WELSH STATUTORY INSTRUMENTS

2011 No. 691 (W.103)

EDUCATION, WALES

The Student Fees (Qualifying Courses and Persons) (Wales) Regulations 2011

Made - - - -	*8 March 2011*
Laid before the National Assembly for Wales - -	*9 March 2011*
Coming into force - -	*31 March 2011*

The Welsh Ministers in exercise of the powers conferred on the National Assembly for Wales by sections 28(6) and 47(5) of the Higher Education Act 2004(**1**) and now exercisable by them(**2**), make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Student Fees (Qualifying Courses and Persons) (Wales) Regulations 2011 and they come into force on 31 March 2011.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Higher Education Act 2004;

"the 2011 Regulations" ("*Rheoliadau 2011*") means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2011(**3**);

"course for the initial training of teachers" ("*cwrs ar gyfer hyfforddiant cychwynnol athrawon*") includes such a course leading to a first degree;

"course of higher education" ("*cwrs addysg uwch*") means a course falling within paragraph 1 of Schedule 6 to the Education Reform Act 1988(**4**);

"end-on course" ("*cwrs penben*") has the meaning given in regulation 2(1) of the 2011 Regulations;

(**1**) 2004 c. 8. There are amendments to section 28 which are not relevant to these Regulations.
(**2**) 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).
(**3**) S.I. 2011/148 (W.32).
(**4**) 1988 c. 40.

"equivalent or lower qualification" ("*cymhwyster cyfwerth neu is*") means a qualification determined by the Welsh Ministers in accordance with paragraph (2) to be an equivalent or lower qualification;

"preceding course" ("*cwrs blaenorol*") means a course mentioned in paragraph 2 or 3 of Schedule 2 to the 2011 Regulations or a course for a foundation degree or a course for the initial training of teachers which (disregarding any intervening vacation) a person ceases to attend immediately before beginning to attend an end-on course;

"public funds" ("*cronfeydd cyhoeddus*") means moneys provided by Parliament including funds provided by the Welsh Ministers;

"publicly-funded" ("*a ariennir yn gyhoeddus*") means maintained or assisted by recurrent grants out of public funds;

"qualified teacher" ("*athro cymwysedig neu athrawes gymwysedig*") has the meaning given in section 132(1) of the Education Act 2002(**5**); and

"single course" ("*cwrs sengl*") means a course to which regulation 5(6) of the 2011 Regulations applies and which falls within the description of a course in that regulation.

(2) The Welsh Ministers may determine that a qualification is an equivalent or lower qualification if—

(a) the person holds a higher education qualification from an institution in the United Kingdom; and

(b) the qualification referred to in sub-paragraph (a) is of an academic level which is equivalent to or higher than a qualification to which the current course leads.

Prescribed description of a qualifying course

3.—(1) A qualifying course which is prescribed for the purposes of section 28 of the Act is:

(a) a course of higher education;

(b) subject to paragraphs (3) and (4), designated for the purposes of section 22 of the Teaching and Higher Education Act 1998(**6**) on the first day of an academic year which begins during the grant period; and

(c) provided by an institution in Wales.

(2) For the purposes of paragraph (1) the reference to an institution in Wales means an institution whose activities are carried on in Wales.

(3) A course is not a qualifying course if at the time the qualifying person received an offer of a place on that course the institution providing it was not publicly-funded.

(4) A course is not a qualifying course if the first academic year of the course began before 1 September 2012.

(5) A course is not a qualifying course if—

(a) it is an end-on course; and

(b) the preceding course was not a qualifying course by reason of paragraph (4).

(**5**) 2002 c. 32.
(**6**) 1998 c. 30. Section 22 was amended by the Learning and Skills Act 2000 (c. 21), section 146 and Schedule 11. There are other amendments not relevant to these Regulations.

Prescribed description of a qualifying person

4.—(1) A qualifying person who is prescribed for the purposes of section 28 of the Act is a person who falls within the Schedule on the first day of an academic year which begins during the grant period, other than—

(a) a person who is not eligible for support under the 2011 Regulations by reason of regulation 4(3)(c), (d), (e) or (f) of those Regulations; or

(b) a person mentioned in paragraph (2), (3), (6) or (7).

(2) Subject to the exceptions in paragraphs (4), (5) (6) and (7), a person is not a qualifying person if—

(a) the person holds a higher education qualification; and

(b) the qualifying course leads to a qualification which is an equivalent or lower qualification.

(3) A person is not a qualifying person if—

(a) the person ceases a course ("the first course") which is not a qualifying course;

(b) disregarding any intervening vacation, the person immediately attends another course which is a qualifying course; and

(c) the first course was not a qualifying course by reason of regulation 3(4).

(4) Paragraph (2) does not apply where—

(a) the qualifying course is a course for the initial training of teachers;

(b) the duration of the course does not exceed two years (the duration of a part-time course being expressed as its full-time equivalent); and

(c) the qualifying person is not a qualified teacher.

(5) Paragraph (2) does not apply in respect of any part of a single course where—

(a) the single course leads to an honours degree being conferred on the qualifying person from an institution in the United Kingdom before the final degree or equivalent qualification; and

(b) the only honours degree held by the qualifying person was received as part of that single course.

(6) Paragraph (2) does not apply where the qualifying course is a foundation degree.

(7) Paragraph (2) does not apply where the qualifying course leads to qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect.

(8) Where an event occurs in the course of an academic year and as a result a person falls within the Schedule in the course of an academic year, that person is not a qualifying person in respect of the academic year in which the relevant event occurred or any previous academic year.

Leighton Andrews
Minister for Children, Education and Lifelong Learning, one of the Welsh Ministers

8 March 2011

SCHEDULE

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

"academic year" ("*blwyddyn academaidd*") means the period of twelve months beginning on 1 January, 1 April, 1 July or 1 September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1 January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August or on or after 1 August and on or before 31 December, respectively;

"Directive 2004/38" ("*Cyfarwyddeb 2004/38*") means Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States(**7**);

"EEA frontier self-employed person" ("*person hunangyflogedig ffin yr 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(**8**) other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State daily or at least once a week;

"EEA frontier worker" ("*gweithiwr ffin yr 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 other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State daily or at least once a week;

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

"EEA national" ("*gwladolyn o'r AEE*") means a national of an EEA State other than the United Kingdom;

"EEA self-employed person" ("*person hunangyflogedig o'r AEE*") means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

"employed person" ("*person cyflogedig*") means an employed person with the meaning of Annex 1 to the Swiss Agreement;

"employment" ("*cyflogaeth*") means full-time or part-time employment;

"EU national" ("*gwladolyn o'r UE*") means a national of a Member State of the European Union;

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

"European Union" ("*yr Undeb Ewropeaidd*") means the territory comprised by the Member States of the European Union as constituted from time to time;

"family member" ("*aelod o deulu*") means—

(a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—

(i) that person's spouse or civil partner;

(ii) direct descendants of the person or of the person's spouse or civil partner who are—

(**7**) OJ L158, 30.04.2004, pp.77-123.
(**8**) "EEA State" is defined in the Interpretation Act 1978 (c. 30).

(aa) under the age of 21; or

(bb) dependants of the person or the person's spouse or civil partner; or

(iii) dependent direct relatives in the ascending line of the person or the 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) the person's spouse or civil partner; or

(ii) the person's child or the child of the 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) dependent direct relatives in the national's ascending line or of the national's spouse or civil partner;

(e) in relation to a United Kingdom national, for the purposes of paragraph 9—

(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;

"the Islands" ("*yr Ynysoedd*") means the Channel Islands and the Isle of Man;

"overseas territories" ("*tiriogaethau tramor*") means Anguilla; Aruba; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Montserrat; Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten); Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; St Helena and Dependencies (Ascension Island and Tristan de Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

"person with leave to enter or remain" ("*person sydd â chaniatâd i ddod i mewn neu i aros*") means a person ("P")—

(a) who has been informed 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;

(b) who has been granted leave to enter or to remain accordingly;

(c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter