into force on 31 August 2011 and apply in relation to Wales.

Interpretation

2. In these Regulations—

"the 2011 Regulations" ("*Rheoliadau 2011*") means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2011(**6**);

"the 2012 Regulations" ("*Rheoliadau 2012*") means the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011(**7**);

"European Institutions Regulations" ("*Rheoliadau'r Sefydliadau Ewropeaidd*") means the Assembly Learning Grants (European Institutions) (Wales) Regulations 2011(**8**);

"European University Institute Regulations" ("*Rheoliadau'r Athrofa Brifysgol Ewropeaidd*") means the Assembly Learning Grants (European University Institute) (Wales) Regulations 2009(**9**);

"Fees Regulations" ("*y Rheoliadau Ffioedd*") means the Education (Fees and Awards) (Wales) Regulations 2007(**10**); and

"Qualifying Courses and Persons Regulations" ("*Rheoliadau'r Cyrsiau a Phersonau Cymhwysol*") means the Student Fees (Qualifying Courses and Persons) (Wales) Regulations 2011(**11**).

Amendment of the 2011 Regulations

3. The 2011 Regulations are amended in accordance with regulations 4 and 5.

4. In regulation 2(1), in the definition of "person with leave to enter or remain" ("*person sydd â chaniatâd i ddod i mewn neu i aros*"), for sub-paragraph (a) substitute—

"(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 A is considered not to qualify for recognition as a refugee it is thought right to allow A to enter or remain in the United Kingdom on the grounds of humanitarian protection(**12**) or discretionary leave(**13**); or

(ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow A to enter or remain in the United Kingdom on the grounds of discretionary leave;".

5. In Part 2 of Schedule 1—

(a) for paragraph 5(2)(b), substitute—

(**6**) S.I. 2011/148 (W.32).
(**7**) S.I. 2011/886 (W.130).
(**8**) S.I. 2011/736 (W.113).
(**9**) S.I. 2009/3359 (W.295).
(**10**) S.I. 2007/2310 (W.181), as amended by S.I. 2008/1259 and S.I. 2010/1142.
(**11**) S.I. 2011/691 (W.103).
(**12**) Humanitarian protection may be granted by the Secretary of State pursuant to Part 11 of the Immigration Rules made under section 3(2) of the Immigration Act 1971 (c. 77).
(**13**) Discretionary leave may be granted by the Secretary of State under section 3(1)(b) of the Immigration Act 1971.

"(b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made—

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made;";

(b) for paragraph 5(3)(b), substitute—

"(b) who, on the date on which the person with leave to enter or remain made—

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made,

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

(c) for paragraph 5(3)(c), substitute—

"(c) who was under 18 on the date on which the person with leave to enter or remain made —

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made;".

Amendment of the 2012 Regulations

6. The 2012 Regulations are amended in accordance with regulations 7 and 8.

7. In regulation 2(1), in the definition of "person with leave to enter or remain" ("*person sydd â chaniatâd i ddod i mewn neu i aros*"), for sub-paragraph (a) substitute—

"(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 A is considered not to qualify for recognition as a refugee it is thought right to allow A to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave; or

(ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow A to enter or remain in the United Kingdom on the grounds of discretionary leave;".

8. In Part 2 of Schedule 1—

(a) for paragraph 5(2)(b), substitute—

"(b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made—

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made;";

(b) for paragraph 5(3)(b), substitute—

"(b) who, on the date on which the person with leave to enter or remain made—

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made,

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

(c) for paragraph 5(3)(c), substitute—

"(c) who was under 18 on the date on which the person with leave to enter or remain made—

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made;".

Amendment of the European Institutions Regulations

9. The European Institutions Regulations are amended in accordance with regulations 10 and 11.

10. In regulation 3(1), in the definition of "person with leave to enter or remain" ("*person sydd â chaniatâd i ddod i mewn neu i aros*"), for sub-paragraph (a) substitute—

"(a) who has—

(i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is considered not to qualify for recognition as a refugee, it is thought right to allow P to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave; or

(ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow P to enter or remain in the United Kingdom on the grounds of discretionary leave;".

11. In Part 2 of Schedule 1—

(a) for paragraph 5(2)(b), substitute—

"(b) was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made—

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made;";

(b) for paragraph 5(3)(b), substitute—

"(b) on the date on which the person with leave to enter or remain made—

(i) the application for asylum; or

(ii) the application for discretionary leave, where no application for asylum was made,

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

(c) for paragraph 5(3)(c), substitute—

"(c) was under 18 on the date on which the person with leave to enter or remain made —

(i) the application for asylum; or