WELSH STATUTORY INSTRUMENTS

2007 No. 2310 (W.181)

EDUCATION, WALES

The Education (Fees and Awards) (Wales) Regulations 2007

Made - - - -	*4 August 2007*
Laid before the National Assembly for Wales - -	*7 August 2007*
Coming into force - -	*31 August 2007*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State and now vested(**1**) in them by sections 1 and 2 of the Education (Fees and Awards) Act 1983(**2**), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Fees and Awards) (Wales) Regulations 2007.

(2) These Regulations come into force on 31 August 2007 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the 2005 Act" ("*Deddf 2005*") means the Education Act 2005(**3**);

"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

(**1**) 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 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 of the Government of Wales Act 2006 (c. 32).

(**2**) 1983 c. 40. Section 1 was amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 19; the Education Act 1994 (c. 30), Schedule 2, paragraph 7; the Education Act 1996 (c. 56), Schedule 37, paragraph 57; the Teaching and Higher Education Act 1998 (c. 30), Schedule 3, paragraph 5; the Learning and Skills Act 2000 (c. 21), Schedule 9, paragraphs 1 and 11; the Education Act 2002 (c. 32), Schedule 21, paragraph 5 and the Education Act 2005 (c. 18), Schedule 14, paragraph 9. Section 2 was amended by the Teaching and Higher Education Act 1988, section 44 and Schedule 4.

(**3**) 2005 c. 18.

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;

"award" ("*dyfarniad*") means a fees award or a maintenance award or both;

"education" ("*addysg*") includes post-graduate research otherwise than in the course of employment;

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

"European Community" ("*y Gymuned Ewropeaidd*") means the territory comprised by the Member States of the European Community as constituted from time to time;

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

"fees award" ("*dyfarniad ffioedd*") means an award in respect only of any fees payable other than any element of those fees which is a charge for maintenance;

"HEFCW" ("*CCAUC*") means the Higher Education Funding Council for Wales(**4**);

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

"maintenance award" ("*dyfarniad cynnal*") means any award other than a fees award;

"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, Curaçao, Saba, Sint Eustatius and Sint Maarten); Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and 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;

"post-compulsory education award" ("*dyfarniad addysg ôl-orfodol*") means a scholarship, exhibition, bursary or other allowance granted by a local education authority under the Local Education Authority (Post-Compulsory Education Awards)(Wales) Regulations 2002(**5**);

"training provider" ("*darparwr hyfforddiant*") means a person who provides training for members of the school workforce under Part 3 of the 2005 Act;

(2) Despite section 11 of the Interpretation Act 1978(**6**) section 3(2) of the Education (Fees and Awards) Act 1983 (references to the United Kingdom to include references to the Islands) will not apply for the purposes of interpreting these Regulations.

(3) For the purposes of these Regulations, "parent" ("*rhiant*") includes a guardian, any other person having parental responsibility for a child and any person having care of a child and "child" ("*plentyn*") is to be construed accordingly.

(4) For the purposes of these Regulations, a person is to be treated as ordinarily resident in Wales, Great Britain, the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland and Turkey if he or she would have been so resident but for the fact that—

(a) he or she;

(b) his or her spouse or civil partner;

(c) his or her parent; or

(**4**) Established under section 65 of the Further and Higher Education Act 1992 (c. 13).
(**5**) S.I. 2002 No.1856 (W. 180).
(**6**) 1978 c. 30.

(d) in the case of a dependent direct relative in the ascending line, his or her child or child's spouse or civil partner,

is or was temporarily employed outside the area in question.

(5) For the purposes of paragraph (4), temporary employment 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 an EEA State or Switzerland, any period which they serve outside the territory comprising the European Economic Area and Switzerland as members of such forces; and

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

(6) For the purposes of regulations 6,7 and 8, a person is to be treated as ordinarily resident in Wales, Great Britain, the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland and Turkey if he or she would have been so resident but for the fact that—

(a) he or she;

(b) his or her spouse or civil partner;

(c) his or her parent; or

(d) in the case of a dependent direct relative in the ascending line, his or her child or child's spouse or civil partner,

was temporarily receiving full-time education outside the area in question.

(7) For the purposes of these Regulations an area which—

(a) was previously not part of the European Community or the European Economic Area; but

(b) at any time before or after these Regulations come into force has become part of one or the other or both of these areas,

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

Lawful acts

3.—(1) If discrimination arises from the remission in whole or in part of any fee (on grounds of financial hardship or otherwise), nothing in these Regulations is to be construed as rendering that discrimination unlawful, if it would have been lawful had these Regulations not been made.

(2) If discrimination arises from any rule of eligibility for an award, nothing in these Regulations is to be construed as rendering that discrimination unlawful, if it would have been lawful had these Regulations not been made.

Fee charging

4.—(1) It will be lawful for the institutions mentioned in paragraph (3) to charge higher fees in the case of a person who does not fall within the Schedule than in the case of a person who does fall within the Schedule.

(2) For the purposes of this regulation a person falls within the Schedule if they fall within it on the first day of an academic year of the course.

(3) The institutions mentioned in this paragraph are institutions—

(a) within the higher education sector, including a constituent college, school or hall of such an institution;

(b) within the further education sector;

(c) which are training providers and are receiving financial support under section 86 of the 2005 Act;

(d) which provide further education and are maintained by a local education authority.

(4) This regulation does not make lawful the charging of a fee which is unlawful by reason of a condition imposed under section 28 of the Higher Education Act 2004(**7**).

Awards by local education authorities

5.—(1) It shall be lawful for a local education authority to adopt rules of eligibility for awards under sections 1(6) or 2 of the Education Act 1962(**8**) or for post-compulsory education awards which—

(a) do not take account of regulation 2(4);

(b) confine eligibility in the case of fees awards to those persons who fall within the Schedule, excluding those who fall within paragraph 5, or

(c) confine eligibility in the case of maintenance awards to those persons who fall within the Schedule, excluding those who fall within paragraphs 5 and 9.

Payments by the Training and Development Agency for Schools and HEFCW

6.—(1) It shall be lawful for the Training and Development Agency for Schools(**9**) under section 78 of the 2005 Act and HEFCW under section 86 of the 2005 Act to adopt rules of eligibility for awards by any training provider to which they make grants, loans or other payments which confine eligibility to those persons who fall within the Schedule.

(2) It shall be lawful for a training provider who is receiving financial support under section 78 and or section 86 of the 2005 Act to adopt rules of eligibility for awards which confine eligibility to those persons who fall within the Schedule.

Payments by HEFCW

7.—(1) It shall be lawful for HEFCW to adopt rules of eligibility for awards to be made to students who are being trained (otherwise than by a course leading to a first degree) to teach persons over school age by an institution to which it makes grants, loans or other payments under section 65 of the Further and Higher Education Act 1992 which confine eligibility to those persons who fall within the Schedule.

(2) It shall be lawful for an institution to which HEFCW pays grants, loans or other payments for the purpose described in paragraph (1) to adopt rules of eligibility for awards which confine eligibility to those persons who fall within the Schedule.

(**7**) 2004 c. 8.

(**8**) 1962 c .12. The Education Act 1962 was repealed by the Teaching and Higher Education Act 1998, subject to transitional and saving provisions to enable payments to be made pursuant to awards made under the Act before its repeal and to enable awards to be made in respect of courses beginning before 1 September 1999 and certain courses beginning after that date.

(**9**) The Teacher Training Agency was established under section 1 of the Education Act 1994 and under section 74 of the Education Act 2005, its name was changed to the Training and Development Agency for Schools. Under section 78 of the Education Act 2005 the Training and Development Agency for Schools may provide financial support to any person it thinks fit in furtherance of its objectives.

Payments by the Welsh Ministers

8.—(1) It shall be lawful for the Welsh Ministers to adopt rules of eligibility for awards by an institution to which they make grants, loans or other payments under section 34 of the Learning and Skills Act 2000 which confine eligibility to those persons who fall within the Schedule.

(2) It shall be lawful for an institution to which the Welsh Ministers pay grants, loans or other payments to adopt rules of eligibility for awards (however described) which confine eligibility to those persons who fall within the Schedule.

Revocation

9.—(1) The following Regulations are revoked in relation to Wales—

(a) The Education (Fees and Awards) Regulations 1997(**10**);

(b) The Education (Student Fees and Support) (Switzerland) Regulations 2003(**11**);

(c) The Education (Fees and Awards) (Amendment) Regulations 2006(**12**); and

(d) The Education (Fees and Awards) (Amendment) (Wales) Regulations 2006(**13**).

Jane E. Hutt
Minister for Children, Education, Lifelong Learning and Skills, one of the Welsh Ministers.

4 August 2007

(**10**) S.I.1997/1972, amended by S.I. 1998/1965, S.I. 1999/229, S.I. 2000/2192, S.I. 2003/2945, S.I. 2005/2114, S.I. 2006/483 and S.I. 2006 1795.
(**11**) S.I. 2003/3280.
(**12**) S.I. 2006/483.
(**13**) S.I. 2006/1795 (W.190)