

Huw Lewis AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Ein cyf/Our ref LF/HL/1047/14

Ann Jones AM
Chair
Children, Young People and
Education Committee
National Assembly for Wales

16 October 2014

Dear Ann,

Higher Education (Wales) Bill – Draft Regulations

During my attendance to the Constitutional and Legislative Affairs Committee I promised the Committee that during Stage 2 I would make available drafts of the regulations to be made under the powers in the Bill, necessary for the operation of the new regulatory system. These are attached.

I believe that the draft regulations and the Statement of Policy Intent, which I sent you at Introduction of the Bill, will together aid Committee Members in their further scrutiny of the Bill. I would like also to reassure you that my officials continue to work closely with the Higher Education Funding Council for Wales and key stakeholders and will continue to do so as scrutiny of the Bill progresses.

I trust that this information will assist Committee Members to better understand the policy intention. The final detail of the regulations will of course depend on the outcomes of Assembly scrutiny and consultation.

I am also copying this letter to David Melding AM, Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

Huw Lewis AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Fee and
Access Plans) (Review, Notices and
Directions) (Wales) Regulations
2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of the issue and review of those notices and directions specified in section 40(1) of the Higher Education (Wales) Act 2015.

Regulation 3 prescribes the time and manner in which representations may be made in respect of proposed notices and directions. Regulation 4 sets out when notices and directions shall be treated as having been given.

Regulation 5 sets out the information that must be given with notices and directions.

Regulation 6 prescribes the grounds on which an application for a review of a notice or direction may be made. Regulation 7 sets out the procedure that a governing body must follow in order to apply for a review of a notice or direction.

Regulation 8 sets out the procedure to be followed by the person, or panel of persons, appointed by the Welsh Ministers to review notices and directions. Regulation 9 prescribes the post review procedure.

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Fee and
Access Plans) (Review, Notices and
Directions) (Wales) Regulations
2015**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by sections 41(2)(d), 42(c) and 43(3) of the Higher Education (Wales) Act 2015⁽¹⁾, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Higher Education (Fee and Access Plans) (Review, Notices and Directions) (Wales) Regulations 2015.

(2) These Regulations come into force on [] and apply in relation to Wales.

Interpretation

2. In these Regulations—

“review panel” [Welsh translation to be included] means the person, or panel of persons, appointed by the Welsh Ministers under section 43(2) of the 2015 Act;

“the 2015 Act” “*Deddf 2015*” means the Higher Education (Wales) Act 2015.

(1) [Reference to be included].

Representations in respect of proposed notices and directions: warning notices

3. For the purposes of section 41(2)(d) of the 2015 Act, representations must be made to HEFCW in writing before the end of 40 days beginning with the date of the warning notice.

Treatment of notices and directions

4. A notice or direction specified in section 40(1) of the 2015 Act is to be treated as having been given on the day that the first of the following events occur—

- (a) the governing body notifies HEFCW in writing that it accepts the notice or direction;
- (b) the time limit to apply for a review of the notice or direction under section 43 of the 2015 Act has expired and the governing body has not applied for a review;
- (c) a review of the notice or direction under section 43 of the 2015 Act has concluded and HEFCW has notified the governing body in writing that the notice or direction stands.

Information to be given with notices and directions

5. A statement issued in accordance with section 42 of the 2015 Act must include the following information—

- (a) the date of issue of the notice or direction;
- (b) when the notice or direction is to be treated as having been given;
- (c) the grounds in regulation 6 on which an application for a review may be made;
- (d) the procedure in regulation 7 that a governing body must follow in order to apply for a review;
- (e) the name and address of the review panel to whom an application for a review must be made.

Grounds for review of notices and directions

6. An application to review a notice or direction under section 43 of the 2015 Act may be made on one or more of the following grounds—

- (a) the governing body presents a material factor for consideration to which, for good reason, it had not previously drawn HEFCW's attention;
- (b) the governing body considers that HEFCW disregarded a material factor which it should have considered;

- (c) the governing body considers that the notice or direction is disproportionate in view of all the relevant facts which were considered by HEFCW.

Procedure to apply for a review of a notice or direction

7. An application for a review of the notice or direction must—

- (a) be made to the review panel in writing before the end of 40 days beginning with the date of issue of the notice or direction;
- (b) specify the grounds for review;
- (c) include the following—
 - (i) a copy of the notice or direction to be reviewed;
 - (ii) a copy of the statement issued in accordance with section 42 of the 2015 Act;
 - (iii) information in support of the application.

Review procedure

8.—(1) This regulation applies where an application for a review has been made.

(2) The review panel must give HEFCW—

- (a) details of the notice or direction to be reviewed;
- (b) details of the grounds on which the application for review has been made;
- (c) a copy of the information provided by the governing body in support of the application for review.

(3) The review panel may make a written request for further information from either HEFCW or the governing body for the purposes of the review. Any request for further information made by the panel must be sent to HEFCW and the governing body at the same time.

(4) HEFCW or the governing body must provide any further information requested by the review panel before the end of 28 days beginning with the date of the request.

(5) The review panel must—

- (a) provide a copy of any further information received from HEFCW to the governing body, and any further information received from the governing body to HEFCW;
- (b) take account of any information submitted by HEFCW or the governing body;

- (c) prepare a written report of the review and its findings;
- (d) send a dated copy of its report to HEFCW and the governing body at the same time.

Post review procedure

9.—(1) Following a review under section 43 of the 2015 Act, HEFCW must take account of the review panel’s report and reconsider its decision to issue the notice or direction.

(2) Before the end of 40 days beginning with the date of the review panel’s report, HEFCW must notify the governing body in writing whether the notice or direction stands or not, and provide reasons for that decision.

Name

Title of Minister, one of the Welsh Ministers

Date

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Fee and
Access Plans) (Wales) Regulations
2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about fee and access plans as defined in section 2(2) of the Higher Education (Wales) Act 2015.

Fee and access plans may be submitted to the Higher Education Funding Council for Wales (HEFCW) for approval by institutions which meet the criteria set out in section 2(3) of that Act. Approval of a fee and access plan by HEFCW leads to the automatic designation of an institution's courses for the purposes of statutory student support. The Welsh Ministers provide student support under regulations made by them by virtue of section 22 of the Teaching and Higher Education Act 1998.

Regulation 3 provides that an application for a fee and access plan must include information relating to an institution's financial viability, the organisation and management of its financial affairs and the quality of the education provided by, or on behalf of, the institution.

Regulation 4 prescribes that the maximum period during which a fee plan is to have effect is two years.

Regulations 5 to 7 prescribe the provisions relating to the promotion of equality of opportunity and the promotion of higher education that a fee and access plan must include.

Regulation 8 specifies the matters that HEFCW must take into account when deciding whether, or not, to approve a fee and access plan.

Regulation 9 requires publication of an approved plan.

Regulation 10 provides for the variation of an approved plan.

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Fee and
Access Plans) (Wales) Regulations
2015**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by sections 2(4), 4(2), 6(1), 7(3), 8(1) and 9(1) of the Higher Education (Wales) Act 2015(1), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Higher Education (Fee and Access Plans) (Wales) Regulations 2015.

(2) These regulations come into force on ... and apply in relation to Wales.

Interpretation

2. In these Regulations “the 2015 Act” (“Deddf 2015”) means the Higher Education (Wales) Act 2015.

Applications for approval of a fee and access plan

3. An application by an institution for approval of a fee and access plan must include information that—

- (a) demonstrates the financial viability of the institution;
- (b) specifies the arrangements for the organisation and management of the institution’s financial affairs;

(1) [reference to be included]

- (c) demonstrates that the quality of education provided by, or on behalf of, the institution is adequate.

Period to which the plan relates

4. For the purposes of section 4(2) of the 2015 Act the maximum period in respect of which a fee and access plan is to have effect is prescribed as two years.

Provisions to be included in fee and access plans

5. Regulations 6 and 7 prescribe for the purposes of section 6(1) of the 2015 Act the provisions relating to the promotion of equality of opportunity and the promotion of higher education that a fee and access plan must include.

6. A fee and access plan must—

- (a) set out the objectives of the institution, determined by the governing body, relating to the promotion of equality of opportunity and the promotion of higher education;
- (b) specify the proportion of fees payable by qualifying persons undertaking qualifying courses that the governing body will spend on the objectives in paragraph (a).

7. A fee and access plan must include provisions requiring the governing body of an institution—

- (a) to take, or to secure the taking of, measures to attract applications from prospective students who are members of under-represented groups;
- (b) to take, or to secure the taking of, measures to retain students who are members of under-represented groups;
- (c) to provide, or to secure the provision of, financial assistance to students;
- (d) to make available to students or prospective students information about financial assistance available to students from any source, or to secure that such information is made available;
- (e) to inform any prospective student, before the student commits to undertaking a course, of the aggregate amount of fees that the institution will charge for the completion of the course, or to secure that any prospective student is so informed;
- (f) to monitor—
 - (i) compliance with the provisions of the plan; and
 - (ii) progress in achieving the objectives set out in the plan.

Matters to be taken into account by HEFCW

8. In making any determination in respect of approval or rejection of a fee and access plan HEFCW(1) must take into account—

- (a) the safeguarding of fair access to higher education;
- (b) the provisions included in the fee and access plan relating to the promotion of equality of opportunity and the promotion of higher education;
- (c) the fees payable by qualifying persons undertaking qualifying courses(2);
- (d) the proportion of fees payable by qualifying persons undertaking qualifying courses that the governing body will spend on the promotion of equality of opportunity and the promotion of higher education;
- (e) the information required by regulation 3.

Publication of approved fee and access plan

9. Where HEFCW has approved a fee and access plan, the governing body must publish it in a manner which makes it conveniently accessible to students and prospective students.

Variations of fee and access plans

10.—(1) A governing body may apply to HEFCW for approval of a variation to the approved plan whilst the approved plan is in force.

(2) A variation to an approved plan may take effect only if approved in writing by HEFCW.

(3) In making any determination in respect of approval or rejection of a variation to the approved plan HEFCW must take into account the matters set out in regulation 8(a) to (d).

(4) Where HEFCW have approved a variation to an approved plan the governing body must comply with regulation 9 as if in that regulation the words “fee and access plan” were substituted by “variation”.

Name

Minister for Education and Skills, one of the Welsh Ministers

Date

(1) Higher Education Funding Council for Wales.

(2) “Qualifying course” and “qualifying person” are prescribed for the purposes of section 5(2) and (5)(b) of the 2015 Act by the Higher Education (Qualifying Courses and Persons) (Wales) Regulations 2015 (S.I.2015/xxx (W.xxx)).

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Qualifying
Courses and Persons) (Wales)
Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the qualifying courses and qualifying persons for the purposes of section 5 of the Higher Education (Wales) Act 2015 (“the 2015 Act”).

Section 5(2)(b) of the 2015 Act enables the Welsh Ministers to prescribe qualifying courses, and section 5(5) enables them to prescribe certain persons as qualifying persons.

The qualifying courses prescribed by regulation 3 are those courses which are capable of being designated under regulation 5(1) of the Education (Student Support) (Wales) Regulations 2013 where the first academic year of the course begins on or after 1 September 2012. There is an exception for “end-on courses” where the original course began before 1 September 2012.

The qualifying persons prescribed by regulation 4 are those persons who, on the first day of the relevant academic year, fall within the Schedule, save for those persons who are not eligible for support under the Education (Student Support) (Wales) Regulations 2013 by reason of certain paragraphs of regulation 4 of those Regulations, or who already have an honours degree from a UK institution.

There is an exception for those students who transfer to a qualifying course from a course which began before 1 September 2012. There are exceptions in respect of a previous honours degree for persons undertaking courses of initial teacher training, who have obtained the honours degree only as part of a single course they are currently undertaking or where the course leads to a qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect.

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Qualifying
Courses and Persons) (Wales)
Regulations 2015**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers in exercise of the powers conferred on them by sections 5(2)(b) and 5(5) of the Higher Education (Wales) Act 2015(1) make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Higher Education (Qualifying Courses and Persons) (Wales) Regulations 2015 and they come into force on xxxxxx.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the 2013 Regulations” (“*Rheoliadau 2013*”) means the Education (Student Support) (Wales) Regulations 2013(2);

“the 2015 Act” (“*y Ddeddf*”) means the Higher Education (Wales) Act 2015;

“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

(1) Anaw xx

(2) S.I. 2013/3177 (W.316) amended by S.I. 2014/1712 (W.172).

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;

“course for the initial training of teachers” (“*cwrs ar gyfer hyfforddiant cychwynmol 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;

“end-on course” (“*cwrs penben*”) has the meaning given in regulation 2(1) of the 2013 Regulations;

“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 2013 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;

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

“single course” (“*cwrs sengl*”) means a course to which regulation 5(6) of the 2013 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) Subject to paragraphs (2) and (3) a qualifying course for the purpose of section 5(2)(b) of the Act is—

- (a) a course of higher education capable of being designated under regulation 5 of the 2013 Regulations provided by an institution in Wales, or

- (b) a course of higher education capable of being designated under regulation 5 of the 2013 Regulations and which is provided on behalf of an institution in Wales by another institution.

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

(3) 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 (2).

Prescribed description of a qualifying person

4.—(1) A qualifying person who is prescribed for the purposes of section 5(5) of the Act is a person who falls within the Schedule on the first day of an academic year, other than—

- (a) a person who is not eligible for support under the 2013 Regulations by reason of regulation 4(3)(c), (d), (e) or (f) of those Regulations; or
- (b) a person mentioned in paragraphs (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(2).

(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.

Name

Title of Minister, one of the Welsh Ministers

Date

SCHEDULE

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

“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⁽¹⁾;

“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⁽²⁾ 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
- 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;

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

(2) “EEA State” is defined in the Interpretation Act 1978 (c.30).

“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—
 - (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-Barthélemy; 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—
 - (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;
- (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 or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002)(1); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since P was granted leave to enter or remain;

“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(2) as extended by the Protocol thereto which entered into force on 4th October 1967(3);

“right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“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(4);

“Swiss Agreement” (*“Cytundeb y Swistir”*) means the Agreement between the European Community 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(5) and which came into force on 1 June 2002;

“Swiss employed person” (*“person cyflogedig Swisaidd”*) means a Swiss national who is an

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

(2) Cmnd. 9171.

(3) Cmnd. 3906, (out of print; photocopies are available, free of charge, from the Student Support Division, Department for Business, Innovation and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

(4) section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).

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

employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” (“*person cyflogedig ffin y Swistir*”) 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 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;

“Swiss frontier self-employed person” (“*person hunangyflogedig ffin y Swistir*”) 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 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;

“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; and

“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” (“*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.

(3) For the purposes of this Schedule, a person (“P” in this definition) is to be treated as ordinarily resident in 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, Turkey and the overseas territories 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 dependent direct relative in the ascending line, P's child or child's spouse or civil partner,

is or was temporarily employed outside the area in question.

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

(5) For the purposes of this Schedule an area which—

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

(6) For the purposes of this Schedule a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland or the Islands having moved from one 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 the person moved.

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the course—

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom;

- (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) 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(3).

Persons who are settled in the United Kingdom

3. A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence on the first day of an academic year of the course;
- (b) is ordinarily resident in the United Kingdom 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 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 European Economic Area, Switzerland and the overseas territories immediately before the period of residence referred to in sub-paragraph (c).

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 the person was recognised as a refugee; and
- (c) is ordinarily resident in the United Kingdom on the first day of the first academic year of the 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 made an application for asylum;

- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the refugee was given leave to remain in the United Kingdom; and
 - (d) is ordinarily resident in the United Kingdom on the first day of the first academic year of the 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 the refugee was given leave to remain in the United Kingdom; and
 - (e) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

Persons with leave to enter or remain and their family members

- 5.—(1) A person—
- (a) with leave to enter or remain; and
 - (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (2) A person who—
- (a) is the spouse or civil partner of a person with leave to enter or remain;
 - (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; and
 - (c) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (3) A person—
- (a) who 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) 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;

- (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; and
- (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

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

6.—(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 the United Kingdom on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories 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 falls within paragraph (a)(iv), (v) or (vi) of that sub-paragraph.

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

7. A person who —

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories 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 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⁾, as extended by the EEA Agreement.

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

8.—(1) A person who —

- (a) is settled in the United Kingdom;
- (b) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person (“A” in this sub-paragraph) has exercised a right of residence:

- (a) where A is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive

(1) OJ No L141, 27.05.2011, p1.

2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has a right of permanent residence, A 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

- (b) where A is settled in the United Kingdom and has a right of permanent residence, A goes to the state within the territory comprising the European Economic Area and Switzerland of which A is a national or of which the person in relation to whom A is a family member is a national.

EU nationals

9.—(1) A person who —

- (a) is either—
 - (i) an EU national on the first day of an academic year of the course; or
 - (ii) a family member of a such a person;
- (b) is undertaking the course in the United Kingdom;
- (c) subject to sub-paragraph (2), has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (3), whose ordinary residence in the relevant territory 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 (c) of sub-paragraph (1) does not apply to a family member of an EU national where that EU national—

- (a) is—
 - (i) a United Kingdom national who has exercised a right to reside in the territory of another Member State under Article 7(1) of Directive 2004/38; or
 - (ii) not a United Kingdom national; and
- (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.

(3) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily

resident in the relevant territory in accordance with paragraph 1(3).

EU nationals

10.—(1) A person who —

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in the United Kingdom 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 immediately preceding the first day of the first academic year of the 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 European Economic Area, Switzerland and the overseas territories immediately prior to 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 other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11.— 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 the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the 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 European Economic

Area and Switzerland immediately before the period of ordinary residence referred to in sub-paragraph (c).

Children of Turkish workers

12.— A person who —

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Amounts)
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the maximum amount which an institution with an approved fee and access plan in force will be able to charge by way of tuition fees for full-time undergraduate courses.

Regulation 3 prescribes the maximum amount which will apply. Regulations 4, 5 and 6 prescribe lower maximum amounts in respect of certain courses.

Regulation 7 provides that where a course is a franchised course that fees are to be treated as payable to the institution on whose behalf the course is provided, and that the total fees that a student pays must not exceed the amount prescribed by these regulations.

2015 No. (W.)

EDUCATION, WALES

**The Higher Education (Amounts)
(Wales) Regulations 2015**

Laid before the National Assembly for Wales

Made ***

Coming into force ***

These Regulations are made by the Welsh Ministers in exercise of the powers conferred on them by sections 5(3),5(9) and 52(2) of the Higher Education (Wales) Act 2015(1).

Title, commencement, application

1.—(1) The title of these Regulations is the Higher Education (Amounts) (Wales) Regulations 2015 and they come into force on xxxx.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations “the 2015 Act” (“*Deddf 2015*”) means the Higher Education (Wales) Act 2015.

Interpretation

2. In these Regulations—

“the 2015 Act” (“*Deddf 2015*”) means the Higher Education (Wales) Act 2015;

“overseas institution” (“*sefydliad tramor*”) means an institution other than one in Wales, England, Scotland, Northern Ireland, the Channel Islands or the Isle of Man;

“sandwich course” (“*cwrs rhyngosad*”) has the meaning given in regulation 2(1) of the Education (Student Support) (Wales) Regulations 2013(2).

(1) Anaw xx
(2) S.I. 2013/3177 (W.316) as amended by S.I. 2014/1712 (W.172).

Prescribed maximum amount

3. Subject to regulations 4, 5 and 6 the prescribed maximum amount for the purposes of section 5(3) of the 2015 Act is £9,000.

Prescribed maximum amount for the final academic years of courses and academic years of courses of initial training of teachers

4.— For the purposes of section 5(3) of the 2015 Act the maximum amount is prescribed as £4,500 in respect of:

- (a) the final academic year of a course where that academic year is normally required to be completed after less than 15 weeks' attendance;
- (b) a course of initial training of teachers⁽¹⁾ (including such a course leading to a first degree), an academic year during which any periods of full time study are in aggregate less than 10 weeks.

Prescribed maximum amount for sandwich courses

5.—For the purposes of section 5(3) of the 2015 Act the maximum amount is prescribed as £1,800 in respect of an academic year of a sandwich course:

- (a) during which any periods of full time study are in aggregate less than 10 weeks; or
- (b) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full time study at the institution (disregarding intervening vacations) exceeds 30 weeks.

Prescribed maximum amount for study and work placements overseas

6.—For the purpose of section 5(3) of the 2015 Act the maximum amount is prescribed as £1,350 in respect of an academic year of a course provided in conjunction with an overseas institution:

- (a) during which any periods of full time study at the institution in the United Kingdom are in aggregate less than 10 weeks; or
- (b) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full time study at the institution in the United Kingdom

(1) 'Initial training of teachers' is training or education with the object of fitting persons, who are not teachers, to be teachers.

(disregarding intervening vacations) exceeds 30 weeks.

Fees payable to other persons

7. For the purpose of section 5(9) of the 2015 Act the circumstances in which fees are to be treated as being paid to a regulated institution under section 5(2)(a) of the 2015 Act are where the fees are payable to a person in respect of a qualifying course provided on behalf of a regulated institution by that person.

Minister for Education and Skills