

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 12 March 2018

Meeting time: 11.00

For further information contact:

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Committee Clerk

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- 1 Introduction, apologies, substitutions and declarations of interest**
11.00
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**
11.00 (Pages 1 – 2)
CLA(5)–09–18 – Paper 1 – Statutory instruments with clear reports
Affirmative Resolution Instruments
 - 2.1 SL(5)193 – The Welsh Language Standards (No. 7) Regulations 2018**
- 3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**
11.00
Negative Resolution Instruments
 - 3.1 SL(5)189 – The Education (Student Support) (Wales) Regulations 2018**
(Pages 3 – 188)
CLA(5)–09–18 – Paper 2 – Regulations
CLA(5)–09–18 – Paper 3 – Explanatory Memorandum
CLA(5)–09–18 – Paper 4 – Report
 - 3.2 SL(5)191 – The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018**
(Pages 189 – 206)
CLA(5)–09–18 – Paper 5 – Regulations



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CLA(5)–09–18 – Paper 6 – Explanatory Memorandum

CLA(5)–09–18 – Paper 7 – Report

3.3 SL(5)197 – The Jam and Similar Products (Wales) Regulations 2018

(Pages 207 – 242)

CLA(5)–09–18 – Paper 8 – Regulations

CLA(5)–09–18 – Paper 9 – Explanatory Memorandum

CLA(5)–09–18 – Paper 10 – Report

Affirmative Resolution Instruments

3.4 SL(5)196 – The Agricultural Sector (Wales) Act 2014

(Pages 243 – 286)

CLA(5)–09–18 – Paper 11 – Order

CLA(5)–09–18 – Paper 12 – Explanatory Memorandum

CLA(5)–09–18 – Paper 13 – Report

4 Paper to Note

4.1 European Union (Withdrawal) Bill: Letter from the Leader of the House and Chief Whip

(Pages 287 – 288)

CLA(5)–09–18 – Paper 14 – Letter from the Leader of the House and Chief Whip, 7 March 2018

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

11.05

Items 5.1 and 5.2, until 11.30am

5.1 Legislative Consent Memorandum: Trade Bill: Draft report

(Pages 289 – 333)

CLA(5)–09–18 – Paper 15 – Draft Report

CLA(5)–09–18 – Paper 16 – Letter from the Cabinet Secretary for Economy and Transport, 26 February 2018

CLA(5)–09–18 – Paper 17– Committee’s report on the EU (Withdrawal) Bill: Legislative Consent Memorandum

CLA(5)–09–18 – Paper 18– Report of the External Affairs and Additional Legislation Committee – paper to follow

5.2 Assembly Procedure for Section 116C Orders in Council

(Pages 334 – 353)

CLA(5)–09–18 – Paper 19 – Letter from the Llywydd, 1 March 2018

Public session

6 Law Derived from the European Union (Wales) Bill: Evidence session

11.30

(Pages 354 – 379)

Mark Drakeford AM, Cabinet Secretary for Finance;

Robert Parry, Welsh Government;

Rhys Davies, Welsh Government.

CLA(5)–09–18 – Legal Briefing

[Law Derived from the European Union \(Wales\) Bill: Bill Summary](#)

7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

7.1 Law Derived from the European Union (Wales) Bill :Consideration of evidence

Date of the next meeting

19 March 2018

Statutory Instruments with Clear Reports

Agenda Item 2

12 March 2018

SL(5)193 – The Welsh Language Standards (No. 7) Regulations 2018

Procedure: Affirmative

The Welsh Language (Wales) Measure 2011 (“the Measure”) makes provision for the specification of standards of conduct in relation to the Welsh language (“standards”). These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993.

These Regulations specify standards in relation to the conduct of Local Health Boards, National Health Service Trusts in Wales, Community Health Councils and the Board of Community Health Councils in Wales (which are referred to in the Regulations as “bodies”).

The Regulations also authorise (subject to certain exceptions set out in regulation 3(2)) the Commissioner to give a compliance notice to those bodies, in relation to standards specified by the Regulations. In relation to Social Care Wales the Regulations authorise the Commissioner to give that body a compliance notice in relation to standards specified in the Welsh Language Standards (No. 4) Regulations 2016.

Usually a number in the name of one of a series of Statutory Instruments refers to the number made in the particular year. In this case the number refers to the whole series of Standards Regulations, in the same manner as commencement orders are numbered.

These Regulations use the Welsh alphabet in the Welsh version and the English version, because of the nature and subject matter of the Regulations. This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers.

Parent Act: Welsh Language (Wales) Measure 2011

Date Made: Not stated



Date Laid: Not stated

Coming into force date: 29 June 2018



Agenda Item 3.1

WELSH STATUTORY INSTRUMENTS

2018 No. 191 (W. 42)

EDUCATION, WALES

The Education (Student Support) (Wales) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 August 2018. They also provide support for courses which begin before that date and are subsequently converted from full-time to part-time or part-time to full-time on or after 1 August 2018.

The Education (Student Support) (Wales) Regulations 2017 (“2017 Regulations”) remain in force as amended by regulation 100 of, and Schedule 6 to, these Regulations. The 2017 Regulations apply to the provision of support to students who continue on courses they started on or after 1 September 2017 and before 1 August 2018. The 2017 Regulations also apply to end-on courses (within the meaning of those Regulations) and in relation to courses where a student’s status has transferred under regulation 8, 75, 102, 114 of, or paragraph 11 of Schedule 4 to, the 2017 Regulations, whether that transfer occurs before, on or after 1 August 2018.

To qualify for support under these Regulations a student must be an “eligible student”. To be an eligible student, a person must satisfy the eligibility provisions in Part 4 (Chapter 2, Section 1) and any other eligibility requirements elsewhere in the Regulations. An eligible student must also satisfy the specific requirements applicable to each type of financial support.

To be an eligible student, a person must fall within one of the categories set out in Schedule 2. The majority of categories in Schedule 2 require the student to be ordinarily resident in Wales (other than categories 4(1)(a)(iv) – (vi) and category 6(1)). For the purposes of these Regulations a person who is ordinarily resident in England, Wales, Scotland,

Northern Ireland, the Channel Islands or the Isle of Man as a result of having moved from one of those areas for the purpose of undertaking a designated course is considered ordinarily resident in the place from which that person moved (Schedule 2, paragraph 9(1)).

The period for which a student is eligible to receive support under these Regulations is determined in accordance with regulations 12 to 23. Regulations 24 to 27 restrict the availability of support where a student has undertaken certain previous study. In certain circumstances an eligible student may transfer from one designated course to another, including from a full-time course to a part-time course and vice-versa (regulations 28 to 31).

Support is only available under these Regulations in respect of “designated” courses within the meaning of regulations 5 and 8. Support is provided to eligible students undertaking a designated course wherever they study in the United Kingdom.

These Regulations provide a core set of rules for the provision of support to eligible students whether they study full-time, part-time, sandwich courses or distance learning courses. Any differences in treatment between those courses are prescribed in the relevant regulations. Eligible students undertaking part-time courses will not be eligible for support under these Regulations in respect of an academic year where their intensity of study for that year is less than 25% (regulation 13). Schedule 1 of these Regulations makes provision about the interpretation of certain key terms and paragraph 5 of Schedule 1 sets out how “intensity of study” is to be calculated.

Part 5 of these Regulations makes provision for applications for support (regulation 32), time limits for applications (regulation 33) and regulation 34 permits the Welsh Ministers to make such inquiries as they think necessary to make a decision on an application and to notify an applicant of a decision. This Part imposes obligations on eligible students to provide the Welsh Ministers with information (regulation 35), to enter into a contract for a loan (regulation 36) and an obligation on academic authorities to inform the Welsh Ministers when a student has ceased to undertake a course (regulation 37).

Support under these Regulations is available in the form of the following grants and loans-

- a. tuition fee loan (Part 6);
- b. base grant and maintenance grant (Part 7);
- c. maintenance loan (Part 8);
- d. disabled student’s grant (Part 9);

- e. grants for travel (Part 10);
- f. grants for dependants (Part 11);
- g. disabled postgraduate student's grant (Part 15);
- h. Oxbridge college fee loans (Part 16).

In order to qualify for a tuition fee loan, base grant, maintenance grant, maintenance loan, disabled student's grant, grant for travel, or grants for dependants, an eligible student must meet the qualifying conditions for those types of support. In order to be eligible for support eligible students who wish to undertake a distance learning course must, in addition to satisfying the qualifying conditions, be in Wales on the first day of the first academic year of the course. This requirement does not apply to students who are not in Wales on the first day of the first academic year of the course because they, or their close relative, is serving as a member of the regular navy, military or air forces of the Crown outside Wales. Eligible students undertaking distance learning courses are not eligible for grants for travel, grants for dependants or Oxbridge college fee loans (subject to the exception in paragraph 3(4) of Schedule 5).

Fee grants payable under the 2017 Regulations are not available under these Regulations and are replaced with tuition fee loans which are payable in accordance with Part 6. Part 7 provides for the payment of a new base grant and a maintenance grant. The base grant is a payment of £1,000 for eligible students undertaking full-time courses and for eligible students undertaking part-time courses it is £1,000 multiplied by the intensity of their study.

The amount of maintenance grant payable to full-time students is determined by reference to the student's living arrangements, their household income and whether they are a care leaver (regulation 46). The amount of maintenance grant payable to part-time students is determined by reference to the student's household income, whether they are a care leaver and the intensity of their study (regulation 47). An eligible student's household income is calculated in accordance with Part 2 of Schedule 3. "Care leaver" for these purposes is defined in regulation 49.

Chapter 4 of Part 7 of these Regulations provides for a special support payment to be made to an eligible student who meets one of the qualifying conditions in regulation 51 and who qualifies for a base grant or maintenance grant. A special support payment is intended to meet the cost of books and equipment, travel expenses and childcare costs incurred by an eligible student in undertaking a designated course.

Maintenance loans are payable to eligible students in accordance with Part 8 of these Regulations. An eligible student will qualify for a maintenance loan unless one of the exceptions in regulation 54 applies to the student. The amount of maintenance loan available is calculated in accordance with regulations 55 to 57 for full-time students and regulation 58 for part-time students.

Part 9 of these Regulations makes provision in respect of grants for disabled students. The qualifying conditions for such grants are set out in regulation 62. The amount of grant available to disabled students is the amount that the Welsh Ministers think appropriate not exceeding the aggregate amount of the limits applicable in respect of the Cases listed in regulation 63(2).

Part 10 of these Regulations makes provision in respect of grants for travel; including grants for travel for medical students (regulation 65) and for study or work overseas (regulation 66).

Part 11 makes provision for grants to eligible students in respect of the costs associated with certain dependants. Three grants are available; an adult dependants grant (Chapter 2), a parents' learning grant (Chapter 3) and childcare grant (Chapter 4). In order to qualify for a grant an eligible student must meet the specified qualifying conditions for that grant and the qualifying conditions in regulation 69.

Part 12 makes provision for students who qualify for certain types of support part way through an academic year. Where a student qualifies for a grant or maintenance loan during the course of an academic year, such support is payable only in respect of the academic quarters following the event which triggers their eligibility. A maintenance loan will only be payable if it is a quarter in respect of which the loan would otherwise be payable under regulation 85(6) and (7).

Part 13 of these Regulations makes provision in respect of payments, overpayments and recovery of payments.

Regulations 93 to 95 make provision for support payable under these Regulations to be reduced in certain circumstances; including where an eligible student becomes a prisoner, stops undertaking the present course for any period, or where their eligibility has ended or has been terminated, during an academic year.

Schedule 3 concerns the calculation of income. Part 2 of Schedule 3 provides for the way in which an eligible student's household income will be calculated for the purposes of determining the amount of

maintenance grant, grant for travel and grants for dependants which may be payable to the eligible student. In order to calculate household income it is necessary to calculate the taxable income and residual income of each person in the household. Part 3 of Schedule 3 sets out the meaning of taxable income for these purposes. Part 4 of Schedule 3 makes provision about the calculation of a person's residual income. Part 5 of Schedule 3 makes provision about the calculation of net income for the purposes of determining whether an eligible student qualifies for an adult dependants grant and for the purposes of calculating the amount of grant for dependants payable to the student.

Part 15 and Schedule 4 make provision for support for postgraduate students with disabilities.

Part 16 and Schedule 5 make provision for "Oxbridge college fee loans". These are loans in respect of the college fees payable by eligible Oxbridge students (as defined in paragraph 3 of Schedule 5) to a college or permanent private hall of the University of Oxford, or a college of the University of Cambridge, in connection with their attendance on a designated Oxbridge course (as defined in paragraph 2 of Schedule 5).

Part 17 and Schedule 6 contains amendments to the 2017 Regulations.

Schedule 7 is the final schedule to these Regulations and contains the index of defined terms.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Higher Education Division, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 191 (W. 42)

EDUCATION, WALES

**The Education (Student Support)
(Wales) Regulations 2018**

Made 14 February 2018

Laid before the National Assembly for Wales
16 February 2018

Coming into force 12 March 2018

CONTENTS

PART 1

TITLE, COMMENCEMENT AND APPLICATION

1. Title and commencement
2. Application

PART 2

OVERVIEW

3. Overview

PART 3

INTERPRETATION AND INDEX

4. Interpretation and index

PART 4

KEY CONCEPTS

Chapter 1 DESIGNATED COURSES

5. Designated courses
6. Designated courses - conditions
7. Designated courses - exceptions
8. Designation of other courses

Chapter 2 ELIGIBILITY

Section 1 Eligible students

9. Eligible students
10. Eligible students – exceptions
11. Eligible students continuing on a course

Section 2 Period of eligibility

12. Period of eligibility – general rule

13. Part-time courses – no eligibility for years of low intensity study
14. Maximum period of eligibility – tuition fee loans and grants for new students
15. Maximum period of eligibility – tuition fee loans and specified grants for students who attended a previous course
16. Maximum period of eligibility – tuition fee loans and grants for certain continuing students
17. Maximum period of eligibility – interpretation
18. Extension of maximum period where student receives incorrect notification

Section 3 Termination of eligibility

19. Early termination of eligibility
20. Misconduct and failure to provide accurate information
21. Reinstatement of eligibility after termination
22. Refugees who cease to have leave to remain
23. Other persons who cease to have leave to enter or remain

Section 4 Previous study

24. Full-time students – restrictions on support for honours graduates
25. Part-time students – restrictions on support for graduates
26. Restrictions lifted where incorrect notification received
27. Further restriction on support for part-time students

Section 5 Transfer and conversions

28. Transfer of status
29. Effect of transfer – tuition fee loans
30. Effect of transfer – grants and maintenance loans
31. Transfer involving conversions between part-time and full-time study

PART 5

APPLICATIONS, PROVIDING INFORMATION AND LOAN CONTRACTS

32. Requirement to apply for support
33. Time limit for making application
34. Welsh Ministers' decision on an application
35. Requirements on eligible students to provide information
36. Requirement to enter into a contract for a loan

37. Requirement on academic authority to notify when student leaves course

PART 6

TUITION FEE LOANS

38. Tuition fee loans
39. Qualifying conditions for tuition fee loans
40. Amount of tuition fee loans
41. Applying for a tuition fee loan for less than the maximum amount
42. Further application for tuition fee loan up to maximum amount

PART 7

BASE GRANT AND MAINTENANCE GRANT

Chapter 1 QUALIFYING CONDITIONS

43. Base grant and maintenance grant
44. Qualifying conditions for base grant and maintenance grant

Chapter 2 BASE GRANT

45. Amount of base grant

Chapter 3 MAINTENANCE GRANT

46. Amount of maintenance grant: full-time students
47. Amount of maintenance grant: part-time students
48. Household income
49. Meaning of care leaver

Chapter 4 SPECIAL SUPPORT PAYMENT

50. Special support payment
51. Special support payment: qualifying conditions
52. Maximum amount of maintenance grant treated as special support payment

PART 8

MAINTENANCE LOAN

53. Maintenance loan
54. Qualifying conditions for a maintenance loan
55. Amount of maintenance loan: full-time students
56. Amount of maintenance loan full-time students to whom special support payment payable
57. Increased maintenance loan for full-time students in extended years
58. Amount of maintenance loan: part-time students
59. Applying for maintenance loan for less than the maximum amount

60. Further application for maintenance loan up to maximum amount

PART 9

DISABLED STUDENT'S GRANT

61. Disabled student's grant
62. Qualifying conditions for disabled student's grant
63. Amount of disabled student's grant

PART 10

GRANTS FOR TRAVEL

64. Grant for travel
65. Grant for travel for medical students
66. Grant for travel for study or work overseas
67. Grant for travel not payable for expenditure covered by disabled student's grant

PART 11

GRANTS FOR DEPENDANTS

Chapter 1 INTRODUCTION

68. Grants for dependants
69. Qualifying conditions for grants for dependants
70. Interpretation of Part

Chapter 2 ADULT DEPENDANTS GRANT

71. Adult dependants grant
72. Maximum amount of adult dependants grant

Chapter 3 PARENTS' LEARNING GRANT

73. Parents' learning grant
74. Maximum amount of parents' learning grant

Chapter 4 CHILDCARE GRANT

75. Childcare grant
76. Maximum amount of parents' learning grant

Chapter 5 AMOUNT OF GRANT FOR DEPENDANTS PAYABLE

77. Grants for dependants: calculating the amount payable
78. Amount of adult dependants grant and childcare grant eligible student's partner is an eligible student
79. Changes in circumstances

PART 12

QUALIFYING FOR SUPPORT DURING THE ACADEMIC YEAR

80. Qualifying for a tuition fee loan during the academic year

81. Qualifying for grants or maintenance loan during an academic year

PART 13

PAYMENTS, OVERPAYMENTS AND RECOVERY

Chapter 1 PAYMENT FOLLOWING A PROVISIONAL DECISION

82. Payment based on provisional assessment

Chapter 2 PAYMENT OF TUITION FEE LOAN

83. Payment of tuition fee loan
84. Requirements for payment of tuition fee loan

Chapter 3 PAYMENT OF GRANTS AND MAINTENANCE LOANS

85. Payment of grants and maintenance loans
86. Students living in more than one location
87. Confirmation of attendance
88. Determination of amount payable made after payment made

Chapter 4 OVERPAYMENTS AND RECOVERY

89. Overpayments – general
90. Recovery of overpayments of grant
91. Recovery of overpayments of maintenance loans

PART 14

RESTRICTIONS ON PAYMENTS AND AMOUNTS PAYABLE

Chapter 1 RESTRICTIONS RELATING TO GRANTS AND MAINTENANCE LOANS

92. Requirement for payment to be made into bank or building society account
93. Support reduced for periods spent in prison
94. Support reduced for other periods of absence
95. Payments when period of eligibility ends or is terminated

Chapter 2 RESTRICTIONS RELATING TO LOANS

96. Requirement to provide national insurance number
97. Information requirements relating to loans

PART 15
DISABLED POSTGRADUATE STUDENT'S
GRANT

98. Disabled postgraduate student's grant

PART 16
OXBRIDGE COLLEGE FEE LOANS

99. Oxbridge college fee loans

PART 17
AMENDMENTS TO THE EDUCATION
(STUDENT SUPPORT) (WALES)
REGULATIONS 2017

100. Amendments to the Education (Student Support) (Wales) Regulations 2017

SCHEDULE 1 Interpretation

SCHEDULE 2 Categories of eligible student

SCHEDULE 3 Calculation of income

PART 1 Introduction

PART 2 Household income

PART 3 Taxable income

PART 4 Residual income

PART 5 Net income of dependants

PART 6 Interpretation

SCHEDULE 4 Disabled postgraduate student's grant

SCHEDULE 5 Oxbridge college fee loans

SCHEDULE 6 Amendments to the Education (Student Support) (Wales) Regulations 2017

SCHEDULE 7 Index of defined terms

The Welsh Ministers, in exercise of powers conferred on the Secretary of State under sections 22 and 42(6) of the Teaching and Higher Education Act 1998⁽¹⁾ and

(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 and S.I. 2013/1881. See section 43(1) of the Teaching and Higher Education Act 1998 for the definition of "prescribed" and "regulations".

now exercisable by them⁽¹⁾, make the following Regulations:

PART 1

TITLE, COMMENCEMENT AND APPLICATION

Title and commencement

1.—(1) The title of these Regulations is the Education (Student Support) (Wales) Regulations 2018.

(2) These Regulations come into force on 12 March 2018.

Application

2.—(1) These Regulations apply in relation to Wales.

(2) These Regulations apply to the provision of support to students in relation to a course which begins on or after 1 August 2018 regardless of whether anything done under these Regulations is done before, on or after 1 August 2018.

(3) But these Regulations do not apply to the provision of support to students in relation to such a course if—

- (a) the course is one in relation to which the student's status has transferred under regulation 8, 75, 102 or 114 of, or paragraph 11 of Schedule 4 to, the Education (Student Support) (Wales) Regulations 2017 (“the 2017 Regulations”)⁽²⁾, or
- (b) the course is an end-on course within the meaning of the 2017 Regulations.

(4) For provision about support provided to students in relation to a course—

- (a) to which paragraph (3) applies, or
- (b) which begins before 1 August 2018,

⁽¹⁾ The Secretary of State's functions in section 22(2)(a) to (i) and (k) 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 subsections (a),(c) and (k) being 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 the National Assembly for Wales (Transfer of Functions) Order 1999, article 2 Schedule 1 (SI 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

⁽²⁾ S.I. 2017/47 (W.21).

see the 2017 Regulations as amended by Schedule 6 to these Regulations.

PART 2

OVERVIEW

3.—(1) The remaining Parts of these Regulations are arranged as follows.

(2) Part 3 introduces 2 Schedules—

- (a) Schedule 1, which contains provisions about the interpretation of certain key terms, and
- (b) Schedule 7, which contains an index of the terms defined in these Regulations.

(3) Part 4 comprises 2 Chapters containing provision about the key concepts which determine eligibility for support under these Regulations—

- (a) Chapter 1 makes provision about determining whether a course is designated for the purposes of these Regulations and is therefore a course in respect of which a student may be eligible for support;
- (b) Chapter 2 comprises 5 Sections making provision about how a student undertaking a designated course may be eligible for support under these Regulations—
 - (i) Section 1 sets out the criteria for determining whether a student is eligible for support (see in particular Schedule 2 which sets out the categories of eligible student) and includes provision about the exceptions which may mean that a student is not eligible;
 - (ii) Section 2 makes provision about the period for which a student may remain eligible for support, including in cases where a student undertakes more than one course;
 - (iii) Section 3 sets out the rules for the early termination of a student's eligibility, for example as a result of the student's misconduct;
 - (iv) Section 4 sets out the restrictions on support available under these Regulations in cases where a student has undertaken previous study, such as a previous degree;
 - (v) Section 5 deals with cases where a student transfers from one designated course to another, including provision about reassessing the amount payable to a student in such circumstances and provision dealing with cases where a

student transfers from full-time study to part-time and *vice versa*.

(4) Part 5 makes administrative provision about—

- (a) applications for support under these Regulations;
- (b) requirements imposed on applicants and eligible students to provide information;
- (c) contracts for loans applied for under these Regulations.

(5) Part 6 make provision about tuition fee loans including provision about—

- (a) the qualifying conditions that a student must meet in order to qualify for a tuition fee loan, and
- (b) the amounts of loan available to various categories of eligible student.

(6) Part 7 comprises 4 Chapters containing provision about the main grant support available to eligible students in respect of living and study costs, in particular—

- (a) Chapter 1 sets out the qualifying conditions that must be met for a student to qualify for a grant under Chapters 2 or 3;
- (b) Chapter 2 makes provision about base grant, specifying the amount of base grant available;
- (c) Chapter 3 makes provision about maintenance grant, including provision about—
 - (i) the amount of grant available;
 - (ii) how the amount of grant available is reduced in relation to the household income of the student (see Schedule 3 for provision about how to calculate household income);
 - (iii) cases where a student's household income is not relevant and the maximum amount of grant is available;
- (d) Chapter 4 contains provisions determining when an amount of grants payable under this Part may be classified as special support as a result of the student satisfying certain conditions in connection with entitlement to benefits or credits, including provision specifying the amount to be so classified.

(7) Part 8 makes provision about maintenance loans including provision about—

- (a) the maximum amount of loan available;
- (b) how the maximum amount of loan available is to be reduced in relation to the amount of maintenance grant payable to an eligible student.

(8) Part 9 makes provision about disabled student's grant which is a grant available to certain eligible students with a disability undertaking a designated course in respect of certain additional costs set out in the Part which are incurred by reason of the student's disability.

(9) Part 10 makes provision about grants for travel costs incurred by certain eligible students.

(10) Part 11 comprises 5 Chapters about additional grants available to eligible students with dependants ("grants for dependants" or "GfDs"), in particular—

- (a) Chapter 1 sets out what the 3 GfDs are and includes provision about the qualifying conditions and defined terms common to each of the GfDs;
- (b) Chapter 2 makes provision about adult dependants grant including provision about the qualifying criteria and the maximum amount of grant available;
- (c) Chapter 3 makes similar provision in respect of parents' learning grant;
- (d) Chapter 4 makes provision about childcare grant including provision about the qualifying conditions, the types of childcare for which support is available and how to calculate the maximum amount of childcare grant available;
- (e) Chapter 5 sets out how to calculate the amount of GfDs payable to a student, including reducing the amount payable by reference to income (see Schedule 3 for provision about calculating income for the purposes of these provisions).

(11) Part 12 makes provision about cases where a student may become eligible for support under these Regulations after the academic year has begun.

(12) Part 13 comprises 4 Chapters about payments, overpayments and the recovery of overpayments, in particular—

- (a) Chapter 1 makes provision permitting payments to be made on the basis of provisional decisions;
- (b) Chapter 2 makes provision about the payment of tuition fee loans, including provision about when the loan may be paid and the requirements to be met before payments are made;
- (c) Chapter 3 makes similar provision in respect of the payment of grants or maintenance loans;
- (d) Chapter 4 makes provision about overpayments, including provision specifying

what constitutes an overpayment and how an overpayment may be recovered.

(13) Part 14 comprises 2 Chapters about restrictions on payments and amounts that may be payable to an eligible student, in particular—

- (a) Chapter 1 sets out restrictions on the payment of grants and maintenance loans, including provision about—
 - (i) requiring bank account details prior to payments being made;
 - (ii) calculating the reduction in an amount payable as a result of a period of absence;
 - (iii) calculating the reduction in an amount payable as a result of eligibility ending or being terminated;
- (b) Chapter 2 sets out restrictions on the payment of loans, including provision—
 - (i) restricting payment of a loan if the student fails to provide a National Insurance number;
 - (ii) withholding payment of a loan if the student fails to provide certain requested information.

(14) Part 15 introduces Schedule 4 which makes provision about disabled postgraduate student's grant, which is a grant available to certain postgraduate students undertaking a designated postgraduate course in respect of living costs which are incurred by reason of the student's disability.

(15) Part 16 introduces Schedule 5 which makes provision about loans available for college fees payable by certain students undertaking certain courses at the University of Oxford or the University of Cambridge (Oxbridge college fee loans).

(16) Part 17 introduces Schedule 6 which contains amendments to the 2017 Regulations.

PART 3

INTERPRETATION AND INDEX

Interpretation and index

4.—(1) Schedule 1 makes provision about the interpretation of certain key terms for the purposes of these Regulations.

(2) Schedule 7, which is the final Schedule to these Regulations, contains the index of defined terms.

PART 4
KEY CONCEPTS
CHAPTER 1
DESIGNATED COURSES

Designated courses

5. In these Regulations (and for the purposes of section 22 of the Teaching and Higher Education Act 1998 (“the 1998 Act”)), a course is a designated course if it—

- (a) satisfies each of the conditions in regulation 6(1), and
- (b) does not fall within any of the exceptions in regulation 7(1).

Designated courses – conditions

6.—(1) The conditions are—

Condition 1

The course is one of the following—

- (a) a first degree course;
- (b) a course for the Diploma of Higher Education;
- (c) a course for the Higher National Diploma or Higher National Certificate of—
 - (i) the Business and Technology Education Council, or
 - (ii) the Scottish Qualification Authority;
- (d) a course for the certificate of Higher Education;
- (e) a course for the initial training of teachers;
- (f) a course for the further training of youth and community workers;
- (g) a course in preparation for a professional examination of a standard higher than that of—
 - (i) an examination at advanced level for the General Certificate of Education or at higher level for the Scottish Certificate of Education, or
 - (ii) an examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph (c),so long as a first degree (or equivalent qualification) is not normally required for entry to the course;
- (h) a course—

- (i) providing education (whether or not in preparation for an examination) the standard of which is higher than that of a course mentioned in paragraph (g) but not higher than that of a first degree course, and
- (ii) for entry to which a first degree (or equivalent qualification) is not normally required.

Condition 2

The course is either—

- (a) a full-time course,
- (b) a sandwich course, or
- (c) a part-time course.

Condition 3

The duration of the course is at least one academic year.

Condition 4

Where the course is a full-time course, it is provided by—

- (a) a recognised educational institution (whether alone or in conjunction with an institution situated outside the United Kingdom),
- (b) a charity within the meaning given by section 1 of the Charities Act 2011⁽¹⁾ on behalf of a Welsh regulated institution, or
- (c) a publicly funded institution on behalf of an English regulated institution.

Where the course is a part-time course, it is provided by a publicly funded institution (whether alone or in conjunction with an institution situated outside the United Kingdom).

Condition 5

At least half of the teaching and supervision which comprise the course is provided in the United Kingdom.

Condition 6

The course leads to an award granted or to be granted by a body falling within section 214(2)(a) or (b) of the Education Reform Act 1988⁽²⁾ unless the course falls within paragraph (c) or (e) of Condition 1.

(2) For the purposes of Condition 4—

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the

⁽¹⁾ 2011 c. 25.

⁽²⁾ 1988 c.40; section 214(2) was amended by the Further and Higher Education Act 1992 (c. 13), section 93 and Schedule 8.

institution has entered into an agreement with the student to provide the course;

a university and any constituent college, or constituent institution in the nature of a college, of a university is regarded as a recognised educational institution if either the university or the constituent college or institution is a recognised educational institution;

- (b) an institution is not regarded as a recognised educational institution by reason only that it is a connected institution within the meaning of section 65(3B) of the Further and Higher Education Act 1992 which receives from the governing body of another institution the whole or part of any grants, loans or other payments provided to that other institution in accordance with section 65(3A) of that Act⁽¹⁾.

(3) In this regulation, if paragraph (4) applies to a course, it is considered to be a single course for a first degree (or equivalent qualification) even if the course leads to another degree or qualification being conferred before the degree (or equivalent qualification) (regardless of whether part of the course is optional).

(4) This paragraph applies to a course—

- (a) the standard of which is not higher than a first degree, and
- (b) which leads to a qualification as a medical doctor, dentist, veterinary surgeon, architect, landscape architect, landscape designer, landscape manager, town planner or town and country planner.

Designated courses – exceptions

7.—(1) The exceptions are—

Exception 1

A course taken as part of an employment-based teacher training scheme.

Exception 2

A course falling within paragraph (g) or (h) of Condition 1 of regulation 6(1) if the governing body of a maintained school has arranged for the provision of the course to a pupil of the school.

(2) For the purposes of Exception 1, “employment-based teacher training scheme” means—

- (a) a scheme established by the Welsh Ministers under Regulation 8 of the Education (School

(1) 1992 c. 13; subsections (3B) and (3A) of section 65 were inserted by the Teaching and Higher Education Act 1998 (c.30), section 27.

Teachers' Qualifications) (Wales) Regulations 2004⁽¹⁾ or under Regulation 8 of the School Teachers' Qualifications (Wales) Regulations 2012⁽²⁾ whereby a person may undertake initial teacher training in order to obtain qualified teacher status while being employed to teach at a maintained school, independent school or other institution except a pupil referral unit;

- (b) a scheme established by the Secretary of State whereby a person may undertake initial teacher training in order to obtain qualified teacher status while being employed to teach at a school, city college, Academy, independent school or other institution except a pupil referral unit.

(3) For the purposes of Exception 2, "maintained school" means—

- (a) a community, foundation or voluntary school,
- (b) a community or foundation special school, or
- (c) a maintained nursery school.

Designation of other courses

8.—(1) The Welsh Ministers may specify that a course is to be treated as a designated course despite the fact that, but for the specification, it would not otherwise be a designated course⁽³⁾.

(2) The Welsh Ministers may suspend or revoke the specification of a course made under paragraph (1).

CHAPTER 2

ELIGIBILITY

SECTION 1

Eligible students

Eligible students

9.—(1) A person is an eligible student in connection with a designated course that the person is undertaking if—

- (a) the person falls within one of the categories of persons set out in Schedule 2 and none of the exceptions set out in regulation 10 apply to the person, or

(1) S.I. 2004/1729 (W. 173), as amended by S.I. 2007/2811 (W. 238), S.I. 2008/215 (W. 26) and S.I. 2010/1142 (W.101). S.I. 2004/1729 was revoked, with savings, by S.I. 2012/724 (W. 96).

(2) S.I. 2012/724 (W. 96)

(3) See <http://www.studentfinancewales.co.uk/practitioners/policy-information/designated-courses.aspx> for a list of designated courses specified, suspended or revoked by the Welsh Ministers under this regulation.

- (b) the person's circumstances fall within one of the cases set out in regulation 11.

(2) A person may, at any given time, be an eligible student only in connection with one designated course.

Eligible students - exceptions

10.—(1) A person (“P”) is not an eligible student if any of the following exceptions applies—

Exception 1

Where the designated course is a full-time course, an award within the meaning of the Education (Mandatory Awards) Regulations 2003⁽¹⁾ has been bestowed on P in respect of the course.

Exception 2

Where the designated course is a full-time course, P is eligible for a loan in relation to an academic year of the designated course under the Education (Student Loans) (Northern Ireland) Order 1990⁽²⁾.

Exception 3

In respect of P undertaking the designated course, P has been bestowed or paid—

- (a) where the course is a full-time course—
 - (i) a healthcare bursary, the amount of which is not calculated by reference to P's income (unless it is a bursary grant for living costs), or
 - (ii) an allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007⁽³⁾;
- (b) where the course is a part-time course—
 - (i) a healthcare bursary (whether or not calculated by reference to P's income),
 - (ii) an allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, or
 - (iii) a Scottish healthcare allowance (whether or not calculated by reference to P's income).

Exception 4

P is in breach of an obligation to repay a student loan.

(1) S.I. 2003/1994, amended by SI 2004/1038, S.I. 2004/1792, S.I. 2005/2083, S.I. 2005/3137, S.I. 2005/3482, S.I. 2006/930, S.I. 2007/1629, S.I. 2008/1477, S.I. 2010/1142 (W.101), S.I. 2010/1172, S.I. 2011/1043, S.I. 2014/107, S.I. 2016/211 and the Education Act 2005 section 74.

(2) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/274 (N.I.1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No 306.

(3) S.S.I. 2007/151 as amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/309, S.S.I. 2012/72, S.S.I. 2013/80 and S.S.I. 2017/180.

Exception 5

P has reached the age of 18 and has not ratified an agreement for a student loan made with P when P was under 18.

Exception 6

The Welsh Ministers think that P's conduct is such that P is not fit to receive support.

Exception 7

P is a prisoner.

But P may be an eligible student despite being a prisoner if—

- (a) P's application for support is in respect of the academic year during which P enters or is released from prison,
- (b) P's present course is a full-time end-on course, or
- (c) P has been authorised by the prison Governor or Director or other appropriate authority to study the present course and P's earliest release date is within 6 years of the first day of the first academic year of the course.

(2) In Exception 3, "bursary grant for living costs" is a grant for living costs made available under the NHS Wales Bursary Scheme.

(3) In Exceptions 4 and 5, "student loan" means a loan made under—

- (a) the Education (Student Loans) Act 1990⁽¹⁾;
- (b) the Education (Scotland) Act 1980;
- (c) the Education (Student Loans) (Northern Ireland) Order 1990⁽²⁾;
- (d) the Education (Student Support) (Northern Ireland) Order 1998⁽³⁾;
- (e) regulations made under any of those Acts or Orders;
- (f) these Regulations or any other regulations made under the 1998 Act.

(4) In these Regulations—

"healthcare bursary" ("*bwrsari iechyd*") means a bursary or award of similar description under—

(1) 1990 c. 6; repealed by the Teaching and Higher Education Act 1998 (c. 30), Schedule 4, with savings *see* the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998 (S.I. 1998/2004) (C. 46).

(2) S.I. 1990/1506 (N.I. 11) amended by S.I. 1996/274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No 306.

(3) S.I. 1998/1760 (N.I. 14).

- (a) section 63(6) of the Health Services and Public Health Act 1968⁽¹⁾, but not a payment made out of the Learning Support Fund;
- (b) Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽²⁾;
“Learning Support Fund” (“*Cronfa Cymorth Dysgu*”) means the fund made available by NHS England to certain students in respect of qualifying healthcare courses;
“Scottish healthcare allowance” (“*lwfans gofal iechyd yr Alban*”) means an allowance under sections 73(f) and 74(1) of the Education (Scotland) Act 1980⁽³⁾ granted in respect of P attending a course leading to a qualification in a healthcare profession other than that of a medical doctor or dentist.

Eligible students continuing on a course

11.—(1) Paragraph (2) applies to a person (“P”) if—

- (a) P’s circumstances fall within one of the cases in paragraph (3), and
- (b) Exception 3 in Regulation 10 does not apply in respect of the year for which P is applying for support.

(2) Where this paragraph applies, P is an eligible student and accordingly—

- (a) P need not fall within any of the categories of student set out in Schedule 2, and
- (b) none of the exceptions set out in Regulation 10 (other than Exception 3) prevent P from being an eligible student.

(3) The cases are—

Case 1

- (a) P was an eligible student in connection with an earlier academic year of P’s present course, and
- (b) P was ordinarily resident in Wales on the first day of the first academic year of that course.

Case 2

- (a) P’s present course is an end-on course,
- (b) P was an eligible student in connection with the course (the “earlier course”) in relation to which P’s present course is an end-on course,

(1) 1968 c.46.
(2) S.I. 1972/1265 (N.I. 14).
(3) 1980 c.44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2) and section 74 was amended by the Self Governing Schools etc. (Scotland) Act 1989 (c. 39), section 82 and Schedule 10, paragraph 8(17).

- (c) P's period of eligibility for the earlier course ended only because P had completed that earlier course, and
- (d) P was ordinarily resident in Wales on the first day of the first academic year of the earlier course.

Case 3

- (a) P was an eligible student in connection with a designated course (the "earlier course") other than the present course,
- (b) P's status as an eligible student in connection with the earlier course has been transferred to the present course (see Section 5), and
- (c) P was ordinarily resident in Wales on the first day of the first academic year of the earlier course.

SECTION 2

Period of eligibility

Period of eligibility – general rule

12.—(1) A student's status as an eligible student in connection with a designated course is retained until the end of the student's period of eligibility unless terminated in accordance with regulation 19, 20, 22 or 23.

(2) A student's period of eligibility ends at the end of the academic year in which the student completes the designated course.

(3) But if—

- (a) the designated course is a full-time or sandwich course, and
- (b) regulation 14, 15 or 16 applies to the student,

the student's period of eligibility for the course is restricted to the maximum period of eligibility specified in the applicable regulation for the category of support specified in that regulation.

(4) Where a student's eligibility for support is restricted under regulation 14, 15 or 16 so that the number of academic years in respect of which the category of support specified in the regulation in question is available is less than the ordinary duration of the present course, the category of support so specified is available in respect of the latest academic years of the course.

Part-time courses – no eligibility for years of low intensity study

13. Where an eligible student is undertaking a part-time course, the student is not eligible for support under these Regulations in respect of an academic year where the intensity of study for that year is less than

25% (see paragraph 5 of Schedule 1 for how to calculate the intensity of study for an academic year).

Maximum period of eligibility – tuition fee loans and grants for new students

14.—(1) This regulation applies to an eligible student who—

- (a) is undertaking a full-time or sandwich course, and
- (b) has not undertaken a previous course.

(2) Where this regulation applies, the maximum period of eligibility for a tuition fee loan, a base grant, a maintenance grant, a disabled student's grant, a grant for travel or a grant for dependants is the period calculated as follows—

Ordinary duration of the present course.

Plus

Number of academic years repeated by the eligible student for compelling personal reasons.

Plus

One year.

Maximum period of eligibility – tuition fee loans and specified grants for students who undertook a previous course

15.—(1) This regulation applies to an eligible student who—

- (a) is undertaking a full-time or sandwich course, and
- (b) has undertaken a previous course.

(2) Where this regulation applies, the maximum period of eligibility for a tuition fee loan, a base grant, a maintenance grant or a grant for travel is the period calculated as follows—

Ordinary duration of the present course.

Plus

Number of academic years repeated by the eligible student for compelling personal reasons.

Plus

One year.

Less

Number of academic years undertaken by the eligible student on the previous course or courses (if the student has undertaken more than one previous course).

But no deduction is to be made if the student is a teacher training student or is undertaking an accelerated graduate entry course.

(3) If the eligible student did not successfully complete the latest previous course for compelling personal reasons—

- (a) one additional year is to be added to the calculation made under paragraph (2), and
- (b) a further additional year may be added if the Welsh Ministers think it appropriate to do so having regard to those reasons.

(4) If the Welsh Ministers determine that regulation 18 applies to a student, they may add one or more additional years to the calculation made under paragraph (2) as they think appropriate.

(5) Where this regulation and regulation 16 apply to an eligible student, the student's maximum period of eligibility for a—

- (a) tuition fee loan,
- (b) base grant,
- (c) maintenance grant, or
- (d) grant for travel.

is to be calculated in accordance with regulation 16.

(6) In paragraph (2), “teacher training student” means a student who is not a qualified teacher undertaking a full-time course for the initial training of teachers the duration of which is no more than 2 years.

Maximum period of eligibility – tuition fee loans and grants for certain continuing students

16.—(1) This regulation applies to—

- (a) an eligible student whose present course is a full-time end-on course (the course in relation to which the present course is an end-on course being referred to in paragraph (2) as the “preliminary course”);
- (b) an eligible student—
 - (i) who has completed a full-time course for the Diploma of Higher Education or for the Higher National Diploma or Higher National Certificate of either the Business and Technology Education Council or the Scottish Qualification Authority (the “preliminary course”),
 - (ii) whose present course is a full-time first degree course (other than a first degree course for the initial training of teachers) that the student did not begin immediately after the preliminary course, and

(iii) who has not undertaken a full-time first degree course after the preliminary course and before the present course;

(c) an eligible student—

(i) who has completed a full-time foundation degree course (the “preliminary course”),

(ii) whose present course is a full-time honours degree course that the student did not begin immediately after the preliminary course, and

(iii) who has not undertaken a full-time first degree course after the preliminary course and before the present course.

(2) Where this regulation applies, the maximum period of eligibility for a tuition fee loan, a base grant, a maintenance grant, a disabled student’s grant, a grant for travel or a grant for dependants is the period calculated as follows—

The greater of three years or the ordinary duration of the present course.

Plus

The greater of one year or the ordinary duration minus one year of the preliminary course (or preliminary courses in total if the student completed more than one course which is to be treated as a preliminary course).

Less

Number of academic years undertaken by the eligible student on the preliminary course (or preliminary courses) excluding years repeated by the eligible student for compelling personal reasons.

(3) If the Welsh Ministers determine that regulation 18 applies to a student, they may add one or more additional years to the calculation made under paragraph (2) as they think appropriate.

Maximum period of eligibility – interpretation

17.—(1) For the purposes of regulations 12 and 14 to 16, the “ordinary duration” of a course is the number of academic years ordinarily required to complete it.

(2) For the purposes of calculating—

(a) a student’s maximum period of eligibility under regulation 14(2), 15(2) or 16(2), or

(b) whether a student’s period of eligibility has ended,

any part-year undertaken by the student is to be counted as a whole academic year.

(3) In regulations 14 and 15, “previous course” means a course which—

- (a) is—
 - (i) a full time higher education course, or
 - (ii) a part-time course for the initial training of teachers,
 that the student began to undertake before the present course,
- (b) meets one of the conditions set out in paragraph (4), and
- (c) is not excluded from being a previous course by virtue of paragraph (5), (6) or (7).

(4) The conditions are—

Condition 1

The course is provided by an institution in the United Kingdom which was a recognised educational institution for some or all of the academic years during which the student undertook the course.

Condition 2

The course is one in relation to which—

- (a) a scholarship, exhibition, bursary, grant, allowance or award of any description was paid in respect of the student undertaking the course to defray fees, and
- (b) the payment was provided by a publicly funded institution.

(5) A course which falls within paragraph (3)(a) and (b) is nevertheless not a previous course if—

- (a) the present course is a full-time course for the initial training of teachers of no more than two years duration, and
- (b) the student is not a qualified teacher.

(6) A course for the Certificate in Education which falls within paragraph (3)(a) and (b) is nevertheless not a previous course if—

- (a) the present course is a course for the degree (including an honours degree) of Bachelor of Education, and
- (b) the student—
 - (i) transferred to the present course from the course for the Certificate in Education before the completion of that course, or
 - (ii) began the present course on completion of the course for the Certificate in Education.

(7) A course for the degree (other than an honours degree) of Bachelor of Education is not a previous course if—

- (a) the present course is a course for the honours degree of Bachelor of Education, and

- (b) the student—
 - (i) transferred to the present course from the course for the degree (other than an honours degree) of Bachelor of Education before the completion of that course, or
 - (ii) began the present course on completion of the course for the degree (other than an honours degree) of Bachelor of Education.

Extension of maximum period where student receives incorrect notification

18.—(1) This regulation applies to an eligible student (“P”)—

- (a) whose maximum period of eligibility is to be calculated in accordance with regulation 15 or 16,
- (b) who has provided all the information required by the Welsh Ministers in relation to—
 - (i) a previous course undertaken by P, and
 - (ii) any qualifications held by P, and
- (c) who has received a notification from the Welsh Ministers stating an incorrect maximum period of eligibility.

(2) But this regulation does not apply if the notification is incorrect because the information provided by P was materially inaccurate.

SECTION 3

Termination of eligibility

Early termination of eligibility

19.—(1) An eligible student’s (“P’s”) period of eligibility terminates at the end of the day on which—

- (a) P withdraws from P’s designated course and the Welsh Ministers do not transfer P’s status as an eligible student under regulation 28, or
- (b) P abandons or is expelled from P’s designated course.

(2) Where—

- (a) an eligible student’s (“P’s”) designated course is a distance learning course, and
- (b) P undertakes the course outside the United Kingdom,

P’s period of eligibility terminates at the beginning of the first day on which P undertakes the course outside the United Kingdom.

(3) But paragraph (2) does not apply where P is undertaking a distance learning course outside the

United Kingdom because P or a close relative of P is serving as a member of the armed forces.

Misconduct and failure to provide accurate information

20.—(1) The Welsh Ministers may terminate an eligible student's period of eligibility if they are satisfied that the student's conduct is such that the student is no longer fit to receive support.

(2) Paragraph (3) applies if the Welsh Ministers are satisfied that an eligible student—

- (a) has failed to comply with a requirement to provide information or documentation under these Regulations, or
- (b) has provided information or documentation which was materially inaccurate.

(3) Where this paragraph applies, the Welsh Ministers may—

- (a) terminate the student's period of eligibility;
- (b) determine that the student does not qualify for a particular category of support or amount of such support.

Reinstatement of eligibility after termination

21.—(1) Where a student's period of eligibility terminates under regulation 19 or 20 during the academic year in which the student completes the present course, the Welsh Ministers may reinstate the student's period of eligibility for such period as they think appropriate.

(2) But a reinstated period of eligibility may not extend beyond the end of the maximum period of eligibility calculated in accordance with Section 2 of this Chapter.

Refugees who cease to have leave to remain

22.—(1) This regulation applies where—

- (a) a person ("P") was a Category 2 eligible student (see Schedule 2) in connection with an application for support—
 - (i) for an earlier year of the present course,
 - (ii) for a full-time course in relation to which the present course is a full-time end-on course, or
 - (iii) for a course from which P's status as an eligible student has been transferred to the present course under regulation 28 or paragraph 7 of Schedule 5, and

- (b) as at the end of the day before the first day of the academic year in respect of which P is applying for support, the refugee status of—

- (i) P, or

- (ii) the person whose status as a refugee meant that P was a Category 2 eligible student,

has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002)(1).

(2) Where this regulation applies, P's status as an eligible student terminates immediately before the first day of the academic year in respect of which P is applying for support.

(3) In this regulation, "refugee" has the meaning given by paragraph 11 of Schedule 2.

Other persons who cease to have leave to enter or remain

23.—(1) This regulation applies where—

- (a) a person ("P") was a Category 3 eligible student (see Schedule 2) in connection with an application for support—

- (i) for an earlier year of the present course,

- (ii) for a full-time course in relation to which the present course is a full-time end-on course, or

- (iii) for a course from which P's status as an eligible student has been transferred to the present course under regulation 28 or paragraph 7 of Schedule 5, and

- (b) as at the end of the day before the first day of the academic year in respect of which P is applying for support, the period for which—

- (i) P, or

- (ii) the person who, as a result of having leave to enter or remain, caused P to be a category 3 eligible student,

is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002).

(2) Where this regulation applies, P's status as an eligible student terminates immediately before the first

(1) 2002 c.41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19), Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9, S.I. 2010/21, the Immigration Act 2014 (c. 22), Schedule 9.

day of the academic year in respect of which P is applying for support.

SECTION 4

Previous study

Full-time students – restrictions on support for honours graduates

24.—(1) If an eligible student undertaking a full-time course has attained an honours degree from an institution in the United Kingdom (an “honours graduate”) the student does not qualify for a tuition fee loan, base grant, maintenance grant or maintenance loan under these Regulations unless the student—

- (a) falls within one of the Cases set out in paragraph (2), and
- (b) in each Case, satisfies the particular qualifying conditions relating to the support in question.

(2) The Cases are—

Case 1

An honours graduate may qualify for support under these Regulations if the present course is—

- (a) a course for the initial training of teachers of no more than two years duration, and the graduate is not a qualified teacher, or
- (b) an accelerated graduate entry course.

Case 2

An honours graduate may qualify for a maintenance loan if any of the following applies—

- (a) the present course leads to a qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect;
- (b) the graduate is to receive any payment under—
 - (i) a healthcare bursary, the amount of which is calculated by reference to the graduate’s income, or
 - (ii) a Scottish healthcare allowance, the amount of which is calculated by reference to the graduate’s income in respect of any academic year of the present course;
- (c) the present course is a course for the initial training of teachers.

Case 3

Despite paragraph (1), if—

- (a) the present course is considered to be a single course by virtue of regulation 6(3) and (4), and

- (b) the course leads to an honours degree from an institution in the United Kingdom being conferred on the eligible student before the final degree or equivalent qualification,

the conferring of that honours degree does not prevent the student from qualifying for support under these Regulations in respect of any part of that single course.

Case 4

Regulation 26 applies.

Part-time students – restrictions on support for graduates

25.—(1) If an eligible student undertaking a part-time course has attained a first degree from an institution in the United Kingdom (a “graduate”) the student does not qualify for support under these Regulations other than a disabled student’s grant unless the student falls within one of the Cases set out in paragraph (2).

(2) The Cases are—

Case 1

The first degree—

- (a) was not an honours degree, and
- (b) was awarded to the graduate on completion of the modules, examinations or other forms of assessment required for that first degree,

and the graduate is undertaking the present course so as to obtain an honours degree on completion of the required modules, examinations or other forms of assessment (whether or not the graduate continues the course at the same institution from which the first degree was awarded).

Case 2

The present course is a course for the initial training of teachers of no more than four years duration and the graduate is not a qualified teacher.

Case 3

The present course leads to an honours degree and is either—

- (a) a course concerned with the study of the history, grammar and use of Welsh, or
- (b) a course listed in the Joint Academic Coding System in one of the following subject areas—
 - (i) engineering;
 - (ii) technology;
 - (iii) computer science;
 - (iv) subjects allied to medicine;
 - (v) biological sciences;

- (vi) veterinary sciences, agriculture and related subjects;
- (vii) physical sciences;
- (viii) mathematical sciences.

Case 4

Regulation 26 applies.

(3) In Case 3 “the Joint Academic Coding System” means version 3 of the Joint Academic Coding System maintained by the Universities and Colleges Admissions Service and the Higher Education Statistics Agency⁽¹⁾.

Restrictions lifted where incorrect notification received

26.—(1) This regulation applies where—

- (a) an honours graduate within the meaning of regulation 24 or a graduate within the meaning of regulation 25 (“G”) has provided all the information required by the Welsh Ministers in relation to an honours degree or, as the case may be, a first degree, previously attained, and
- (b) G receives notification from the Welsh Ministers incorrectly stating that G qualifies for support under these Regulations.

(2) Where this regulation applies, G may qualify for the support specified in the notification for such period as the Welsh Ministers think appropriate.

(3) But this regulation does not apply if the notification is incorrect because the information provided by G was materially inaccurate.

Further restriction on support for part-time students

27.—(1) An eligible student undertaking a part-time course does not qualify for support under these Regulations other than a disabled student’s grant if the student—

- (a) has undertaken one or more part-time courses for an aggregate of at least—
 - (i) 8 academic years (where that course or the earliest of those courses began before 1 September 2014), or
 - (ii) 16 academic years (where that course or the earliest of those courses began on or after 1 September 2014), and
- (b) has received relevant support in respect of at least 8 or, as the case may be, 16 of those

⁽¹⁾ see <https://www.hesa.ac.uk/support/documentation/jacs>

academic years of the part-time course or courses.

(2) In paragraph (1)(b), “relevant support” means—

- (a) a loan, a grant in respect of fees or a grant for books, travel and other expenditure made in respect of an academic year—
 - (i) under these Regulations or any other regulations made under section 22 of the 1998 Act, or
 - (ii) under regulations made under Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998⁽¹⁾;
- (b) a loan made in respect of an academic year under regulations made under sections 73(f), 73B and 74(1) of the Education (Scotland) Act 1980⁽²⁾.

SECTION 5

Transfers and conversions

Transfer of status

28.—(1) Where an eligible student transfers from a designated course (in this Section, the “old course”) to another designated course (in this Section, the “new course”), the Welsh Ministers must transfer the student’s status as an eligible student to the new course if—

- (a) they receive a request from the student to do so,
- (b) they are satisfied that one of the grounds of transfer applies (see paragraph (2)), and
- (c) the student’s period of eligibility has not ended or been terminated.

(2) The grounds of transfer are—

First ground

The eligible student ceases the old course and undertakes the new course at the same institution.

Including—

- (a) where the old course is not a compressed degree course, undertaking the same course as a compressed degree course, or

(1) S.I.1998/1760 (N.I. 14) to which there are amendments not relevant to these Regulations.

(2) 1980 c.44; section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998 (c.30) and was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1), section 34(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) and Schedule 8 to the Bankruptcy (Scotland) Act 2016 (asp 21).

- (b) where the old course is a compressed degree course, undertaking the same course on a non-compressed basis.

Second ground

The eligible student undertakes the new course at another institution.

Third ground

After commencing a course for the Certificate in Education, the eligible student is, on or before the completion of that course, admitted to a designated course for the degree (including an honours degree) of Bachelor of Education.

Fourth ground

After commencing a course for the degree (other than an honours degree) of Bachelor of Education, the eligible student is, on or before completion of that course, admitted to a designated course for the honours degree of Bachelor of Education.

Fifth ground

After commencing a course for a first degree (other than an honours degree) the eligible student is, before the completion of that course, admitted to a designated course for an honours degree in the same subject at the same institution.

Effect of transfer – tuition fee loans

29. Where the Welsh Ministers transfer an eligible student's status under regulation 28 during an academic year, the amount of tuition fee loan payable in respect of that academic year is to be determined by the Welsh Ministers as follows—

Step 1

Calculate, in accordance with Part 6, the amounts of tuition fee loan that would have been payable in respect of—

- (a) the old course, and
- (b) the new course,

for the whole academic year.

Step 2

Reduce those amounts by such proportion as the Welsh Ministers think appropriate having regard to—

- (a) the day on which the transfer occurs, and
- (b) the need to ensure that no amount is payable in respect of both courses for the same period.

Effect of transfer – grants and maintenance loans

30.—(1) This regulation applies where the Welsh Ministers transfer an eligible student's status under regulation 28 during an academic year.

(2) If regulation 31 applies to the transfer, the total amount of any grants and maintenance loan payable to the eligible student for the academic year must be reassessed in accordance with that regulation.

(3) If regulation 31 does not apply to the transfer—

- (a) the Welsh Ministers may re-assess the amount of any grants and maintenance loan payable to the eligible student for the academic year, but
- (b) if no re-assessment is made, the total amount of any grants and maintenance loan payable to the eligible student is the amount which the Welsh Ministers assessed as the amount payable to the student for the academic year in respect of the old course.

(4) Paragraph (5) applies where the transfer occurs after the Welsh Ministers have assessed the amount of any grants or maintenance loan payable to the eligible student for the academic year in respect of the old course but before the student completes that year.

(5) Where this paragraph applies, the eligible student may not apply in respect of the academic year of the new course for another grant or loan of a kind for which the student has already applied in respect of the academic year of the old course (unless specifically permitted to do so by these Regulations).

(6) Where, immediately before the transfer, the eligible student—

- (a) was eligible to apply for a maintenance loan for the academic year of the old course, and
- (b) had not applied for the maximum amount for which the student was entitled,

paragraph (5) does not prevent the student from applying for an additional amount of loan (whether or not a reassessment is made under this regulation or regulation 31).

(7) Where an eligible student has applied for a disabled student's grant for the academic year in which the transfer occurs, paragraph (5) does not prevent the student from making a further such application—

- (a) for a purpose for which the student has not already applied, or
- (b) for an additional amount in respect of a purpose for which the student has already applied.

Transfers involving conversions between part-time and full-time study

31.—(1) This regulation applies where, in relation to a transfer under regulation 28—

- (a) the old course is a full-time course and the new course is a part-time course, or
- (b) the old course is a part-time course and the new course is a full-time course.

(2) Where this regulation applies, the total amount of any grants and maintenance loan payable to the eligible student for the academic year is to be reassessed by the Welsh Ministers as follows—

Step 1

Calculate, in accordance with Parts 7 to 11, the amounts of any grants and maintenance loan that would have been payable in respect of—

- (a) the old course, and
- (b) the new course,

for the whole academic year.

Step 2

Reduce those amounts by multiplying them by the appropriate fraction.

The total of the two amounts arrived at under Step 2 is the total amount of grants and maintenance loan payable to the student for the academic year during which the transfer occurs.

(3) In Step 2 of paragraph (2), the appropriate fraction in relation to the old course is the fraction where—

- (a) the numerator is the number of days in the academic year up to and including the day on which the transfer occurs, and
- (b) the denominator is the total number of days in the academic year.

(4) In Step 2 of paragraph (2), the appropriate fraction in relation to the new course is the fraction where—

- (a) the numerator is the number of days remaining in the academic year after the day on which the transfer occurs, and
- (b) the denominator is the total number of days in the academic year.

(5) For the avoidance of doubt, where the start date of the academic year of the new course is later than the start date of the academic year of the old course, references in paragraph (4) to the academic year are to the academic year of the new course.

PART 5

APPLICATIONS, PROVIDING INFORMATION AND LOAN CONTRACTS

Requirement to apply for support

32.—(1) A person does not qualify for support as an eligible student in relation to an academic year unless the person makes an application for that support in relation to the academic year.

(2) An application under paragraph (1) must—

- (a) be in such form and contain such information as the Welsh Ministers may specify,
- (b) be accompanied by such documentation as the Welsh Ministers may require, and
- (c) reach the Welsh Ministers within the time limit specified in regulation 33.

Time limit for making application

33.—(1) The general rule is that an application under regulation 32(1) must reach the Welsh Ministers no later than the end of the ninth month of the academic year to which it relates.

(2) But if any of the circumstances set out in Column 1 of Table 1 apply, an application must reach the Welsh Ministers within the time limit specified in the corresponding entry in Column 2.

Table 1

<i>Column 1 Circumstances relating to application for support</i>	<i>Column 2 Time limit for making application</i>
Applicant qualifies for support after the first day of the academic year following an event listed in regulation 80(2) or 81(3) or paragraph 4(2) of Schedule 5.	No later than the end of the period of nine months beginning with the day on which the event occurs.
Application is for a tuition fee loan, maintenance loan or Oxbridge college fee loan. Application is for an additional amount of tuition fee loan under regulation 42, maintenance loan under regulation 60 or Oxbridge college fee loan under paragraph 6(2) of Schedule 5.	No later than one month before the end of the academic year to which the application relates.
Application is for a disabled student's grant.	Application must reach the Welsh Ministers as soon as is reasonably practicable.
The Welsh Ministers think that, having regard to the circumstances of a particular case, it is appropriate to extend the time limit for making an application.	No later than the date specified in writing by the Welsh Ministers in the particular case.

Welsh Ministers' decision on an application

34.—(1) The Welsh Ministers may take any steps and make any inquiries as they think necessary to make a decision on an application under regulation 32.

(2) Those steps may include requiring the applicant to provide further information or documentation.

(3) The Welsh Ministers may make a provisional decision on an application under regulation 32 (see regulation 82 for provision about payments made on the basis of a provisional decision).

(4) A decision on an application made by the Welsh Ministers after a provisional decision has been made may—

- (a) confirm the provisional decision, or
- (b) substitute it with a different decision.

(5) The Welsh Ministers must notify the applicant of a decision (including a provisional decision) on an application under regulation 32.

(6) The notification must state—

- (a) whether the Welsh Ministers consider the applicant to be an eligible student,
- (b) if so, whether the eligible student qualifies for support in relation to the academic year,
- (c) if the student does qualify, the category of support for which the student qualifies and the amount payable for the academic year,
- (d) if the support includes a disabled student's grant, a breakdown of that grant specifying the amount payable in respect of each type of expenditure mentioned in regulation 63(2), and
- (e) in the case of a provisional decision, the fact that the decision is provisional and the consequences of that fact.

Requirements on eligible students to provide information

35.—(1) An eligible student must, as soon as reasonably practicable after being requested to do so, provide the Welsh Ministers with such information or documentation as the Welsh Ministers may require—

- (a) for the purposes of determining—
 - (i) the eligibility of a student;
 - (ii) whether a student qualifies for a particular category of support;
 - (iii) the amount of support payable to a student;
 - (iv) whether an overpayment has been made to a student;

- (b) for any purpose relating to the recovery of an overpayment;
- (c) for any purpose relating to the repayment of a loan;
- (d) for any other purpose related to these Regulations that the Welsh Ministers think appropriate.

(2) A request under paragraph (1) may include requesting sight of an eligible student's—

- (a) valid passport issued by the state of which that student is a national,
- (b) valid national identity card, or
- (c) birth certificate.

(3) Where an event mentioned in paragraph (4) occurs in respect of an eligible student, the student must inform the Welsh Ministers as soon as is reasonably practicable after the event occurs.

(4) The events are—

- (a) the student withdraws from, abandons or is expelled from the present course;
- (b) the student transfers to another course (whether at the same or at a different institution);
- (c) the student otherwise ceases to undertake the present course and does not intend to or is not permitted to continue it for the remainder of the academic year;
- (d) the student is absent from the present course for—
 - (i) more than 60 days due to illness, or
 - (ii) for any period for any other reason;
- (e) the month for the start or completion of the present course changes;
- (f) the student's home or term-time—
 - (i) address,
 - (ii) telephone number, or
 - (iii) email address,
 changes.

(5) Information or documentation that is required to be provided to the Welsh Ministers under these Regulations must be provided in such form as the Welsh Ministers may specify.

(6) The Welsh Ministers may require that—

- (a) an application under regulation 32;
- (b) any other documentation provided to them under these Regulations,

must be signed in such manner (including electronically) as they may specify.

(7) The reference to an eligible student in paragraph (1) is to be treated as including a person who makes an application under regulation 32 even if the Welsh Ministers' decision on the application is that the person is not an eligible student.

(8) See regulation 20 for provision about the consequences of failing to comply with a requirement imposed by this regulation.

Requirement to enter into a contract for a loan

36.—(1) An eligible student may not receive a tuition fee loan or maintenance loan under these Regulations unless the student enters into a contract for the loan with the Welsh Ministers.

(2) The contract—

- (a) must be in such form and on such terms, and
- (b) may be required to be signed in such manner (including electronically),

as the Welsh Ministers specify.

(3) The contract may require the eligible student to repay a loan by a particular method.

(4) Where the Welsh Ministers have requested the student's agreement as to the method of repayment, they may withhold any payment of a maintenance loan until the student provides what has been requested.

Requirement on academic authority to notify when student leaves course

37. Where a tuition fee loan is payable to an eligible student—

- (a) who has ceased to undertake the present course during the academic year, and
- (b) whom the academic authority has determined or agreed will not return during that year,

the academic authority must inform the Welsh Ministers as soon as reasonably practicable that the student has ceased to undertake the course.

PART 6

TUITION FEE LOANS

Tuition fee loan

38. A tuition fee loan is a loan made available by the Welsh Ministers to an eligible student for the payment of tuition fees in respect of an academic year.

Qualifying conditions for tuition fee loan

39. An eligible student qualifies for a tuition fee loan in respect of an academic year of the present course unless one of the following exceptions applies—

Exception 1

Where the present course is not an accelerated graduate entry course, the academic year is an Erasmus year of a course provided by an institution in Northern Ireland.

Exception 2

Where the present course is not an accelerated graduate entry course, the academic year is a year in respect of which a student is eligible to apply for—

- (a) a healthcare bursary, or
- (b) a Scottish healthcare allowance,

calculated by reference to the student's income (whether or not the calculation results in a nil amount).

Exception 3

Where the present course is a part-time course or an accelerated graduate entry course, the academic year is an Erasmus year of the course provided by an institution anywhere in the United Kingdom.

Exception 4

The present course is a distance learning course and the student is not in Wales on the first day of the first academic year of the course.

But this Exception does not apply where—

- (a) the student (“S”) or a close relative of S is a member of the armed forces,
- (b) S is not in Wales on the first day of the first academic year, and
- (c) S is not in Wales on that day because S or the close relative is serving as a member of the armed forces outside Wales.

Amount of tuition fee loan

40.—(1) An amount of tuition fee loan in respect of an academic year may not exceed the lower of—

- (a) the tuition fees payable by the eligible student in respect of that year, or
- (b) the maximum loan amount.

(2) The maximum loan amount is calculated in accordance with Table 2 where—

- (a) Column 1 specifies the academic year in relation to which the maximum loan amounts in Column 5 are payable;
- (b) Column 2 specifies the category of student to whom the maximum loan amounts in Column 5 apply (see paragraph (3));

- (c) Column 3 specifies the type of course provider, where—
 - (i) “ordinary provider” means a provider falling within Condition 4 of Regulation 6(1);
 - (ii) “private institution” means an institution, which is not a recognised educational institution, providing a course specified as a designated course by the Welsh Ministers under regulation 8;
- (d) Column 4 specifies the location of the institution providing the course;
- (e) Column 5 specifies the maximum loan amount applicable in respect of the corresponding entries in Columns 1, 2, 3 and 4.

(3) The categories of students set out in Column 2 are—

Category 1

An eligible student undertaking a designated course who does not fall within Category 2, 3, 4 or 5.

Category 2

An eligible student undertaking the final academic year of a full-time course which ordinarily requires attendance of less than 15 weeks in order to be completed.

Category 3

An eligible student undertaking an academic year of a sandwich course provided by an institution in the United Kingdom where—

- (a) the periods of full-time study undertaken at the institution during that academic year are in aggregate less than 10 weeks, or
- (b) the periods spent undertaking the course during that academic year and any previous academic years (which are not periods of full-time study at the institution), disregarding intervening vacations, are in aggregate more than 30 weeks.

Category 4

An eligible student undertaking an academic year of a course provided by an institution in the United Kingdom in conjunction with an institution which is outside the United Kingdom where—

- (a) the periods of full-time study undertaken at the institution in the United Kingdom during that academic year are in aggregate less than 10 weeks, or
- (b) the periods spent undertaking the course during that academic year and any previous academic years (which are not periods of full-time study at the institution in the United

Kingdom), disregarding intervening vacations, are in aggregate more than 30 weeks,

including an eligible student undertaking an Erasmus year of a full-time course provided by an institution in England, Scotland or Wales.

Category 5

An eligible student undertaking an accelerated graduate entry course.

Table 2

<i>Column 1 Academic year</i>	<i>Column 2 Category of student</i>	<i>Column 3 Course provider type</i>	<i>Column 4 Location of course provider</i>	<i>Column 5 Maximum loan amount</i>
Beginning on or after 1 September 2018	1	Ordinary provider	Wales	£9,000 for a full-time course £2,625 for a part-time course
			Elsewhere in UK	£9250 for a full-time course £6,935 for a part-time course
		Private institution	Wales	£6,165 for a full-time course £2,625 for a part-time course
			Elsewhere in UK	£6,165 for a full-time course £4,625 for a part-time course
	2	Ordinary provider	Wales	£4,500
			Elsewhere in UK	£4,625
		Private institution	Wales and Elsewhere in UK	£3,080
	3	Ordinary provider	Wales	£1,800
			England	£1,850
			Scotland and Northern Ireland	£4,625
		Private institution	Wales and England	£1,230
			Scotland and Northern Ireland	£3,080
	4	Ordinary provider	Wales	£1,350
			England and Scotland	£1,385
			Northern Ireland	£4,625
		Private institution	Wales, England and Scotland	£920
			Northern Ireland	£3,080
	5	Ordinary provider	Wales and Elsewhere in UK	£5,535

Applying for a fee loan for less than the maximum amount

41. An eligible student may apply under regulation 32 to borrow part of the tuition fee loan available in respect of an academic year.

Further application for tuition fee loan up to maximum amount

42. Where—

- (a) an eligible student applies for part of the tuition fee loan under regulation 41, or
- (b) an additional amount of tuition fee loan is made available to an eligible student following a transfer and reassessment made under Section 5 of Chapter 2 of Part 4,

the student may make a further application under regulation 32 for the remaining balance of the tuition fee loan available in respect of that academic year.

PART 7

BASE GRANT AND MAINTENANCE GRANT

CHAPTER 1

QUALIFYING CONDITIONS

Base grant and maintenance grant

43.—A base grant and maintenance grant are grants made available by the Welsh Ministers to an eligible student in respect of the student's living and study costs.

Qualifying conditions for base grant and maintenance grant

44.—(1) An eligible student qualifies for a base grant and a maintenance grant in respect of an academic year of the present course unless the eligible student falls within one of the following exceptions—

Exception 1

The eligible student is a prisoner, unless—

- (a) the present course is a part-time course, and
- (b) the eligible student enters or is released from prison in the academic year in question.

Exception 2

The eligible student is a Category 6 eligible student by virtue only of paragraph 6(1) of Schedule 2 and does

not fall within any of the other categories of eligible student specified in that Schedule.

Exception 3

The academic year is a year in respect of which the student is eligible to apply for—

- (a) a healthcare bursary, or
- (b) a Scottish healthcare allowance,

calculated by reference to the student's income (whether or not the calculation results in a nil amount).

Exception 4

The present course is an accelerated graduate entry course.

Exception 5

The present course is a distance learning course and the student is not in Wales on the first day of the first academic year of the course.

But this Exception does not apply where—

- (a) the student ("S") or a close relative of S is a member of the armed forces,
- (b) S is not in Wales on the first day of the first academic year, and
- (c) S is not in Wales on that day because S or the close relative is serving as a member of the armed forces outside Wales.

Exception 6

The eligible student is undertaking an academic year of a sandwich course during which the periods of full-time study are in aggregate less than 10 weeks (unless it is a year to which paragraph (2) applies).

(2) This paragraph applies to an academic year of a sandwich course if, as part of the course, the eligible student undertakes—

- (a) a period of work experience with a body in the United Kingdom specified in paragraph (3), or
- (b) unpaid research—
 - (i) in an institution in the United Kingdom, or
 - (ii) outside the United Kingdom if the eligible student is attending an institution outside the United Kingdom as part of the course.

(3) The bodies referred to in paragraph (2)(a) are—

- (a) a hospital;
- (b) a public health service laboratory;
- (c) a local authority or voluntary organisation exercising a function or carrying out activities relating to the care of children and young persons, health or welfare;

- (d) a body providing prison or probation services in the United Kingdom;
 - (e) a health body listed in paragraph (4).
- (4) The health bodies are—
- (a) a Special Health Authority established under section 28 of the National Health Service Act 2006⁽¹⁾ or section 22 of the National Health Service (Wales) Act 2006⁽²⁾;
 - (b) an NHS trust established under section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006;
 - (c) an NHS foundation trust;
 - (d) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
 - (e) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978⁽³⁾;
 - (f) the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽⁴⁾;
 - (g) the Regional Agency for Public Health and Social Well-being established under section 12 of that Act;
 - (h) a health and social care trust (formerly called a health and social services trust) established under the Health and Personal Social Services (Northern Ireland) Order 1991⁽⁵⁾;
 - (i) a special health and social care agency (formerly called a special health and social services agency) established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990⁽⁶⁾;
 - (j) the National Health Service Commissioning Board established under section 1H of the National Health Service Act 2006 or a clinical commissioning group established under section 11 of that Act⁽⁷⁾;
 - (k) the National Institute for Health and Care Excellence established under section 232 of the Health and Social Care Act 2012⁽⁸⁾;

(1) 2006 c. 41

(2) 2006 c. 42

(3) 1978 c. 29

(4) 2009 c. 1 (N.I.)

(5) 1991/194 (N.I. 1)

(6) 1990/247 (N.I. 3)

(7) 2006 c. 41; section 1H and section 11 were inserted by the Health and Social Care Act 2012 (c. 7), sections 9 and 10

(8) 2012 c. 7

- (1) the Health and Social Care Information Centre established under section 252 of that Act.

CHAPTER 2

BASE GRANT

Amount of base grant

45. In Table 3, Column 2 sets out the amount of base grant available for the academic year set out in the corresponding entry in Column 1.

Table 3

<i>Column 1 Academic year</i>	<i>Column 2 Base grant available</i>
Beginning on or after 1 September 2018	£1,000 for a full-time course £1,000 multiplied by the intensity of study for a part-time course

CHAPTER 3

MAINTENANCE GRANT

Amount of maintenance grant: full-time students

46.—(1) Table 4 sets out the maximum amounts of maintenance grant available to an eligible student undertaking a full-time course (a “full-time student”) where—

- (a) Column 1 specifies the academic year in relation to which the amounts of maintenance grant specified in Column 3 are payable;
- (b) Column 2 specifies the location in which the student is living (see paragraph 3 of Schedule 1);
- (c) Column 3 specifies the maximum amount of grant available in respect of the corresponding entries in Columns 1 and 2.

(2) Where—

- (a) the student’s household income does not exceed £18,370, or
- (b) the student is a care leaver,

the amount of maintenance grant payable is the maximum amount of grant available in respect of the student’s location.

(3) Where the student’s household income exceeds £18,370 but is less than £59,200, the amount of maintenance grant payable to the student is the maximum amount of maintenance grant available reduced by £1 for every—

- (a) £6.937 of household income exceeding £18,370 where the student is living at home;

(b) £4,475 of household income exceeding £18,370 where the student is living away from home, studying in London;

(c) £5,750 of household income where the student is living away from home, studying elsewhere.

(4) Where the full-time student's household income is £59,200 or more, the amount of maintenance grant payable is £0.

Table 4

<i>Column 1 Academic year</i>	<i>Column 2 Location of full-time student</i>	<i>Column 3 Maximum amount of maintenance grant available to full-time student</i>
Beginning on or after 1 September 2018	Living at home	£5,885
	Living away from home, studying in London	£9,124
	Living away from home, studying elsewhere	£7,100

Amount of maintenance grant: part-time students

47.—(1) Table 5 sets out the maximum amounts of maintenance grant available to an eligible student undertaking a part-time course (a “part-time student”) where—

- (a) Column 1 specifies the academic year in relation to which the amounts of maintenance grant specified in Column 2 are payable;
- (b) Column 2 specifies the maximum amount of grant available in respect of the corresponding academic year in Column 1.

(2) If—

- (a) a part-time student's household income does not exceed £25,000, or
- (b) the student is a care leaver,

the amount of maintenance grant payable to the student is the maximum amount available multiplied by the intensity of study of the present course.

(3) Where the part-time student's household income exceeds £25,000 but is less than £59,200, the amount

of maintenance grant payable is calculated as follows—

Step 1

Reduce the maximum amount of maintenance grant available by £1 for every £6.84 of household income exceeding £25,000.

Step 2

Multiply the result of Step 1 by the intensity of study of the present course.

The result is the amount of maintenance grant payable.

(4) Where the part-time student's household income exceeds £59,200, the amount of maintenance grant payable is £0.

Table 5

<i>Column 1</i> <i>Academic year</i>	<i>Column 2</i> <i>Maximum amount of maintenance grant available to part-time student</i>
Beginning on or after 1 September 2018	£5,000

Household income

48. See Part 2 of Schedule 3 for provision about calculating an eligible student's household income.

Meaning of care leaver

49. An eligible student is a “care leaver” if the student—

- (a) is under the age of 25 on the first day of the first academic year of the present course,
- (b) is, or has been, a category of young person defined in, or by virtue of, section 104 of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, and
- (c) between the student's 14th birthday and the first day of the first academic year of the course, the student—
 - (i) was looked after, fostered or accommodated (within the meaning of sections 74 and 104 of the Social Services and Well-being (Wales) Act 2014) for an aggregate period of 13 weeks or more, or

(1) 2014 anaw. 4.

- (ii) was a person with respect to whom a special guardianship order (within the meaning given by section 14A of the Children Act 1989)(1) was in force for a period of 13 weeks or more.

CHAPTER 4

SPECIAL SUPPORT PAYMENT

Special support payment

50.—(1) Where an eligible student who qualifies for a base grant or, as the case may be, a maintenance grant, meets one of the qualifying conditions in regulation 51—

- (a) all of the base grant payable to the eligible student, and
- (b) an amount of maintenance grant payable to the student up to the maximum specified in regulation 52,

is to be treated as a special support payment.

(2) A special support payment is a payment which is intended to meet—

- (a) the cost of books and equipment;
- (b) travel expenses;
- (c) childcare costs,

in connection with an eligible student undertaking a designated course.

Special support payment: qualifying conditions

51. An eligible student qualifies for a special support payment in respect of an academic year of the present course if the eligible student satisfies one of the following conditions—

Condition A

The eligible student, for the purposes of assessing entitlement to income support, falls within a prescribed category of person for the purposes of section 124(1)(e)(2) of the Social Security Contributions and Benefits Act 1992.

Condition B

-
- (1) 1989 c.41; section 14A was inserted by the Adoption and Children Act 2002 (c. 38) and amended by the Children and Families Act 2014 (c. 6) and the Children and Young Persons Act 2008 (c. 23).
 - (2) 1992 c. 4. There are amendments to section 124 which are not relevant to these Regulations and the section is repealed by the Welfare Reform Act 2012 (c. 3), section 147 and Schedule 14 Part 1 subject to savings specified in SI 2013/358 article 9. Categories under section 124(1)(e) are prescribed by regulations. The relevant regulation is regulation 4ZA of the Income Support (General) Regulations 1987 (S.I. 1987/1967). Regulation 4ZA was inserted by S.I. 1996/206 and amended by S.I. 1997/2197, S.I. 2000/1981, S.I. 2001/3070, S.I. 2008/1826, S.I. 2009/2655, S.I. 2009/3152 and S.I. 2013/2536.

The eligible student, for the purposes of assessing entitlement to housing benefit, is treated as being liable to make payments in respect of a dwelling prescribed by regulations made under section 130(2) of that Act⁽¹⁾.

Condition C

The eligible student, for the purposes of assessing entitlement to universal credit, is liable or is treated as being liable under regulation 25(3) of the Universal Credit Regulations 2013⁽²⁾ to make payments in respect of accommodation the student occupies as his or her home.

Maximum amount of maintenance grant treated as special support payment

52. In Table 6, Column 2 sets out the maximum amount of maintenance grant payable as special support payment in respect of the academic year set out in the corresponding entry in Column 1.

Table 6

<i>Column 1</i> <i>Academic year</i>	<i>Column 2</i> <i>Maximum amount of maintenance grant payable as part of a special support payment</i>
Beginning on or after 1 September 2018	£4,161 for a full-time course £5,000 multiplied by the intensity of study for a part-time course

PART 8

MAINTENANCE LOAN

Maintenance loan

53. A maintenance loan is a loan made available by the Welsh Ministers to an eligible student in respect of living costs for an academic year.

(1) There are amendments to section 130 which are not relevant to these Regulations and the section is repealed by the Welfare Reform Act 2012 (c. 3), section 147 and Schedule 14 Part 1 subject to savings specified in SI 2013/358 article 9. The relevant regulation is regulation 56 of the Housing Benefit Regulations 2006 S.I. 2006/213 as amended by S.I. 2008/1042, S.I. 2008/1082, S.I. 2012/757, S.I. 2013/630, S.I. 2013/2070 and SI 2017/901.

(2) S.I. 2013/376

Qualifying conditions for a maintenance loan

54. An eligible student qualifies for a maintenance loan in respect of an academic year of the present course unless one of the following exceptions applies—

Exception 1

The eligible student is a prisoner, unless—

- (a) the present course is a part-time course, and
- (b) the eligible student enters or is released from prison in the academic year in question.

Exception 2

The eligible student is a Category 6 eligible student by virtue only of paragraph 6(1) of Schedule 2 and does not fall within any of the other categories of eligible student specified in that Schedule.

Exception 3

The eligible student is aged 60 or over on the first day of the first academic year of the present course.

Exception 4

The present course is a distance learning course and the student is not in Wales on the first day of the first academic year of the course.

But this Exception does not apply where—

- (a) the student (“S”) or a close relative of S is a member of the armed forces,
- (b) S is not in Wales on the first day of the first academic year, and
- (c) S is not in Wales on that day because S or the close relative is serving as a member of the armed forces outside Wales.

Exception 5

The present course leads to qualification as—

- (a) a landscape architect,
- (b) a landscape designer,
- (c) a landscape manager,
- (d) a town planner, or
- (e) a town and country planner.

Amount of maintenance loan: full-time students

55.—(1) Where an eligible student’s present course is a full-time course (a “full-time student”), the amount of maintenance loan payable to the student is calculated as follows—

Maximum amount of maintenance loan available to the student in respect of an academic year.

Minus

Amount of maintenance grant payable to the student under regulation 46.

(2) Table 7 sets out the maximum amounts of maintenance loan available in respect of a full-time student where—

- (a) Column 1 specifies the academic year in relation to which the amounts of maintenance loan specified in Column 4 apply;
- (b) Column 2 specifies the category of student to whom the maximum amounts in Column 4 apply;
- (c) Column 3 specifies the location in which the student is living (see paragraph 3 of Schedule 1);
- (d) Column 4 specifies the maximum amount of loan available in respect of the corresponding entries in Columns 1, 2 and 3.

(3) For the purposes of this regulation the categories of student are—

Category 1

An eligible student undertaking—

- (a) an academic year of a designated course, or
- (b) the first year of an accelerated graduate entry course,

who is not a Category 2 student.

Category 2

An eligible student undertaking—

- (a) an academic year in respect of which a student is eligible to apply for—
 - (i) a healthcare bursary, or
 - (ii) a Scottish healthcare allowance, calculated by reference to the student's income (whether or not the calculation results in a nil amount), or
- (b) an academic year of a sandwich course during which the periods of full-time study undertaken by the student are in aggregate less than 10 weeks (unless it is a year to which regulation 44(2) applies).

(4) This regulation is subject to regulation 56.

Table 7

<i>Column 1 Academic year</i>	<i>Column 2 Category of student</i>	<i>Column 3 Location of student</i>	<i>Column 4 Maximum amount of maintenance loan available to full-time student</i>
Beginning on or after 1 September 2018	Category 1	Living at home	£6,650
		Living away from home, studying in London	£10,250
		Living away from home, studying elsewhere	£8,000
	Category 2	Living at home	£3,325
		Living away from home, studying in London	£5,125
		Living away from home, studying elsewhere	£4,000

Amount of maintenance loan payable: full-time students to whom special support payment payable

56.—(1) Where a special support payment is payable to a full-time student under regulation 50, the amount of maintenance loan payable to the student is the greater of—

- (a) the amount calculated under regulation 55(1), or
- (b) the minimum amount of maintenance loan payable in respect of the student's location.

(2) In Table 8—

- (a) Column 1 specifies the academic year in relation to which the minimum loan amounts in Column 3 are payable;
- (b) Column 2 specifies the location in which the student is living (see paragraph 3 of Schedule 1);
- (c) Column 3 specifies the minimum loan amount payable in respect of the corresponding entries in Columns 1 and 2.

Table 8

<i>Column 1 Academic year</i>	<i>Column 2 Location of student</i>	<i>Column 3 Minimum amount of maintenance loan payable to full-time student where special support payable</i>
Beginning on or after 1 September 2018	Living at home	£3,325
	Living away from home, studying in London	£5,125
	Living away from home, studying elsewhere	£4,000

Increased maintenance loan for full-time students in extended years

57.—(1) Paragraph (2) applies where—

- (a) the present course is a full-time course, and

- (b) an eligible student is required to undertake the course for a period exceeding 30 weeks and 3 days in an academic year.

(2) Where this paragraph applies, the amount of loan payable to the student calculated under regulation 55 or, as the case may be, 56 is increased by the weekly amount specified in Column 3 of Table 9 for each week (or part of a week) that the student is required to undertake the course beyond the period of 30 weeks and 3 days.

(3) Paragraph (4) applies where—

- (a) the present course is a full-time course, and
(b) an eligible student undertakes the course for a period of 45 weeks or more in any continuous period of 52 weeks.

(4) Where this paragraph applies, the amount of loan payable to the student calculated under regulation 55 or, as the case may be, 56 is increased by the weekly amount specified in Column 3 of Table 9 for each whole week in the 52 week period during which the student did not undertake the course.

(5) The increase in the amount of maintenance loan payable referred to in paragraph (4) applies in relation to the academic year into which the most weeks of the 52 week period fall.

(6) The maximum amount of maintenance loan payable to an eligible student may be increased under both paragraphs (2) and (4) in relation to the same academic year.

(7) In Table 9—

- (a) Column 1 specifies the academic year in relation to which the maintenance loan is payable;
(b) Column 2 specifies the location in which the student is living (see paragraph 3 of Schedule 1);
(c) Column 3 specifies the weekly amount by which the amount of loan payable is to increase in respect of the corresponding entries in Columns 1 and 2.

Table 9

<i>Column 1 Academic Year</i>	<i>Column 2 Location of student</i>	<i>Column 3 Weekly amount of increase to maintenance loan payable</i>
Beginning on or after 1 September 2018	Living at home	£80
	Living away	£153

	from home, studying in London	
	Living away from home, studying elsewhere	£120

Amount of maintenance loan: part-time students

58.—(1) Where an eligible student's present course is a part-time course (a "part-time student"), the amount of maintenance loan payable to the student is calculated as follows—

Maximum amount of maintenance loan available to the student (see Table 10).

Minus

Amount of maintenance grant payable to the student under regulation 47.

(2) In Table 10, Column 1 specifies the academic year in relation to which the maximum amount of maintenance loan in Column 2 is available.

Table 10

<i>Column 1</i> <i>Academic year</i>	<i>Column 2</i> <i>Maximum amount of maintenance loan available to part-time student</i>
Beginning on or after 1 September 2018	£5,650 multiplied by the intensity of study

Applying for maintenance loan for less than the maximum amount

59. An eligible student may apply under regulation 32 to borrow part of the amount of maintenance loan payable to the eligible student in respect of an academic year.

Further application for maintenance loan up to maximum amount

60. Where—

- (a) an eligible student applies for part of the maintenance loan under regulation 59, or
- (b) an additional amount of maintenance loan is made available to an eligible student following a transfer and reassessment made under Section 5 of Chapter 2 of Part 4,

the student may make a further application under regulation 32 for the remaining balance of the maintenance loan payable in respect of that academic year.

PART 9

DISABLED STUDENT'S GRANT

Disabled student's grant

61.—(1) A disabled student's grant is a grant made available by the Welsh Ministers to an eligible student with a disability to assist with additional expenditure in respect of living costs which the student is obliged to incur in connection with the present course by reason of the student's disability.

(2) In these Regulations, "disability" is to be construed in accordance with section 6 of the Equality Act 2010.

Qualifying conditions for disabled student's grant

62.—(1) An eligible student qualifies for a disabled student's grant in respect of an academic year of the present course if—

- (a) the student has a disability, and
- (b) the student does not fall within any of the exceptions in paragraph (2).

(2) The exceptions are—

Exception 1

The eligible student is a prisoner, unless—

- (a) the present course is a part-time course, and
- (b) the eligible student enters or is released from prison in the academic year in question.

Exception 2

The eligible student is a Category 6 eligible student by virtue only of paragraph 6(1) of Schedule 2 and does not fall within any of the other categories of eligible student specified in that Schedule.

Exception 3

The present course is a full-time course and the academic year is a year in respect of which the student is eligible to apply for—

- (a) a healthcare bursary, or
- (b) a Scottish healthcare allowance,

calculated by reference to the student's income (whether or not the calculation results in a nil amount).

Exception 4

The eligible student is undertaking an academic year of an accelerated graduate entry course, other than the first year of the course.

Exception 5

The present course is a distance learning course and the student is not in Wales on the first day of the first academic year of the course.

But this Exception does not apply where—

- (a) the student (“S”) or a close relative of S is a member of the armed forces,
- (b) S is not in Wales on the first day of the first academic year, and
- (c) S is not in Wales on that day because S or the close relative is serving as a member of the armed forces outside Wales.

Exception 6

The eligible student is undertaking an academic year of a sandwich course during which the periods of full-time study are in aggregate less than 10 weeks (unless it is a year to which regulation 44(2) applies).

Amount of disabled student’s grant

63.—(1) The amount of disabled student’s grant for which a student qualifies in respect of an academic year is the amount—

- (a) which the Welsh Ministers think appropriate, but
- (b) which does not exceed the aggregate amount of the limits applicable in respect of the Cases listed in paragraph (2).

(2) The Cases and limits are—

Case 1

Expenditure required on a non-medical personal helper.

Limit of £21,181 in respect of an academic year of a full-time course.

Limit of £15,885 in respect of an academic year of a part-time course.

Case 2

Expenditure required on major items of specialist equipment.

Limit of £5,332 less the amounts paid as disabled student’s grant to the student for the same purpose in any previous academic year of the course.

Case 3

Additional expenditure incurred—

- (a) within the United Kingdom for the purpose of attending an institution, and

- (b) within or outside the United Kingdom for the purpose of attending, as part of the present course, any period of study at an overseas institution (including the University of London Institute in Paris).

Limited to the actual expenditure incurred for this purpose.

Case 4

Any other expenditure including expenditure for a purpose specified in Case 1 or 2 where the limit applicable to that Case has been reached in respect of the disabled student's grant for the academic year in question.

Limit of £1,785 in respect of an academic year of a full-time course.

Limit of £1,338 in respect of an academic year of a part-time course.

PART 10

GRANTS FOR TRAVEL

Grant for travel

64. A grant for travel is a grant made available by the Welsh Ministers to an eligible student in the circumstances set out in regulation 65(1) or 66(1).

Grant for travel for medical students

65.—(1) A grant for travel is available to an eligible student if the following conditions are satisfied—

Condition 1

The present course is a full-time course in—

- (a) medicine, or
- (b) dentistry,

a necessary part of which is a period of study by way of clinical training.

Condition 2

In the academic year in question, the eligible student is obliged to incur expenditure for the purpose of attending—

- (a) a hospital, or
- (b) other premises,

in the United Kingdom (not comprised in the institution providing the present course) so as to undertake clinical training as part of the course.

Condition 3

The academic year is not a year in respect of which the student is eligible to apply for—

(a) a healthcare bursary, or

(b) a Scottish healthcare allowance,

calculated by reference to the student's income (whether or not the calculation results in a nil amount).

(2) But a grant for travel is not available where the eligible student is a Category 6 eligible student by virtue only of paragraph 6(1) of Schedule 2 and does not fall within any of the other categories of eligible student specified in that Schedule.

(3) The amount of grant for travel payable under this regulation in respect of an academic year is the amount determined by the Welsh Ministers as follows—

Step 1

Determine the amount of reasonable expenditure incurred by the eligible student in the academic year in question for the purpose mentioned in Condition 2 of paragraph (1) (including expenditure incurred for that purpose before or after attending the hospital or other premises).

Step 2

If the eligible student's household income (see Schedule 3) is £59,200 or less in respect of that year, deduct £303 from the amount arrived at in Step 1.

If the eligible student's household income is more than £59,200 in respect of that year, deduct £1,000 from the amount arrived at in Step 1.

The result is the amount of grant for travel payable.

(4) Expenditure incurred for the purpose of residential study away from the institution providing the present course is not expenditure incurred for the purpose mentioned in Condition 2 of paragraph (1).

Grant for travel for study or work overseas

66.—(1) A grant for travel is available to an eligible student if the following conditions are satisfied—

Condition 1

The present course is a full-time course.

Condition 2

For at least of half of any quarter of the academic year in question, the eligible student attends, as part of the course—

(a) an overseas institution (including the University of London Institute in Paris), or

(b) an overseas work placement in an Erasmus year,

(such attendance being referred to in this regulation as “the placement” and such a quarter being referred to as a “qualifying quarter”).

Condition 3

The student incurs—

- (a) travel costs, or
- (b) any expenditure mentioned in paragraph (3),

for the purpose of the placement.

(2) The amount of grant for travel payable under this regulation in respect of an academic year is the amount determined by the Welsh Ministers in accordance with the following formula—

$$(X - Y) + Z$$

Where—

X is the aggregate of the reasonable travel costs that the eligible student is obliged to incur in each qualifying quarter for the purposes of the placement;

Y is—

- (a) £303 if the eligible student's household income (see Schedule 3) is £59,200 or less in respect of the academic year in question, or
- (b) £1,000 if the eligible student's household income is more than £59,200 in respect of that year;

Z is the aggregate of any expenditure incurred in each qualifying quarter specified in paragraph (3).

The result is the amount of grant for travel payable (and if the result is nil or a negative amount, no grant for travel is payable).

(3) The expenditure mentioned in paragraphs (1) and (2) is—

- (a) expenditure that the eligible student reasonably incurs in insuring against liability for the cost of medical treatment provided outside the United Kingdom for any illness or personal injury contracted or suffered during the placement;
- (b) the cost of any visa the student is obliged to obtain in order to attend the placement;
- (c) medical costs that the student reasonably incurs in order to fulfil a mandatory condition of entry into the territory, country or state in which the placement is situated.

Grant for travel not payable for expenditure covered by disabled student's grant

67. Where a disabled student's grant is payable to assist an eligible student with expenditure that the student is obliged to incur in connection with the present course by reason of the student's disability, no grant for travel is payable under regulation 65 or 66 in respect of the same expenditure.

PART 11
GRANTS FOR DEPENDANTS
CHAPTER 1
INTRODUCTION

Grants for dependants

68.—(1) The following are grants made available by the Welsh Ministers to an eligible student in respect of costs associated with certain dependants of the student for an academic year—

- (a) an adult dependants grant (see Chapter 2);
- (b) a parents' learning grant (see Chapter 3);
- (c) a childcare grant (see Chapter 4).

(2) In these Regulations, those grants are collectively referred to as “grants for dependants” (“GfDs”).

Qualifying conditions for grants for dependants

69.—(1) An eligible student qualifies for any particular GfD in respect of an academic year of the present course if the student—

- (a) satisfies the qualifying conditions for that grant,
- (b) does not fall within any of the exceptions in paragraph (2), and
- (c) if the student's present course is a part-time course, the intensity of study of the academic year is at least 50%.

(2) The exceptions are—

Exception 1

The eligible student is a prisoner, unless—

- (a) the present course is a part-time course, and
- (b) the student enters or is released from prison in the academic year in question.

Exception 2

The eligible student is a Category 6 eligible student by virtue only of paragraph 6(1) of Schedule 2 and does not fall within any of the other categories of eligible student specified in that Schedule.

Exception 3

The academic year is a year in respect of which the student is eligible to apply for—

- (a) a healthcare bursary, or
- (b) a Scottish healthcare allowance,

calculated by reference to the student's income (whether or not the calculation results in a nil amount).

Exception 4

The eligible student is undertaking an academic year of an accelerated graduate entry course, other than the first year of the course.

Exception 5

The present course is a distance learning course.

Exception 6

The eligible student is undertaking an academic year of a sandwich course during which the periods of full-time study are in aggregate less than 10 weeks (unless it is a year to which Regulation 44(2) applies).

Exception 7

The person in respect of whom the eligible student is applying—

- (a) is an eligible student, and
- (b) is in receipt of a statutory award.

Interpretation of this Part

70.—(1) In this Part—

“adult dependant” (“*oedolyn dibynnol*”) means an adult person—

- (a) who is wholly or mainly financially dependent on the eligible student, or
- (b) who is wholly or mainly financially dependent on both the eligible student and the eligible student’s partner together,

but not the eligible student’s child, the eligible student’s partner (including a partner from whom the eligible student is separated) or the eligible student’s former partner;

“current academic year” (“*blwyddyn academiadd gyfredol*”) means the academic year of the present course in respect of which the eligible student is applying for a GfD;

“dependent child” (“*plentyn dibynnol*”) means a child—

- (a) who is wholly or mainly financially dependent on the eligible student, or
- (b) who is wholly or mainly financially dependent on both the eligible student and the eligible student’s partner together,

including a child of the eligible student’s partner and a child for whom the eligible student has parental responsibility;

“lone parent” (“*rhiant unigol*”) means a person who—

- (a) is a parent of a dependent child, and
- (b) does not have a partner.

(2) In this Part, any reference to a person’s (“A’s”) partner means—

- (a) A's spouse or civil partner, or
- (b) a person ordinarily living with A as if the person were A's spouse or civil partner.

(3) Any reference in this Part to a person's or persons' income is a reference to that income as calculated in accordance with the appropriate provisions of Schedule 3.

CHAPTER 2

ADULT DEPENDANTS GRANT

Adult dependants grant

71.—(1) An eligible student qualifies for an adult dependants grant in respect of only one of the following persons—

- (a) the student's partner;
- (b) an adult dependant of the student.

(2) But an eligible student does not qualify for an adult dependants grant if one of the following exceptions applies—

Exception 1

Where the eligible student is applying in respect of an adult dependant ("A")—

- (a) A's net income for the current academic year exceeds £3,923, or
- (b) A is—
 - (i) the spouse or civil partner of the eligible student's partner (including a spouse or civil partner from whom the student's partner is separated), or
 - (ii) the former partner of the eligible student's partner.

Exception 2

Where the eligible student is applying in respect of the student's partner "P"—

- (a) the eligible student is, in the opinion of the Welsh Ministers, separated from P, or
- (b) P is ordinarily living outside the United Kingdom and is not maintained by the eligible student.

Maximum amount of adult dependants grant

72.—(1) In Table 11, Column 2 sets out the maximum amount of adult dependants grant payable in respect of an academic year in the corresponding entry in Column 1.

(2) But where the person in respect of whom the eligible student is applying is ordinarily resident outside the United Kingdom, the amount of adult dependants grant payable is an amount, not exceeding

the maximum amount, which the Welsh Ministers consider reasonable in the circumstances.

Table 11

<i>Column 1</i> <i>Academic year</i>	<i>Column 2</i> <i>Maximum amount of adult dependants grant</i>
Beginning on or after 1 September 2018	£2,732

CHAPTER 3

PARENTS' LEARNING GRANT

Parents' learning grant

73.—An eligible student qualifies for a parents' learning grant if the eligible student has one or more dependent children.

Maximum amount of parents' learning grant

74. In Table 12, Column 2 sets out the maximum amount of parents' learning grant payable in respect of an academic year in the corresponding entry in Column 1.

Table 12

<i>Column 1</i> <i>Academic year</i>	<i>Column 2</i> <i>Maximum amount of parents' learning grant</i>
Beginning on or after 1 September 2018	£1,557

CHAPTER 4

CHILDCARE GRANT

Childcare grant

75.—(1) An eligible student qualifies for a childcare grant in respect of prescribed childcare charges for a dependent child incurred during the current academic year if one of the following conditions are satisfied—

Condition 1

The dependent child is under the age of 15 immediately before the beginning of the academic year.

Condition 2

The dependent child has special educational needs within the meaning of section 312 of the Education Act 1996⁽¹⁾ and is under the age of 17 immediately before the beginning of the first day of the academic year.

(2) But the eligible student does not qualify for a childcare grant in any of the following cases—

Case 1

The eligible student or the eligible student's partner has elected to receive the childcare element of the working tax credit under Part 1 of the Tax Credits Act 2002⁽²⁾.

Case 2

The eligible student or the eligible student's partner is entitled to an award of universal credit which includes an amount in respect of childcare costs under regulation 31 of the Universal Credit Regulations 2013 (child care costs element)⁽³⁾.

Case 3

The eligible student's partner has elected to receive financial support for childcare under a healthcare bursary.

Case 4

The prescribed childcare charges are for a period in respect of which the eligible student or the eligible student's partner has made a valid declaration of eligibility within the meaning given by section 4 of the Childcare Payments Act 2014⁽⁴⁾.

Case 5

The prescribed childcare charges are paid or to be paid by the eligible student to the student's partner.

Case 6

The prescribed childcare charges are in respect of any period between the end of the course and the end of the academic year in which the course ends.

(3) In this regulation and regulation 76—

“dependent child” (*“plentyyn dibynnol”*) includes a dependent child born after the beginning of the academic year;

“prescribed childcare charges” (*“ffioedd gofal plant rhagnodedig”*) means childcare charges of a

(1) 1996 c. 56; section 312 was amended by the Education Act 1997 (c. 44), Schedule 7, paragraph 23 and Schedule 8, the Schools Standards and Framework Act 1998 (c. 31), section 140, Schedule 30, paragraph 71 and Schedule 31, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 59 and Schedule 2, the Children and Families Act 2014 (c. 6), Schedule 3 and S.I. 2010/1158.

(2) 2002 c. 21

(3) S.I. 2013/376

(4) 2014 c. 28.

description prescribed for the purposes of section 12 of the Tax Credits Act 2002⁽¹⁾.

Maximum amount of childcare grant

76.—(1) The amount of childcare grant payable is 85% of the eligible student's weekly prescribed childcare charges, up to the maximum weekly amount—

- (a) specified in Table 13, or
- (b) where paragraph (4) applies, specified in that paragraph.

(2) In Table 13—

- (a) Column 1 specifies the academic year in relation to which the maximum weekly amount of childcare grant in Column 3 is payable;
- (b) Column 2 specifies the number of dependent children to which the amounts specified in Column 3 relate;
- (c) Column 3 specifies the maximum weekly amount of childcare grant payable in respect of the corresponding entries in Columns 1 and 2, where the application for a childcare grant identifies a childcare provider.

Table 13

<i>Column 1 Academic year</i>	<i>Column 2 Number of child dependants</i>	<i>Column 3 Maximum weekly amount</i>
Beginning on or after 1 September 2018	One dependent child	£161.50
	More than one dependent child	£274.55

(3) Where the eligible student has more than one dependent child, the amount specified in the appropriate entry in Column 3 is the maximum weekly amount payable, irrespective of the number of children receiving childcare.

(4) Where the eligible student's application for childcare grant does not identify the childcare provider, the Welsh Ministers may limit—

- (a) the amount of childcare grant paid to the student to 85% of the prescribed childcare charges up to a maximum weekly amount of £115;

(1) Regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) as amended prescribes the childcare charges.

- (b) the payment of the childcare grant to one quarter of the academic year.

(5) For the purposes of calculating an amount of childcare grant, a week runs from Monday to Sunday.

(6) Where prescribed childcare charges are incurred in respect of a week that falls partly within and partly outside the academic year in respect of which childcare grant is payable, the maximum weekly amount is calculated by applying the following formula—

$$\frac{A \times B}{7}$$

Where—

A is the applicable maximum weekly amount, and

B is the number of days of the week falling within the academic year.

CHAPTER 5

AMOUNT OF GRANT FOR DEPENDANTS PAYABLE

Grants for dependants: calculating the amount payable

77.—(1) The amount of GfD payable to an eligible student in respect of an academic year is calculated by applying the following steps—

Step 1

Aggregate—

- (a) the eligible student's household income calculated under Part 2 of Schedule 3,
- (b) if not already taken into account as part of the eligible student's household income, the residual income of the eligible student's adult dependant for the applicable financial year calculated under Chapter 2 of Part 4 of Schedule 3, and
- (c) the net income of the eligible student's dependent children for the applicable financial year calculated under Part 5 of Schedule 3.

Step 2

Deduct the following amounts from the aggregated total calculated under Step 1—

- (a) £6,159, where the eligible student has no dependent children;
- (b) £8,473, where the eligible student is not a lone parent and has one dependent child;
- (c) £9,632, where the eligible student—
 - (i) is not a lone parent and has more than one dependent child, or

- (ii) is a lone parent and has one dependent child;
- (d) £10,797, where the eligible student is a lone parent and has more than one dependent child.

The result is the net total.

Step 3

Add up the maximum amounts of each GfD for which the eligible student qualifies.

The result is the aggregated maximums.

Step 4

- (a) If the net total under Step 2 is nil or a negative amount, the amount payable is—
 - (i) where the present course is a full-time course, the aggregated maximums arrived at under Step 3;
 - (ii) where the present course is a part-time course, the aggregated maximums arrived at under Step 3 reduced in accordance with paragraph (2).
- (b) If the net total under Step 2 is equal to or exceeds the aggregated maximums arrived at under Step 3, the amount payable is nil.
- (c) If the net total under Step 2 is a positive amount which is less than the aggregated maximums arrived at under Step 3, deduct the net total from the aggregated maximums so as to reduce the amount of GfDs payable in the following order until the net total is extinguished—
 - (i) first deduct the maximum amount of adult dependants grant for which the eligible student qualifies;
 - (ii) then deduct the maximum amount of childcare grant for which the student qualifies;
 - (iii) finally deduct the maximum amount of parents' learning grant for which the student qualifies.
- (d) Where sub-paragraph (c) of this Step applies, the amount remaining after that reduction is—
 - (i) the amount payable where the present course is a full-time course;
 - (ii) the amount to be reduced in accordance with paragraph (2) where the present course is a part-time course.

(2) If the eligible student's present course is a part-time course, the amount of GfD payable is the amount referred to in paragraph (a)(ii) or (d)(ii) of Step 4 of paragraph (1) multiplied by—

- (a) 50%, where the intensity of study for the current academic year is at least 50% but less than 60%;
- (b) 60%, where the intensity of study for the current academic year is at least 60% but less than 75%;
- (c) 75%, where the intensity of study for the current academic year is 75% or more.

(3) Where the amount of GfD payable as a result of Step 4 of paragraph (1) or, as the case may be, paragraph (2), is an amount of parents' learning grant which is more than £0.01 but less than £50, the amount payable is £50.

(4) This regulation is subject to regulations 78 and 79.

Amount of adult dependants grant and childcare grant: eligible student's partner is an eligible student

78. Where, as a result of Step 4 of paragraph (1) of regulation 77 or, as the case may be, paragraph (2) of that regulation, an amount of adult dependants grant and childcare grant is payable to an eligible student, that amount is reduced by one half where—

- (a) the eligible student's partner—
 - (i) is an eligible student, or
 - (ii) is in receipt of a statutory award, and
 - (b) the amount of support payable to the partner—
 - (i) by virtue of the partner being an eligible student, or
 - (ii) under the statutory award
- takes account of the partner's dependants.

Changes in circumstances

79.—(1) This regulation applies where, in the course of the academic year, any of the following occurs—

- (a) there is a change in the number of the eligible student's dependants;
- (b) the student becomes or ceases to be a lone parent;
- (c) the student becomes an eligible student as a result of an event referred to in regulation 81(3).

(2) For the purposes of determining whether an adult dependants grant or parents' learning grant is payable and the amount payable, the Welsh Ministers must determine the following in relation to each relevant quarter—

- (a) how many dependants the eligible student is to be treated as having;

- (b) whether the student is to be treated as a lone parent.

(3) The total amount of GfD payable for the academic year is—

- (a) the aggregate of the amounts of adult dependants grant and parents' learning grant calculated in respect of each relevant quarter under this regulation, plus
- (b) the amount of any childcare grant payable for the academic year.

(4) The amount of adult dependants grant and parents' learning grant payable in respect of a relevant quarter is one third of the amount of that grant which would be payable for the academic year as determined under regulation 77 if the student's circumstances in the relevant quarter had been the same throughout the whole of the academic year.

(5) In this regulation a "relevant quarter" means—

- (a) in the case of an eligible student referred to in paragraph (1)(c), a quarter which begins immediately after the relevant event occurs other than a quarter during which the longest of any vacation occurs;
- (b) otherwise, a quarter other than the quarter during which the longest of any vacation occurs.

PART 12

QUALIFYING FOR SUPPORT DURING THE ACADEMIC YEAR

Qualifying for a tuition fee loan during the academic year

80.—(1) Where one of the events listed in paragraph (2) occurs within 3 months of the first day of the academic year, the student may qualify for a tuition fee loan in respect of that academic year.

(2) The events are—

- (a) the present course becomes a designated course;
- (b) the student becomes an eligible student on the grounds that—
 - (i) the student or the student's spouse, civil partner or parent is recognised as a refugee or becomes a person with leave to enter or remain;
 - (ii) a state accedes to the European Union where the student is a national of that state or a family member of a national of that state;

- (iii) the student becomes a family member of an EU national;
- (iv) the student acquires the right of permanent residence;
- (v) the student becomes a child of a Turkish worker;
- (vi) the student becomes a person described in paragraph 4(1)(a) of Schedule 2;
- (vii) the student becomes the child of a Swiss national.

(3) In this regulation and regulation 81, the following terms have the same meaning as in Schedule 2—

“child” (*“plentyyn”*);

“family member” (*“aelod o deulu”*) (within the meaning given by paragraph 6(5) of Schedule 2);

“parent” (*“rhiant”*);

“person with leave to enter or remain” (*“person sydd â chaniatâd i ddod i mewn neu i aros”*);

“refugee” (*“ffoadur”*);

“right of permanent residence” (*“hawl i breswyllo’n barhaol”*);

“Turkish worker” (*“gweithiwr Twrcaidd”*).

Qualifying for grants or maintenance loan during the academic year

81.—(1) Where one of the events in paragraph (3) occurs, the eligible student may qualify for a grant or maintenance loan.

(2) But the amount of grant or loan payable to the eligible student—

- (a) will only be in respect of the quarter or quarters of the academic year beginning after the relevant event occurs, and
- (b) in relation to a maintenance loan, will only be payable if it is a quarter in respect of which the loan would otherwise be payable under regulation 85(6) and (7).

(3) The events are—

- (a) the student’s course becomes a designated course;
- (b) the student becomes an eligible student on the grounds that—
 - (i) the student or the student’s spouse, civil partner or parent is recognised as a refugee or becomes a person with leave to enter or remain;
 - (ii) a state of which the student is a national accedes to the European Union where the student 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;
- (iii) the student acquires the right of permanent residence;
- (iv) the student becomes a child of a Turkish worker;
- (v) the student becomes a person described in paragraph 4(1)(a) of Schedule 2;
- (vi) the student becomes the child of a Swiss national.

PART 13

PAYMENTS, OVERPAYMENTS AND RECOVERY

CHAPTER 1

PAYMENT FOLLOWING A PROVISIONAL DECISION

Payment based on provisional assessment

82. Where the Welsh Ministers make a provisional decision on an application under regulation 32, the Welsh Ministers may make a payment based on that decision.

CHAPTER 2

PAYMENT OF TUITION FEE LOAN

Payment of tuition fee loan

83.—(1) Where a tuition fee loan is payable to an eligible student, the Welsh Ministers must pay that amount to the academic authority to which the student is liable to make payment.

(2) The Welsh Ministers may pay that amount in instalments or in a single lump sum.

Requirements for payment of tuition fee loan

84.—(1) The Welsh Ministers may not make any payment under regulation 83 unless they have received from the academic authority—

- (a) a request for payment in respect of the eligible student, and
- (b) confirmation in writing that the student is undertaking the designated course.

(2) The confirmation referred to in paragraph (1)(b) must—

- (a) in relation to the first (or only) payment in respect of the course, be confirmation that the

student has enrolled on and started to undertake the present course;

- (b) in relation to any subsequent payments in respect of the course, be confirmation that the student remains enrolled on and continues to undertake the course.

CHAPTER 3

PAYMENT OF GRANTS AND MAINTENANCE LOANS

Payment of grants and maintenance loans

85.—(1) The Welsh Ministers must pay an amount of grant or maintenance loan to an eligible student where it is payable to the student.

(2) The Welsh Ministers may pay that amount in instalments or in a single lump sum.

(3) Subject to paragraphs (4) and (5), a grant is payable in respect of the four quarters of the academic year.

(4) An amount of disabled student's grant payable in respect of expenditure on major items of specialist equipment may be payable as a single amount for the whole academic year if the Welsh Ministers think it appropriate.

(5) A grant for travel payable under regulation 66 is payable in respect of each of the qualifying quarters (within the meaning of that regulation).

(6) A maintenance loan is payable in respect of three quarters of the academic year.

(7) No maintenance loan is payable—

- (a) in the case of a compressed degree course, in respect of the quarter nominated by the Welsh Ministers;
- (b) in any other case, in respect of the quarter in which the longest of any vacation occurs.

Students living in more than one location

86.—(1) The Welsh Ministers must determine the location in which an eligible student is living during each quarter in respect of which a maintenance grant or maintenance loan is payable to the student (see paragraph 3 of Schedule 1).

(2) Where an eligible student is living in more than one category of location during a quarter, the eligible student is treated as living in the location in which the student lives the longest.

(3) Where an eligible student is living in more than one category of location for an equal period during a quarter, the eligible student is treated as living in the location in relation to which the highest rate of maintenance loan or maintenance grant is payable.

Confirmation of attendance

87.—(1) The Welsh Ministers may not make any payment under regulation 85 unless they have received from the academic authority confirmation in writing that the student is undertaking the designated course for the academic year.

(2) The confirmation referred to in paragraph (1) must be confirmation—

- (a) that the eligible student has enrolled on the course for the academic year, in a case where the student is applying for support in connection with the course—
 - (i) other than for the first time,
 - (ii) for the first time if the student's status as an eligible student has transferred to the course from another designated course at the same institution, or
 - (iii) for the first time if the student has a disability, or
- (b) that the eligible student has enrolled for the academic year and has started to undertake the course, in a case where—
 - (i) the student is applying for support in connection with the course for the first time, and
 - (ii) the student has not transferred to the course from another designated course at the same institution.

(3) But a payment may be made before the Welsh Ministers receive the confirmation referred to in paragraph (1) if—

- (a) the payment is an amount of disabled student's grant, or
- (b) the Welsh Ministers think that owing to exceptional circumstances it is appropriate to do so.

Determination of amount payable made after payment made

88.—(1) This regulation applies where the Welsh Ministers make a determination of the amount any grant or maintenance loan payable to an eligible student (whether as a result of revising a provisional decision or otherwise) after a payment of any amount of the grant or maintenance loan has been made.

(2) If the determination increases the amount of grant or loan payable, the Welsh Ministers must pay the additional amount in such instalments, or in a single lump sum, as they think appropriate.

(3) If the determination decreases the amount of any grant payable—

- (a) the amount of the decrease is subtracted from the grant which remains to be paid;
 - (b) if the decrease is greater than the amount of that grant remaining to be paid—
 - (i) that amount remaining to be paid is reduced to nil,
 - (ii) the remainder of the decrease, if any, is deducted from the amount of any other grant remaining to be paid, and
 - (iii) if any amount of the decrease still remains it is treated as an overpayment.
- (4) If the determination decreases the amount of any maintenance loan payable (“the new total payable”)—
- (a) where the new total payable is greater than the amount of maintenance loan for which the student has applied, any additional amount for which the student may apply is reduced accordingly;
 - (b) where the new total payable is less than the amount for which the student has applied, the student may not apply for any additional amount of maintenance loan;
 - (c) where the new total payable is less than the amount of maintenance loan remaining to be paid—
 - (i) the amount remaining to be paid is reduced to nil, and
 - (ii) such of the amount already paid as exceeds the new total payable, if any, is to be treated as an overpayment.

CHAPTER 4

OVERPAYMENTS AND RECOVERY

Overpayments – general

89.—(1) Any overpayment of a tuition fee loan is recoverable by the Welsh Ministers from the academic authority.

(2) Where an eligible student has been paid an amount of any grant or maintenance loan which exceeds the amount to which the student is entitled under these Regulations, the student must repay the excess amount if required to do so by the Welsh Ministers.

(3) In this Chapter, references to an eligible student are to be treated as including a person who has received support but is not, or is no longer, an eligible student.

Recovery of overpayments of grants

90.—(1) The Welsh Ministers must recover any overpayment of a grant unless they think it is not appropriate to do so.

(2) A payment of a grant made before the day on which the course begins in respect of the academic year in question is an overpayment if the eligible student withdraws from the course before that day.

(3) A payment of disabled student's grant is an overpayment if either of the following cases apply—

Case 1

An amount of the grant has been paid for the purpose of assisting with expenditure on major items of specialist equipment but the equipment has not been delivered to the eligible student before the student's period of eligibility ends or is terminated.

Case 2

Payment of an amount of the grant for the purpose of assisting with expenditure on major items of specialist equipment is made after the eligible student's period of eligibility ends or is terminated.

(4) Overpayment of a grant may be recovered by subtracting the overpayment from any grant payable to the eligible student from time to time under these Regulations or any other regulations made by the Welsh Ministers under section 22 of the 1998 Act.

(5) Where—

- (a) there is an overpayment of a disabled student's grant, and
- (b) any amount of the grant was paid for the purpose of assisting with expenditure on major items of specialist equipment,

the Welsh Ministers may accept the return of specialist equipment by way of recovery of all or part of the overpayment.

(6) Paragraphs (4) and (5) do not prevent the Welsh Ministers from recovering an overpayment by any other method available to them.

Recovery of overpayments of maintenance loans

91.—(1) Where a maintenance loan has been overpaid for any of the reasons mentioned in paragraph (2), the Welsh Ministers may recover the overpayment—

- (a) by subtracting it from any maintenance loan payable to the eligible student from time to time under these Regulations or any other regulations made by the Welsh Ministers under section 22 of the 1998 Act, or
- (b) by any other method available to them.

(2) The reasons are—

- (a) the student failed to promptly provide information which may have affected whether the student qualified for the loan or the amount of loan payable;
- (b) the student provided the information but it was materially inaccurate;
- (c) the student failed to provide information which the Welsh Ministers think is material in the context of recovering the loan.

(3) Where a maintenance loan has been overpaid for any other reason, the Welsh Ministers may recover the overpayment only by subtracting it from any maintenance loan payable to the eligible student from time to time under these Regulations or any other regulations made by the Welsh Ministers under section 22 of the 1998 Act.

PART 14

RESTRICTIONS ON PAYMENTS AND AMOUNTS PAYABLE

CHAPTER 1

RESTRICTIONS RELATING TO GRANTS AND MAINTENANCE LOANS

Requirement for payment to be made into bank or building society account

92.—(1) If the Welsh Ministers think it appropriate to make payments of a grant or maintenance loan by transfer into a bank or building society account, they may require an eligible student to provide details of such an account in the United Kingdom into which payments may be made.

(2) If that requirement is imposed, the Welsh Ministers may not make any payment of the grant or loan until the eligible student has complied.

Support reduced for periods spent in prison

93.—(1) This regulation applies to an eligible student—

- (a) to whom a grant (other than disabled student's grant) or maintenance loan is payable in respect of an academic year, and
- (b) who becomes a prisoner during the academic year.

(2) Where this regulation applies, the amount of the grant or maintenance loan payable is reduced in accordance with the following formula—

$$A \times \frac{(dY - dP)}{dY}$$

Where—

A is the amount of grant or maintenance loan payable;

dY is the number of days in the academic year in question;

dP is the number of days during the year that the eligible student is a prisoner.

(3) But the Welsh Ministers may determine that the reduction is not to be made if they think it appropriate in the circumstances, having regard in particular to—

- (a) the financial hardship that may be caused to the student by reducing the amount of grant or loan payable;
- (b) whether the reduction would affect the student's ability to continue the present course.

Support reduced for other periods of absence

94.—(1) This regulation applies to an eligible student—

- (a) to whom a grant (other than disabled student's grant) or maintenance loan is payable in respect of an academic year, and
- (b) who stops undertaking the present course for any period during the academic year (referred to in this regulation as being absent).

(2) Where this regulation applies, the amount of the grant or maintenance loan payable is reduced in accordance with the following formula—

$$A \times \frac{(dY - dAbs)}{dY}$$

Where—

A is the amount of grant or maintenance loan payable;

dY is the number of days in the academic year in question;

dAbs is the number of days during the year that the eligible student is absent from the present course.

(3) But the Welsh Ministers may determine that the reduction is not to be made if they think it appropriate in the circumstances, having regard in particular to—

- (a) the reasons for the eligible student's absence,
- (b) the length of absence, and
- (c) any financial hardship that may be caused by reducing the amount of grant or loan payable.

(4) An eligible student is not to be treated as absent for the purposes of this regulation in the following circumstances—

- (a) the absence is due to illness and is for a period not exceeding 60 days;
- (b) where the present course is a compressed degree course, any part of the academic year during which the student is not required to attend the institution;
- (c) where the student has a disability but is unable to attend the institution for a reason relating to that disability;
- (d) where the student is on a period of study or work placement in an Erasmus year;
- (e) the absence is because the eligible student becomes a prisoner (see regulation 93).

Payments when period of eligibility ends or is terminated

95.—(1) Where an eligible student's period of eligibility has ended or has been terminated, any amount of grant or maintenance loan payable in respect of an academic year is reduced in accordance with the following formula—

$$A \times \frac{(ppY - ppT)}{ppY}$$

Where—

A is the amount of grant or maintenance loan payable;

ppY is the number of payment periods in the academic year in question;

ppT is the number of payment periods in the year beginning after the eligible student's period of eligibility has ended or has been terminated.

(2) The Welsh Ministers may not make any payment of an amount of grant or maintenance loan in respect of any payment period beginning after an eligible student's period of eligibility has ended or has been terminated.

(3) Paragraphs (4) to (8) apply where—

- (a) an amount of grant is payable to an eligible student ("P") in respect of an academic year, and
- (b) P's period of eligibility ends or is terminated on or after the day on which the course begins in respect of that year.

(4) The Welsh Ministers must determine—

- (a) the amount of grant that, had P's eligibility not ended or been terminated, would be payable to P in respect of the payment period during which P's period of eligibility ended or was terminated (the "full amount"), and

- (b) the proportion of the full amount that would be payable to P in respect of the period beginning at the start of that payment period and ending when P's eligibility ended or was terminated (the "partial amount").

(5) The Welsh Ministers must take the action mentioned in paragraph (6) where—

- (a) they have made a payment to P of an amount of grant in respect of the payment period during which P's period of eligibility ended or was terminated,
- (b) the payment is made before P's period of eligibility ended or was terminated, and
- (c) the amount paid exceeds the partial amount.

(6) The action referred to in paragraph (5) is to either—

- (a) reduce the amount of grant payable to P by the excess referred to in paragraph (5)(c) (and accordingly treat the excess as an overpayment), or
- (b) if the Welsh Ministers think it appropriate, extend P's period of eligibility in respect of the grant until the end of the payment period (and accordingly the full amount is payable).

(7) Where—

- (a) the Welsh Ministers have made, or are due to make, a payment to P of an amount of grant in respect of the payment period during which P's period of eligibility ended or was terminated, and
- (b) the payment—
 - (i) is made or is due after P's period of eligibility ended or was terminated, or
 - (ii) is made before then and is no more than the partial amount,

the amount of grant payable is the partial amount unless paragraph (8) applies.

(8) In the circumstances referred to in paragraph (7) the Welsh Ministers—

- (a) may determine that P's period of eligibility is extended to the end of payment period in question (and accordingly the full amount of grant is payable) if they think it appropriate to do so, and
- (b) must so determine if the amount of grant in question is an amount of disabled student's grant paid in respect of expenditure on major items of specialist equipment.

(9) In this regulation, "payment period" means a period (whether a whole academic year or a quarter of an academic year) in respect of which a grant or maintenance loan is payable or would be payable were

it not for the fact that the eligible student's period of eligibility had ended or was terminated.

CHAPTER 2

RESTRICTIONS RELATING TO LOANS

Requirement to provide national insurance number

96.—(1) The Welsh Ministers may make it a condition of entitlement to payment of a tuition fee loan or maintenance loan that an eligible student must provide them with the student's United Kingdom national insurance number.

(2) If that condition is imposed, the Welsh Ministers may not make any payment of the loan until the eligible student has complied, unless the Welsh Ministers are satisfied that, owing to exceptional circumstances, it would be appropriate to make a payment despite the condition not being complied with.

Information requirements relating to loans

97.—(1) Where the Welsh Ministers have required information or documentation under regulation 35(1) for any of the purposes mentioned in paragraph (2) of this regulation, they may withhold any payment of a tuition fee loan or maintenance loan until the student complies with the requirement or provides a satisfactory explanation for not doing so.

(2) The purposes are—

- (a) determining whether student is an eligible student who qualifies for a loan;
- (b) determining the amount of loan payable to the student;
- (c) any matter relating to the repayment of a loan by the student.

PART 15

DISABLED POSTGRADUATE STUDENT'S GRANT

98. Schedule 4 makes provision about disabled postgraduate student's grant.

PART 16

OXBRIDGE COLLEGE FEE LOANS

99. Schedule 5 makes provision about Oxbridge college fee loans.

PART 17
AMENDMENTS TO THE EDUCATION
(STUDENT SUPPORT) (WALES)
REGULATIONS 2017

100. Schedule 6 contains amendments to the 2017 Regulations.

Kirsty Williams
Cabinet Secretary for Education, one of the Welsh
Ministers
14 February 2018

SCHEDULES

SCHEDULE 1 Regulation 4(1)

Interpretation

Meaning of academic year

1.—(1) An “academic year”, in respect of a course, is determined as follows—

- (a) identify the period in Column 2 of Table 14 within which the academic year actually begins;
- (b) the academic year is the period of 12 months beginning on the date specified in the entry in Column 1 of the Table corresponding to the period set out in Column 2.

(2) But if the course is a compressed first year course, “academic year”, in respect of the first year of the course, means the period of 8 months beginning on the date so specified.

(3) Any reference in these Regulations to an “academic year” is a reference to a year determined in accordance with sub-paragraphs (1) and (2).

Table 14

<i>Column 1 Start date of academic year for the purposes of these regulations</i>	<i>Column 2 Period within which academic year begins</i>
1 September	On or after 1 August but before 1 January
1 January	On or after 1 January but before 1 April
1 April	On or after 1 April but before 1 July
1 July	On or after 1 July but before 1 August

Educational institutions

2. In these Regulations—

- (a) “recognised educational institution” means—

- (i) a Welsh regulated institution,
- (ii) an English regulated institution,
- (iii) an institution maintained or assisted by recurrent grants out of funds provided by the Scottish Ministers, or
- (iv) an institution maintained or assisted by recurrent grants out of funds provided by the Northern Ireland Executive;
- (b) “Welsh regulated institution” means an institution which has a fee and access plan approved by the Higher Education Funding Council for Wales under section 7 of the Higher Education (Wales) Act 2015⁽¹⁾ and which remains in force;
- (c) “English regulated institution” means an institution maintained or assisted by recurrent grants from the Higher Education Funding Council for England.

Location of an eligible student

3.—(1) In these Regulations, in relation to an eligible student—

- (a) “living at home” means that the student is living at the student’s parent’s home while undertaking the present course;
- (b) “living away from home, studying in London” means that the student is living away from the student’s parent’s home while—
 - (i) undertaking a course at the University of London,
 - (ii) undertaking a course at an institution requiring attendance in the academic year at a site that is wholly or partly in London where at least half of any quarter of the course is provided at such a site, or
 - (iii) undertaking a sandwich course in the academic year at an institution that requires the student to undertake work experience, or a combination of work experience and study, in London where that work experience, or combination of work experience and study, is undertaken for at least half of any quarter;
- (c) “living away from home, studying elsewhere” means that the eligible student is living away from the student’s parent’s home but not studying in London, including attending an institution outside the United Kingdom as part of the student’s course or undertaking an overseas work placement in an Erasmus year.

⁽¹⁾ 2015 anaw 1.

(2) For the purposes of sub-paragraph (1), “London” means the area comprising the City of London and the former Metropolitan Police District.

(3) In sub-paragraph (2), “former Metropolitan Police District” means—

- (a) Greater London, excluding the city of London, the Inner Temple and the Middle Temple,
- (b) in the county of Essex, in the district of Epping Forest—
 - (i) the area of the former urban district of Chigwell, and
 - (ii) the parish of Waltham Abbey,
- (c) in the county of Hertfordshire—
 - (i) in the borough of Broxbourne, the area of the former urban district of Cheshunt,
 - (ii) the district of Hertsmere, and
 - (iii) in the district of Welwyn Hatfield, the parish of Northaw, and
- (d) in the county of Surrey—
 - (i) in the borough of Elmbridge, the area of the former urban district of Esher,
 - (ii) the boroughs of Epsom and Ewell and Spelthorne, and
 - (iii) in the district of Reigate and Banstead, the area of the former urban district of Banstead.

Meaning of Erasmus year

4.—(1) In these Regulations, an “Erasmus year” is an academic year in which a student—

- (a) participates in the ERASMUS scheme as part of a course provided wholly by a recognised educational institution, and
- (b) satisfies condition A, B, or C in sub-paragraph (2).

(2) The conditions are—

Condition A

- (a) The course is provided by an institution in Northern Ireland, and
- (b) the student completes all periods of study or work placement under the scheme outside the United Kingdom.

Condition B

- (a) The course is provided by an institution in England, Scotland or Wales,
- (b) at least one period of study or work placement under the scheme is attended at an institution or workplace outside the United Kingdom during the academic year, and

- (c) during that academic year, the aggregate of any one or more periods of full-time study at the institution in England, Scotland or Wales is less than 10 weeks.

Condition C

- (a) The course is provided by an institution in England, Scotland or Wales,
- (b) at least one period of study or work placement under the scheme is attended at an institution or workplace outside the United Kingdom during the academic year, and
- (c) during 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 England, Scotland or Wales), disregarding any intervening vacations, exceeds 30 weeks.

(3) In sub-paragraph (1), “ERASMUS scheme” means the European Union’s action scheme for the mobility of university students⁽¹⁾.

Part-time students – calculation of intensity of study

5.—(1) In these Regulations, a reference to the intensity of study in relation to a part-time course is a reference to the lower of—

- (a) the percentage calculated in accordance with sub-paragraph (2), or
- (b) 75%.

(2) The percentage is calculated as follows—

$$\frac{PT}{FT} \times 100$$

Where—

PT is the number of modules, credits, credit points, points or other units to be awarded to the student undertaking the part-time course by the academic authority if the student successfully completes the academic year in connection with which the student is applying for support, and

FT is—

- (a) where the course is provided by or on behalf of the Open University, 120;
- (b) where the course is provided by or on behalf of any other institution, the number of modules, credits, credit

(1) ERASMUS is part of the European Community action programme SOCRATES; OJ No L28, 3.2.2000 p.1.

points, points or other units that a standard full-time student would be required to obtain in each academic year in order to complete the full-time equivalent within the period ordinarily required to complete that course.

(3) For the purposes of sub-paragraph (2)—

- (a) “full-time equivalent” means a full-time course leading to the same qualification as the part-time course in question;
- (b) the “period ordinarily required to complete the full-time equivalent” means the period in which a standard full-time student would complete the full-time equivalent;
- (c) “standard full-time student” means a student who is taken—
 - (i) to have started the full-time equivalent on the same date as the student undertaking the part-time course in question,
 - (ii) not to have been excused any part of the full-time equivalent,
 - (iii) not to have repeated any part of the full-time equivalent, and
 - (iv) not to have been absent from the full-time equivalent other than during vacations.

Interpretation of other key terms

6.—(1) In these Regulations—

“academic authority” (“*awdurdod academiadd*”) means, in relation to an institution, the governing body or other body having the functions of a governing body and includes a person acting with the authority of that body;

“accelerated graduate entry course” (“*cwrs mynediad graddedig carlam*”) means a full-time course—

- (a) which leads to a qualification as a medical doctor or dentist,
- (b) the standard of which is not higher than a first degree course,
- (c) where the normal entry requirement is a first degree or equivalent qualification, and
- (d) which does not exceed 4 years duration;

“close relative” (“*perthynas agos*”) (in relation to a person (“P”)) means—

- (a) P’s spouse or civil partner;
- (b) a person ordinarily living with P as if the person were P’s spouse or civil partner;
- (c) P’s parent, where P is under the age of 25;

“compressed degree course” (“*cwrs gradd cywasgedig*”) means a course determined as such by—

- (a) the Welsh Ministers in accordance with subparagraph (2), or
- (b) the Secretary of State in accordance with regulation 2(2) of the Education (Student Support) Regulations 2011⁽¹⁾;

“compressed first year course” (“*cwrs blwyddyn gyntaf gywasgedig*”) means a course where—

- (a) the first year is to be completed in a period of not more than seven months, and
- (b) no other years of the course are undertaken on such a compressed basis;

“course for the initial training of teachers” (“*cwrs ar gyfer hyfforddiant cychwynnol athrawon*”) includes a teacher training course leading to a first degree but excludes an employment-based teacher training scheme (within the meaning given by regulation 7(2));

“distance learning course” (“*cwrs dysgu o bell*”) means a course in relation to which a student undertaking the course is not required to be in attendance by the institution providing the course, other than to satisfy any requirement imposed by the institution to attend any institution—

- (a) for the purposes of registration, enrolment or examination, or
- (b) on a weekend or during a vacation;

“end-on course” (“*cwrs penben*”) means—

- (a) a full-time first degree course (other than a first degree course for the initial training of teachers) which, disregarding any intervening vacation, a student undertakes immediately after ceasing to undertake a full-time relevant education course,
- (b) a full-time honours degree course which, disregarding any intervening vacation, a student undertakes immediately after ceasing to undertake a full-time relevant degree course,
- (c) a part-time first degree course (other than a first degree course for the initial training of teachers) which, disregarding any intervening vacation, a student undertakes immediately after ceasing to undertake a part-time relevant education course, or

(1) S.I. 2011/1986, amended by S.I. 2012/1653, S.I. 2013/235, S.I. 2013/630, S.I. 2013/1728, S.I. 2013/3106, S.I. 2014/1766, S.I. 2014/2103, S.I. 2014/2765, S.I. 2015/1951, S.I. 2016/211, S.I. 2016/270, S.I. 2016/584, S.I. 2017/52, S.I. 2017/114 and S.I. 2017/204.

- (d) a part-time honours degree course which, disregarding any intervening vacation, a student undertakes immediately after ceasing to undertake a part-time relevant degree course;

and in this definition—

“relevant degree course” (“*cwrs gradd perthnasol*”) means—

- (a) a foundation degree course, or
- (b) an ordinary degree course,

for which the student received or was entitled to receive support under these Regulations;

“relevant education course” (“*cwrs addysg perthnasol*”) means—

- (a) a course for the diploma of higher education,
- (b) a course for the Higher National Diploma or Higher National Certificate of—

- (i) the Business and Technology Education Council, or

- (ii) the Scottish Qualification Authority, or

- (c) a course for the certificate of Higher Education,

for which the student received or was entitled to receive support under these Regulations;

“fees” (“*ffioedd*”) has the meaning given in section 57(1) of the Higher Education (Wales) Act 2015⁽¹⁾ but this definition does not apply to Oxbridge college fees (see Schedule 5);

“member of the armed forces” (“*aelod o’r lluoedd arfog*”) means a member of the regular naval, military or air forces of the Crown;

“period of work experience” (“*cyfnod o brofiad gwaith*”) means—

- (a) a period of industrial, professional or commercial experience associated with full-time study at an institution but at a place outside that institution;
- (b) a period during which a student is employed and residing in a country whose language is one that the student is studying for the student’s present course (provided that the period of residence in that country is a requirement of the student’s course and the

(1) 2015 anaw 1.

study of one or more modern languages accounts for not less than one half of the total time spent studying on the course);

“present course” (“*cwrs presennol*”) means the designated course in respect of which a person applies for support under regulation 32;

“prisoner” (“*carcharor*”) means a person who is serving a sentence of imprisonment in the United Kingdom including a person detained in a young offender institution (and “prison” is to be construed accordingly);

“publicly funded institution” (“*sefydliad a gyllidir yn gyhoeddus*”) means an institution in the United Kingdom maintained or assisted by recurrent grants out of funds provided by –

- (a) Parliament;
 - (b) the Welsh Ministers;
 - (c) the Scottish Ministers;
 - (d) the Northern Ireland Executive,
- or from funds attributable to such funds;

“qualified teacher” (“*athro cymwysiedig neu athrawes gymwysiedig*”) means a person who satisfies requirements specified in regulations under section 132 of the Education Act 2002⁽¹⁾;

“quarter” (“*chwarter*”) means a period of the academic year—

- (a) beginning on 1 September and ending on 31 December;
- (b) beginning on 1 January and ending on 31 March;
- (c) beginning on 1 April and ending on 30 June;
- (d) beginning on 1 July and ending on 31 August;

“Research Council” (“*Cyngor Ymchwil*”) means any of the following research councils—

- (a) Arts and Humanities Research Council;
- (b) Biotechnology and Biological Sciences Research Council;
- (c) Economic and Social Research Council;
- (d) Engineering and Physical Sciences Research Council;
- (e) Medical Research Council;
- (f) Natural Environment Research Council;
- (g) Science and Technology Facilities Council;

(1) 2002 c.32; the regulations are the Education (Teachers’ Qualifications and Health Standards) (Wales) Regulations 1999, S.I. 1999/2817, the Education (School Teachers’ Qualifications) (England) Regulations 2003, S.I. 2003/1662, the School Teachers’ Qualifications (Wales) Regulations 2012, S.I. 2012/724 and the Education Workforce Council (Accreditation of Initial Teacher Training) (Wales) Regulations 2017, S.I. 2017/165.

“sandwich course” (“*cwrs rhyngosod*”) means a course—

- (a) which consists of alternate periods of full-time study in an institution and periods of work experience, and
- (b) where, taking the course as a whole, the student attends the periods of full-time study at the institution for an average of not less than 18 weeks in each year (and where days of full-time study alternate with days of work experience in any week, those days of study may be aggregated with each other and with any full weeks of full-time study in determining the number of weeks of full-time study in a year);

for the purposes of paragraph (b) the course is to be treated as beginning with the first period of full-time study and ending with the last such period;

but a course for the initial training of teachers is not a sandwich course;

nor is an academic year of a designated course which is an Erasmus year to be treated as a sandwich course;

“statutory award” (“*dyfarndal statudol*”) means any award bestowed, grant paid, or other support provided, by virtue of the 1998 Act or the Education Act 1962, or any comparable award, grant, or other support, in respect of undertaking a course which is paid out of funds provided by a publicly funded institution;

“support” (“*cymorth*”), except where otherwise indicated, means financial support by way of grant or loan made by the Welsh Ministers under—

- (a) these Regulations, or
- (b) any other regulations made under section 22 of the 1998 Act.

(2) The Welsh Ministers may determine that a course is a compressed degree course if the course—

- (a) is a full-time designated course for a first degree (other than a foundation degree), and
- (b) is of two academic years’ duration.

SCHEDULE 2 Regulation

9(1)(a)

Categories of eligible student

Category 1 – Persons settled in the United Kingdom

1.—(1) A person—

- (a) who on the first day of the first academic year of the course—
 - (i) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence, and
 - (ii) is ordinarily resident in Wales,
 - (b) who 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
 - (c) whose residence in the United Kingdom and Islands has not, during any part of the period referred to in paragraph (b), been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 9(2)).
- (2) A person who—
- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
 - (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 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 person's 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 EEA and Switzerland immediately before the period of ordinary residence referred to in sub-paragraph (c).

Category 2 – Refugees and their family members

- 2.—**(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 Wales 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 the application for asylum,

- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and
 - (d) is ordinarily resident in Wales 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 made the application 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 years old on the date on which the refugee made the application for asylum,
 - (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and
 - (e) is ordinarily resident in Wales on the first day of the first academic year of the course.

Category 3 – Persons with leave to enter or remain and their family members

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

- (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 under 18 years old and 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 is ordinarily resident in Wales on the first day of the first academic year of the course, and
 - (d) who 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.
- (4) In this paragraph, a “person with leave to enter or remain” 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), 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.

Category 4 – Workers, employed persons, self-employed persons and their family members

4.—(1) A person who—

- (a) is one of the following—
 - (i) an EEA migrant worker or an EEA self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (ii) a Swiss employed person or a Swiss self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii), who is ordinarily resident in Wales on the first day of the first academic year of the course;
 - (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;
 - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v), and
- (b) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the course,
- (b) has been ordinarily resident in the territory comprising the EEA and Switzerland 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 on freedom of movement for workers within the Union, as extended by the EEA Agreement⁽¹⁾.

(3) In sub-paragraph (1)—

“EEA frontier self-employed person” (“*person hunangyflogedig trawsffiniol AEE*”) means an EEA national who—

(1) OJ No L141, 27.05.2011, p. 1.

- (a) is a self-employed person in Wales, 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, as the case may be, at least once a week;

“EEA frontier worker” (“*gweithiwr trawsffiniol AEE*”) means an EEA national who—

- (a) is a worker in Wales, 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, as the case may be, at least once a week;

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

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

“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) the person's spouse or civil partner,
 - (ii) direct descendants of the person or of the person's spouse or civil partner who are under the age of 21 or who are 21 or over and are 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 that of the person's spouse or civil partner;
- (b) in relation to a Swiss frontier employed person, a Swiss 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;

“Swiss employed person” (*“person cyflogedig Swisaidd”*) means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” (*“person cyflogedig trawsffiniol Swisaidd”*) means a Swiss national who—

- (a) is an employed person in Wales, 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, as the case may be, at least once a week;

“Swiss frontier self-employed person” (*“person hunangyflogedig trawsffiniol Swisaidd”*) means a Swiss national who—

- (a) is a self-employed person in Wales, 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, as the case may be, 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.

(4) For the purposes of sub-paragraph (3)—

“EEA national” (*“gwladolyn AEE”*) means a national of an EEA State other than the United Kingdom;

“employed person” (*“person cyflogedig”*) means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“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;

“worker” (*“gweithiwr”*) means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be.

Category 5 – Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

5.—(1) A person who—

- (a) is settled in the United Kingdom,
- (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence,
- (c) is ordinarily resident in the United Kingdom on the day on which the course begins,
- (d) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (e) in a case where the person's 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 EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if sub-paragraph (3) or (4) applies to the person.

(3) This sub-paragraph applies to a person who is—

- (a) a United Kingdom national,
- (b) a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement), or
- (c) a person who has a right of permanent residence,

who 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.

(4) This paragraph applies to a person ("P")—

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

(5) For the purposes of sub-paragraph (4), P is a family member of another person ("Q") if P—

- (a) is Q's spouse or civil partner,

- (b) is a direct descendant of Q or of Q's spouse or civil partner and P—
 - (i) is under the age of 21, or
 - (ii) is 21 or over and a dependant of Q or of Q's spouse or civil partner, or
- (c) where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, is a dependent direct relative in Q's ascending line or that of Q's spouse or civil partner.

Category 6 – EU nationals

6.—(1) A person—

- (a) who is either—
 - (i) an EU national on the first day of the first academic year of the course, other than a person who is a United Kingdom national who has not exercised a right of residence, or
 - (ii) a family member of such a person,
- (b) who is undertaking a designated course in Wales,
- (c) who has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) whose ordinary residence in the territory comprising the EEA and Switzerland 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 (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).

(2) 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 Wales 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 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 EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(3) 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 sub-paragraph (1)(a) or (2)(a) is treated as being satisfied.

(4) For the purposes of sub-paragraph (1)(a), a United Kingdom national has not exercised a right of residence if that person has not 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.

(5) For the purposes of sub-paragraph (1)(a), a person (“P”) is a family member of another person (“Q”) if—

- (a) P is Q’s spouse or civil partner,
- (b) P is a direct descendant of Q or of Q’s spouse or civil partner and P—
 - (i) is under the age of 21, or
 - (ii) is 21 or over and a dependant of Q or of Q’s spouse or civil partner, or
- (c) in a case where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, P is a dependent direct relative in Q’s ascending line or that of Q’s spouse or civil partner.

Category 7 – Children of Swiss nationals

7.—(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 EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) in a case where the person’s 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 EEA and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

Category 8 – Children of Turkish workers

8.—(1) A person who—

- (a) is the child of a Turkish worker,

- (b) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (c) has been ordinarily resident in the territory comprising the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

(2) In this paragraph, “Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands, and
- (b) is, or has been, lawfully employed in the United Kingdom.

Ordinary residence – additional provision

9.—(1) For the purposes of this Schedule, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland or the Islands, as a result of having moved from another 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.

(2) For the purposes of this Schedule, a person (“P”) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the EEA, Switzerland and Turkey 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 a dependent direct relative in the ascending line, P’s child or child’s spouse or civil partner,

is or was temporarily employed outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey.

(3) For the purposes of sub-paragraph (2), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey includes—

- (a) in the case of members of the armed forces, 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 EEA and Switzerland as members of such forces;

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

(4) For the purposes of this Schedule, an eligible student who is a prisoner is to be considered to be ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.

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

- (a) was previously not part of the EU or the EEA, but
- (b) at any time before or after these Regulations come into force becomes part of one or other or both of these territories,

is to be considered to have always been a part of the EEA.

Further provision on ordinary residence: care leavers

10.—(1) A care leaver is treated as being ordinarily resident in Wales on the first day of the first academic year of the present course even if, on that day, the care leaver—

- (a) is looked after outside Wales (in a case where regulation 49(c)(i) applies to the student), or
- (b) is residing outside Wales under a special guardianship order (in a case where regulation 49(c)(ii) applies to the student),

under arrangements made by a Welsh local authority.

(2) In paragraph (1)—

“care leaver” (*“person sy’n ymadael â gofal”*) has the meaning given in regulation 49;

“looked after” (*“derbyn gofal”*) has the meaning given in section 74 of the Social Services and Well-being (Wales) Act 2014;

“Welsh local authority” (*“awdurdod lleol Cymreig”*) means a local authority within the meaning given by section 197(1) of that Act.

Interpretation

11. In this Schedule—

“Directive 2004/38” (*“Cyfarwydddeb 2004/38”*) means Directive 2004/38/EC of the European Parliament and of the Council of 29th 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” (“*AEE*”) means the European Economic Area, that is to say the territory comprised by the EEA States;

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

“parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly;

“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 its 1967 Protocol⁽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;

“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 EU 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.

SCHEDULE 3 Regulations 48, 65(3), 66(2)(a) and 70(3)

Calculation of income

PART 1

Introduction

Overview of Schedule

1.—(1) This Schedule is arranged as follows.

(1) OJ No L158, 30.04.2004, p.77-123.

(2) Cmnd. 9171.

(3) Cmnd. 3906, the Protocol entered into force on 4 October 1967.

(4) 1971 c.77; 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 L1 14, 30.04.02, p6.

(2) Part 2 makes provision about the calculation of an eligible student's household income for the purposes of determining the amount of—

- (a) maintenance grant (see regulations 46 and 47),
- (b) grant for travel (see regulations 65 and 66), or
- (c) grants for dependants (see Part 11),

payable to the student.

(3) Part 3 sets out the meaning of “taxable income”, which is required in order to calculate a person's residual income.

(4) Part 4 makes provision about the calculation of residual income where—

- (a) Chapter 1 sets out how to calculate the residual income of an eligible student for the purposes of calculating the student's household income, and
- (b) Chapter 2 sets out how to calculate the residual income of the following other persons—
 - (i) an eligible student's parent, eligible student's partner or eligible student's parent's partner for the purposes of calculating the student's household income;
 - (ii) an eligible student's dependent adult for the purposes of calculating the amount of grant for dependants payable to the student (see regulation 77).

(5) Part 5 makes provision about the calculation of the net income of—

- (a) an eligible student's adult dependant, for the purposes of determining whether an eligible student qualifies for an adult dependants grant (see regulation 71);
- (b) an eligible student's dependent children, for the purposes of calculating the amount of grant for dependants payable to the student (see regulation 77).

(6) Part 6 defines certain terms used in this Schedule.

PART 2

Household income

Household income of eligible student

2. This Part makes provision about the calculation of an eligible student's household income.

Calculation of household income

3.—(1) An eligible student's household income is calculated by applying the following steps—

Step 1

If the student is not an independent eligible student (see paragraph 4), aggregate the total residual income of the persons listed in List A.

If the student is an independent eligible student, aggregate the total residual income of the persons listed in List B.

List A

The persons are—

- (a) the eligible student, plus
- (b) either—
 - (i) each of the eligible student's parents (subject to paragraph 5), or
 - (ii) where the student's parents have separated, the parent selected under paragraph 6(3) and that parent's partner (if that parent has one), (subject to paragraph 7).

List B

The persons are—

- (a) the independent eligible student, plus
- (b) the student's partner (if the student has one), (subject to paragraphs 7 and 8).

Step 2

Calculate the applicable amount of dependent child deduction (see sub-paragraphs (2) to (4)) and deduct that from the aggregated total calculated under Step 1.

The result is the eligible student's household income.

(2) A dependent child deduction is a deduction made in respect of each child wholly or mainly financially dependent on—

- (a) the eligible student,
- (b) the eligible student's partner,
- (c) the eligible student's parent, or
- (d) the partner of the eligible student's parent,

where the income of that person is taken into account for the purposes of calculating household income.

(3) But no deduction is to be made in respect of a child of—

- (a) the eligible student's parent, or
- (b) the partner of the eligible student's parent,

if the child is the eligible student.

(4) In Table 15, Column 2 sets out the amount of dependent child deduction in respect of the academic year set out in the corresponding entry in Column 1.

Table 15

<i>Column 1</i> <i>Academic year</i>	<i>Column 2</i> <i>Amount of dependent child deduction</i>
Beginning on or after 1 September 2018	£1,130

Independent eligible students

4.—(1) An eligible student is an independent eligible student if one of the following cases applies—

Case 1

The student is aged 25 or over on the first day of the current academic year.

Case 2

The student is married or is in a civil partnership before the beginning of the first day of the current academic year, whether or not the marriage or civil partnership continues to subsist after that date.

Case 3

The student has no parent living.

Case 4

The Welsh Ministers are satisfied that—

- (a) neither of the student's parents can be found, or
- (b) it is not reasonably practicable to get in touch with either of the student's parents.

Case 5

Either—

- (a) the student has not communicated with either of the student's parents for a period of one year or more ending on the day before the first day of the current academic year, or
- (b) in the opinion of the Welsh Ministers, the student is irreconcilably estranged from the student's parents on other grounds.

Case 6

The student's parents reside outside the European Union and the Welsh Ministers are satisfied that—

- (a) the assessment of the household income by reference to the parents' income would place those parents in jeopardy, or
- (b) it would not be reasonably practicable for the parents to send funds to the United Kingdom for the purposes of supporting the student.

Case 7

Where paragraph 6 (separation of parents) applies, the parent selected by the Welsh Ministers under subparagraph (3) of that paragraph has died, irrespective of whether that parent had a partner.

Case 8

On the first day of the current academic year, the student has the care of a person under the age of 18.

Case 9

The student has been supported by the student's earnings for any period of three years (or periods which together aggregate at least three years) ending before the first day of the first academic year of the present course.

Case 10

Where a student is an independent eligible student by virtue of Case 9 in respect of one academic year, the student continues to be an independent eligible student for any subsequent academic year of the designated course.

Case 11

The student is a care leaver within the meaning given by regulation 49.

(2) For the purposes of Case 9, an eligible student is treated as being supported by the student's earnings if during the period or periods referred to in Case 9 one of the following grounds applies—

Ground 1

The eligible student was participating in arrangements for training unemployed persons under a scheme operated, sponsored or funded by a public body.

Ground 2

The eligible student received a benefit payable by a public body in respect of a person who is available for employment but is unemployed.

Ground 3

The eligible student was available for employment and had complied with any registration requirement of a public body as a condition of entitlement for participation in arrangements for training or the receipt of benefits.

Ground 4

The eligible student held a state studentship or comparable award.

Ground 5

The eligible student received a pension, allowance or other benefit paid by reason of the student's disability, injury or sickness or for a reason associated with childbirth.

Eligible student's parent dies leaving a surviving parent

5.—(1) Where—

- (a) the parent of an eligible student dies before the current academic year, and
- (b) that parent's income has been or would have been taken into account for the purpose of determining household income,

only the residual income of the surviving parent is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the parent dies during the current academic year, the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by $X/52$, and
- (b) the residual income of the surviving parent for the applicable financial year multiplied by $Y/52$,

where—

X is the number of weeks in the current academic year during which both parents were alive, and

Y is the remaining number of weeks in the current academic year.

Separation of eligible student's parents

6.—(1) Where the eligible student's parents are separated for the duration of the current academic year, only the residual income of the parent selected under sub-paragraph (3) is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the student's parents have separated during the current academic year the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by $X/52$, and
- (b) the residual income of the parent selected under sub-paragraph (3) for the applicable financial year multiplied by $Y/52$,

where—

X is the number of weeks in the current academic year during which the parents were not separated, and

Y is the number of weeks in the current academic year during which the parents were separated.

(3) Where sub-paragraph (1) or (2) applies, the Welsh Ministers must select the parent whose residual income it is the most appropriate to take into account in the circumstances.

Separation of eligible student's parent or independent eligible student from partner

7.—(1) Where—

- (a) the parent of an eligible student, or
- (b) an independent eligible student,

is separated from his or her partner for the duration of the current academic year, the income of the partner is not aggregated under Step 1 in paragraph 3(1).

(2) Where—

- (a) the parent of the eligible student, or
- (b) an independent eligible student,

has separated from his or her partner during the current academic year, the amount of the partner's residual income to be aggregated under Step 1 is calculated by applying the formula in sub-paragraph (3).

(3) The formula to be applied is—

$$X \times C / 52$$

Where—

X is the residual income of—

- (a) the eligible student's parent's partner, where List A of Step 1 applies, or
- (b) the independent eligible student's partner where List B of Step 1 applies,

for the applicable financial year;

C is the number of complete weeks of the current academic year during which—

- (a) the eligible student's parent and his or her partner, or
- (b) the independent eligible student and the student's partner,

were not separated.

(4) Where an eligible student has more than one partner in any one academic year, this paragraph and Step 1 of paragraph 3(1) apply in relation to each partner.

Independent eligible student or partner is a parent of an eligible student

8. Where—

- (a) an independent eligible student (I) or the partner of the independent eligible student (PI) is a parent of an eligible student (S), and

- (b) a statutory award payable to S is calculated by reference to the residual income of I or PI, or both,

the residual income of PI is not aggregated under List B of Step 1 in paragraph 3(1) for the purposes of calculating the household income of I.

PART 3

Taxable income

Taxable income

9.—(1) In this Schedule, a person's taxable income means—

- (a) the aggregate of—
 - (i) the total income on which the person is charged to income tax under Step 1 of section 23 of the Income Tax Act 2007⁽¹⁾, and
 - (ii) if not already a component of total income under sub-paragraph (i), payments and other benefits specified in section 401(1) of the Income Tax (Earnings and Pensions) Act 2003⁽²⁾ received by the person or treated as received by the person (but disregard section 401(2) of that Act for the purposes of this sub-paragraph), or
- (b) where the income tax legislation of another member State applies to the person's income, the person's total income from all sources as determined for the purposes of the income tax legislation of that member State.

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

(3) But a person's taxable income does not include income paid to another person under a pension arrangements order.

(1) 2007 c. 3; section 23 was amended by the Finance Act 2009 (c. 10), Schedule 1, paragraph 6(o)(i), the Finance Act 2013 (c. 29), Schedule 3, paragraph 2(2) and the Finance Act 2014 (c. 26), Schedule 17, paragraph 19.

(2) 2003 c.1; section 401 was amended by S.I. 2005/3229, S.I. 2011/1037 and S.I. 2014/211.

PART 4

Residual income

CHAPTER 1

Residual income of an eligible student

Calculation of eligible student's residual income

10.— For the purposes of calculating an eligible student's household income under Part 2, the student's residual income is calculated as follows—

The eligible student's taxable income in respect of the current academic year.

Plus

Income payable to the eligible student under a pension arrangements order during the current academic year, net of income tax.

Minus

The aggregate of the deductions set out in paragraph 11 (unless already deducted for the purposes of determining the student's taxable income).

Deductions for the purpose of calculating residual income of an eligible student

11.— For the purposes of calculating an eligible student's residual income, the deductions are—

Deduction A

Remuneration paid to the eligible student in the current academic year for work done during any academic year of the course, but not remuneration in respect of any—

- (a) period of leave taken by the student, or
- (b) other period during which the student is relieved of a duty to attend work,

so that the student may undertake the course.

Deduction B

The gross amount of any premium or sum paid by the eligible student during the current academic year in relation to a pension in respect of which—

- (a) relief is given under section 188 of the Finance Act 2004⁽¹⁾, or
- (b) where the student's income is computed for the purposes of the income tax legislation of another member State, relief would be given if

(1) 2004 c.12; section 188 was amended by the Finance Act 2007 (c. 11), sections 68 and 114 and Schedules 18, 19 and 27, the Finance Act 2013 (c. 29), section 52 and the Finance Act 2014 (c. 26), Schedule 7.

that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

Income of eligible student received in currency other than sterling

12.—(1) Where the eligible student receives income in a currency other than sterling, the value of the income is—

- (a) the amount of sterling the eligible student receives for the income, or
- (b) where the student does not convert the income into sterling, the value of the sterling which the income would purchase using the HMRC exchange rate.

(2) The HMRC exchange rate⁽¹⁾ is the rate published by HM Revenue and Customs for the month corresponding to the month in which the income is received.

CHAPTER 2

Residual income of persons other than an eligible student

Persons to whom this chapter applies

13. This Chapter makes provision for the calculation of a person's ("P's") residual income where P means the following—

- (a) where P's income is aggregated under Step 1 in paragraph 3(1) for the purpose of calculating an eligible student's household income—
 - (i) the parent of the eligible student,
 - (ii) the eligible student's partner, or
 - (iii) the eligible student's parent's partner,
 as the case may be;
- (b) the adult dependant of an eligible student for the purposes of calculating the amount of grant for dependants payable to the student (see regulation 77).

Calculation of residual income of persons other than eligible student

14. P's residual income is calculated as follows—

P's taxable income for the applicable financial year.

(1) See <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>.

Plus

Income payable to P under a pension arrangements order during the applicable financial year, net of income tax.

Minus

The aggregate of the deductions set out in paragraph 15 (unless already deducted for the purposes of determining P's taxable income).

Deductions for the purpose of calculating residual income of persons other than eligible student

15.—(1) For the purposes of calculating P's residual income, the deductions are—

Deduction A

The gross amount of any premium or sum paid by P in respect of a pension during the applicable financial year, in relation to which—

- (a) relief is given under section 188 of the Finance Act 2004, or
- (b) where P's income is computed for the purposes of the income tax legislation of another member State, relief would be given if that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

Deduction B

Where paragraph 18 applies, a sum equivalent to Deduction A provided that this sum does not exceed the deductions which would be made if the whole of P's income were in fact income for the purposes of the Income Tax Acts.

Deduction C

£1,130, where P—

- (a) is an eligible student in respect of the current academic year but is also the parent of an eligible student, or
- (b) holds a statutory award in respect of the same period.

Applicable financial years: calculating residual income of persons other than eligible student

16.—(1) This paragraph specifies the applicable financial year for the purposes of calculating P's residual income.

(2) Unless sub-paragraph (3) or (5) applies, the applicable financial year is PY-1.

(3) Where the Welsh Ministers are satisfied that P's residual income for CY is likely to be at least 15%

lower than P's residual income for PY-1, the applicable financial year is CY.

(4) Sub-paragraph (5) applies where the applicable financial year for the previous academic year was the financial year beginning immediately before the first day of the previous academic year.

(5) Where this paragraph applies, the applicable financial year is to be determined as follows—

- (a) if the Welsh Ministers are satisfied that P's residual income for CY is likely to be at least 15% lower than P's residual income for PY, the applicable financial year is CY;
- (b) otherwise, the applicable financial year is PY.

Income from business or profession

17.—(1) Sub-paragraph (2) applies where—

- (a) the applicable financial year for the purposes of calculating P's residual income is PY-1, and
- (b) the Welsh Ministers are satisfied that P's income is wholly or mainly derived from the profits of a business or profession carried on by P.

(2) Where this paragraph applies, P's residual income is P's income for the earliest period of twelve months ending in PY-1 in respect of which accounts are kept relating to P's business or profession.

Treatment of income not treated as income for income tax purposes

18.—(1) Sub-paragraph (3) applies where P is in receipt of any income which, for any of the reasons set out in sub-paragraph (2), does not form part of P's income for the purposes of the Income Tax Acts or the income tax legislation of another member State.

(2) The reasons are—

Reason 1

- (a) P is not resident or domiciled in the United Kingdom, or
- (b) P's income is computed for the purposes of the income tax legislation of another member State and P is not resident or domiciled in that member State.

Reason 2

- (a) P's income does not arise in the United Kingdom, or
- (b) P's income does not arise in the member State in which P's income is computed for the purposes of that State's income tax legislation.

Reason 3

The income arises from an office, service or employment, income from which is exempt from tax.

(3) P's taxable income is to be taken to include the income described in sub-paragraph (1) as if it were part of P's income for the purposes of the Income Tax Acts or the income tax legislation of another member State, as the case may be.

P's income in currency other than sterling

19.—(1) Where P's income is computed for the purposes of the income tax legislation of another member State, P's residual income is to be calculated in accordance with this Part in the currency of that member State and is to be taken to be the sterling value of that income determined in accordance with the relevant HMRC rate.

(2) The relevant HMRC rate is the exchange average rate issued by HM Revenue and Customs for the calendar year ending immediately before the end of PY-1.

PART 5

Net income of dependants

Net income of dependants

20. This Part makes provision about the calculation of the net income of the following dependants—

- (a) an eligible student's adult dependant, for the purposes of determining whether an eligible student qualifies for adult dependants grant (see regulation 71);
- (b) an eligible student's dependent children, for the purposes of calculating the amount of grant for dependants payable to the student (see regulation 77).

Net income

21.—(1) The net income of a dependant is the dependant's income from all sources for the relevant year reduced by the amount of income tax and social security contributions payable in respect of that year but disregarding—

- (a) any pension, allowance or other benefit paid by reason of a dependant's disability or incapacity;

- (b) child benefit payable under Part 9 of the Social Security Contributions and Benefits Act 1992⁽¹⁾;
- (c) any financial support payable to the dependant by a local authority in accordance with regulations made under sections 2, 3 and 4 of the Adoption and Children Act 2002⁽²⁾;
- (d) any guardian's allowance to which the dependant is entitled under section 77 of the Social Security Contributions and Benefits Act 1992⁽³⁾;
- (e) in the case of a dependant with whom a child being looked after by a local authority is boarded out, any payment made to that dependant in pursuance of section 23 of the Children Act 1989⁽⁴⁾ or section 81 of the Social Services and Well-being (Wales) Act 2014⁽⁵⁾;
- (f) any payment made to the dependant under section 110(6) of the Social Services and Well-being (Wales) Act 2014 or section 23C(5A) of the Children Act 1989⁽⁶⁾;
- (g) any payments made to the dependant under section 15 of and Schedule 1 to the Children Act 1989 in respect of a person who is not the dependant's child or any assistance given by a local authority pursuant to—
 - (i) section 24 of that Act⁽⁷⁾, or
 - (ii) section 104 of the Social Services and Well-being (Wales) Act 2014 in so far as that section applies to category 5 and 6

(1) 1992 c.4.

(2) 2002 c. 38. Section 2 was amended by S.I. 2016/413 (W. 131). Section 4 was amended by S.I. 2010/1158; the Health and Social Care Act 2012 (c. 7), Schedule 5, paragraphs 104 and 105; and by S.I. 2013/160.

(3) Section 77 was amended by the Child Benefit Act 2005, section 1(3), Schedule 1, Part 1, paragraphs 1 and 4, the Tax Credits Act 2002, Schedule 6, the Civil Partnership Act 2004, section 254(1), Schedule 24, Part 3, paragraph 34.

(4) 1989 c.41. Section 23 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 16, paragraph 12, the Care Standards Act 2000 (c. 14), Schedule 4, paragraph 14, the Children Act 2004 (c. 31), section 49(3), the Children and Young Persons Act 2008 (c. 23), sections 8 and 39 and Schedule 3, paragraphs 1 and 7 and the Children and Families Act 2014 (c. 6), Schedule 2 paragraph 30.

(5) 2014 anaw 4.

(6) Subsections (5A) to (5C) of section 23C of the Children Act 1989 were inserted, in relation to England, by section 21 of the Children and Young Persons Act 2008 and S.I. 2009/268 and S.I. 2009/2273 refer. Subsections (5A) to (5C) were inserted into section 23C in relation to Wales and S.I. 2010/1329 (W. 112) (C.81) and S.I. 2011/824 (W. 123) (C. 32) refer.

(7) Section 24 was amended by the Children (Leaving Care) Act 2000 (c. 35), section 4(1), the Adoption and Children Act 2002 (c. 38), section 139 and Schedule 3, paragraph 60, S.I. 2007/961 (W.85), paragraph 20(2)(b), S.I. 2010/1158, Schedule 2, paragraph 2, the Health and Social Care Act 2012 (c. 7), section 55 and Schedule 5, paragraph 49 and S.I. 2016/413 (W.131), regulation 81.

- young persons within the meaning of that Act;
- (h) any child tax credit to which the dependant is entitled under Part 1 of the Tax Credits Act 2002⁽¹⁾;
 - (i) in the case of a dependant who is entitled to an award of universal credit under Part 1 of the Welfare Reform Act 2012⁽²⁾—
 - (i) any amount that is included in the calculation of the award under regulation 27(1) of the Universal Credit Regulations 2013⁽³⁾, in respect of the fact that the dependant has limited capability for work and work-related activity;
 - (ii) any amount or additional amount that is included in the calculation of the award under regulation 24 of those Regulations⁽⁴⁾ (the child element).

(2) For the purposes of this paragraph, payments made to the eligible student towards a dependent child's maintenance are treated as the dependent child's income.

(3) In this paragraph, "relevant year" means—

- (a) in respect of an eligible student's adult dependant, the current academic year;
- (b) in respect of an eligible student's dependent child, the applicable financial year determined under paragraph 22.

Applicable financial years: calculating net income of an eligible student's dependent children

22.—(1) This paragraph specifies the applicable financial year for the purposes of calculating the net income of an eligible student's dependent child ("C").

(2) Unless paragraph (3) or (5) applies, the applicable financial year is PY-1.

(3) Where the Welsh Ministers are satisfied that C's net income for CY is likely to be at least 15% lower than C's net income for PY-1, the applicable financial year is CY.

(4) Sub-paragraph (5) applies where the applicable financial year for the previous academic year was the financial year beginning immediately before the first day of the previous academic year.

(1) 2002 c. 21.

(2) 2012 c.5.

(3) S.I. 2013/376. Regulation 27 was amended by S.I. 2017/204, regulation 4.

(4) Regulation 24 of S.I. 2013/376, as amended by S.I. 2014/2088 and the Welfare Reform and Work Act 2016 (c.7), section 14, makes further provision about the child element of an award.

(5) Where this paragraph applies, the applicable financial year is to be determined as follows—

- (a) if the Welsh Ministers are satisfied that C's net income for CY is likely to be at least 15% lower than C's net income for PY, the applicable financial year is CY;
- (b) otherwise, the applicable financial year is PY.

PART 6

Interpretation

Interpretation

23.—(1) In this Schedule, any reference to a person's ("A's") partner means—

- (a) A's spouse or civil partner; or
- (b) a person ordinarily living with A as if the person were A's spouse or civil partner.

(2) In this Schedule—

"applicable financial year" (*"blwyddyn academaidd gymwys"*) means the financial year determined in accordance with paragraph 16 or 22;

"current academic year" (*"blwyddyn academaidd gyfredol"*) means the academic year of the present course in respect of which the eligible student is applying for support;

"CY" ("BG") means the financial year beginning immediately before the first day of the current academic year;

"financial year" (*"blwyddyn ariannol"*) means the period of twelve months in respect of which the income of a person is computed for the purposes of the income tax legislation which applies to it;

"PY" ("BF") means the financial year immediately preceding CY;

"PY-1" (*"BF-1"*) means the financial year immediately preceding PY;

"pension arrangements order" (*"gorchymyn trefniadau pensiwn"*) means an order under which a person pays benefits under a pension arrangement to another person under—

- (a) section 23 of the Matrimonial Causes Act 1973⁽¹⁾ which includes provision made by virtue of section 25B(4) (and including such an order as it may have effect by virtue of section 25E(3) of that Act)⁽²⁾, or

(1) 1973 c.18, section 23 was amended by the Administration of Justice Act 1982 (c. 53), section 16.

(2) Section 25B was inserted by the Pensions Act 1995 (c. 26), section 166(1) and was amended by the Welfare Reform and Pensions Act

- (b) Part 1 of Schedule 5 to the Civil Partnership Act 2004⁽¹⁾ which includes provision made by virtue of Part 6 of that Schedule (and including such an order as it may have effect by virtue of Part 7 of that Schedule);

“public body” (“*corff cyhoeddus*”) means a state authority or agency whether national, regional or local.

SCHEDULE 4 Regulation 98

Disabled postgraduate student’s grant

Disabled postgraduate student’s grant

1.—(1) A disabled postgraduate student’s grant is a grant made available by the Welsh Ministers to an eligible postgraduate student with a disability to assist with additional expenditure in respect of living costs which the student is obliged to incur in connection with undertaking a designated postgraduate course by reason of the student’s disability.

(2) In this Schedule, “present postgraduate course” means the course in respect of which a person applies for a disabled postgraduate student’s grant under paragraph 17.

Designated postgraduate courses

2.—(1) In this Schedule (and for the purposes of section 22 of the 1998 Act), a course is a designated postgraduate course if it satisfies each of the following conditions—

Condition 1

A first degree (or equivalent qualification) or higher is normally required for entry onto the course.

Condition 2

The course is not a sandwich course.

Condition 3

The duration of the course is at least one academic year.

Condition 4

The course is provided by a publicly funded institution.

Condition 5

1999 (c. 30), Schedule 4. Section 25E was inserted by the Pensions Act 2004 (c. 35), section 319(1), Schedule 12, paragraph 3 and amended by the Pensions Act 2008 (c. 30), Schedule 6, paragraphs 1 and 6 and Schedule 11, Part 4.

(1) 2004 c.33; paragraph 25 of Schedule 5 was modified by S.I. 2006/1934 and paragraph 30 of Schedule 5 was amended by the Pensions Act 2008 (c.30), Schedules 6 and 11.

At least half of the teaching and supervision which comprise the course is provided in the United Kingdom.

Condition 6

The course is not a course for the initial training of teachers or a course taken as part of an employment based teacher training scheme (within the meaning given by regulation 7(2)).

(2) For the purposes of Condition 4—

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
- (b) a university and any constituent college, or constituent institution in the nature of a college, of a university is regarded as a recognised educational institution if either the university or the constituent college or institution is a recognised educational institution;
- (c) an institution is not regarded as a recognised educational institution by reason only that it is a connected institution within the meaning of section 65(3B) of the Further and Higher Education Act 1992 which receives from the governing body of another institution the whole or part of any grants, loans or other payments provided to that other institution in accordance with section 65(3A)(1) of that Act.

Designation of other postgraduate courses

3.—(1) The Welsh Ministers may specify that a postgraduate course is to be treated as a designated postgraduate course despite the fact that, but for the specification, it would not otherwise be a designated postgraduate course.

(2) The Welsh Ministers may suspend or revoke the specification of a postgraduate course made under subparagraph (1).

Eligible postgraduate students

4.—(1) A person is an eligible postgraduate student in connection with a designated postgraduate course that the person is undertaking if—

- (a) the person has a disability, and
- (b) either—

(1) 1992 c.13; subsections (3A) and (3B) of section 65 were inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27.

- (i) the person falls within one of the categories of persons set out in Schedule 2 and none of the exceptions set out in paragraph 5 of this Schedule applies to the person, or

- (ii) the person's circumstances fall within one of the cases set out in paragraph 6.

(2) A person may, at any given time, be an eligible postgraduate student only in connection with one designated postgraduate course.

5.—(1) A person ("P") is not an eligible postgraduate student if any of the following exceptions applies—

Exception 1

At any one time, P also qualifies for support in connection with a designated course by virtue of these Regulations or any other regulations made under section 22 of the 1998 Act unless the course is one for which a first degree (or equivalent qualification) or higher is a normal entry requirement.

Exception 2

In respect of P undertaking the designated postgraduate course, P has been bestowed or paid—

- (a) a healthcare bursary,
- (b) an allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007,
- (c) an allowance, bursary or award of similar description made by the Research Council, or
- (d) an allowance, bursary or award of similar description made—
 - (i) by the institution providing the course,
 - (ii) under section 67(4)(a) of the Care Standards Act 2000⁽¹⁾, or
 - (iii) under section 116(2)(a) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽²⁾,

which includes any payment for the purpose of meeting additional expenditure incurred by P by reason of P's disability.

Exception 3

P is in breach of an obligation to repay a student loan.

Exception 4

P has reached the age of 18 and has not ratified an agreement for a student loan made with P when P was under 18.

(1) 2000 c.14. Section 67(4) was amended by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), Schedule 3, Part 2, paragraphs 40 and 43.

(2) 2016 anaw 2.

Exception 5

The Welsh Ministers think that P's conduct is such that P is not fit to receive a disabled postgraduate student's grant.

Exception 6

P is a prisoner.

But P may be an eligible postgraduate student despite being a prisoner if—

- (a) P's application for a disabled postgraduate student's grant is in respect of the academic year during which P enters or is released from prison, or
- (b) P has been authorised by the prison Governor or Director or other appropriate authority to study the designated postgraduate course and P's earliest release date is within 6 years of the first day of the first academic year of the course.

Exception 7

P is a Category 6 student by virtue only of paragraph 6(1) of Schedule 2 and does not fall within any other categories of student specified in that Schedule.

(2) In Exceptions 3 and 4, "student loan" means a loan made under—

- (a) the Education (Student Loans) Act 1990;
- (b) the Education (Scotland) Act 1980;
- (c) the Education (Student Loans) (Northern Ireland) Order 1990;
- (d) the Education (Student Support) (Northern Ireland) Order 1998;
- (e) regulations made under any of those Acts or Orders;
- (f) regulations made under the 1998 Act.

Eligible postgraduate students continuing on a course

6.—(1) A person ("P")—

- (a) who has a disability, and
- (b) whose circumstances fall within one of the following cases,

is an eligible postgraduate student (accordingly P need not fall within any of the categories of eligible student set out in Schedule 2 and the exceptions set out in paragraph 5 do not apply to P).

(2) The cases are—

Case 1

- (a) P qualified as an eligible postgraduate student in connection with an earlier academic year of the present postgraduate course, and

- (b) P was ordinarily resident in Wales on the first day of the first academic year of the present postgraduate course.

Case 2

- (a) P was an eligible postgraduate student in connection with a designated postgraduate course (the “earlier course”) other than the present postgraduate course,
- (b) P’s status as an eligible postgraduate student in connection with the earlier course has been transferred to the present postgraduate course (see paragraph 15), and
- (c) P was ordinarily resident in Wales on the first day of the first academic year of the earlier course.

Period of eligibility

7.—(1) A student’s status as an eligible postgraduate student in connection with a designated postgraduate course is retained until the end of the student’s period of eligibility unless terminated in accordance with paragraph 9, 10, 12 or 13.

(2) A student’s period of eligibility ends at the end of the academic year in which the student completes the designated postgraduate course.

Part-time courses – no eligibility for years of low intensity study

8. Where the present postgraduate course is a part-time course, the eligible postgraduate student is not eligible for a disabled postgraduate student’s grant in respect of an academic year where the intensity of study for that year is less than 25% (see paragraph 5 of Schedule 1 for how to calculate the intensity of study for an academic year).

Early termination of eligibility

9. An eligible postgraduate student’s (“P’s”) period of eligibility terminates at the end of the day on which—

- (a) P withdraws from P’s designated postgraduate course and the Welsh Ministers do not transfer P’s status as an eligible postgraduate student under paragraph 15,
- (b) P abandons or is expelled from P’s designated postgraduate course, or
- (c) P also qualifies for support in connection with a designated course by virtue of these Regulations or any other regulations made under section 22 of the 1998 Act unless the course is one for which a first degree (or

equivalent qualification) or higher is a normal entry requirement.

Termination due to misconduct or failure to provide accurate information

10.—(1) The Welsh Ministers may terminate an eligible postgraduate student's period of eligibility if they are satisfied that the student's conduct is such that the student is no longer fit to receive a disabled postgraduate student's grant.

(2) Sub-paragraph (3) applies if the Welsh Ministers are satisfied that an eligible student—

- (a) has failed to comply with a requirement to provide information or documentation imposed by this Schedule, or
- (b) has provided information or documentation which was materially inaccurate.

(3) Where this sub-paragraph applies, the Welsh Ministers may—

- (a) terminate the student's period of eligibility;
- (b) determine that the student does not qualify for a disabled postgraduate student's grant or an amount of such grant as they think appropriate.

Reinstatement of eligibility after termination

11.—(1) Where a student's period of eligibility terminates under paragraph 9 or 10 during the academic year in which the student completes the present postgraduate course, the Welsh Ministers may reinstate the student's period of eligibility for such period as they think appropriate.

(2) But a reinstated period of eligibility may not extend beyond the end of the academic year in which the student completes the designated postgraduate course.

Refugees who cease to have leave to remain

12.—(1) This paragraph applies where—

- (a) a person ("P") was a category 2 eligible postgraduate student (see Schedule 2) in connection with an application for a disabled postgraduate student's grant—
 - (i) for an earlier year of the present postgraduate course, or
 - (ii) in connection with a course from which P's status as an eligible postgraduate student has been transferred to the present course under paragraph 15, and
- (b) as at the end of the day before the first day of the academic year in respect of which P is

applying for a disabled postgraduate student's grant, the refugee status of—

- (i) P, or
- (ii) the person whose status as a refugee meant that P was a category 2 eligible postgraduate student,

has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002).

(2) Where this paragraph applies, P's status as an eligible postgraduate student terminates immediately before the first day of the academic year in respect of which P is applying for a disabled postgraduate student's grant.

(3) In this paragraph, "refugee" has the meaning given by paragraph 11 of Schedule 2.

Other persons who cease to have leave to enter or remain

13.—(1) This paragraph applies where—

- (a) a person ("P") was a category 3 eligible postgraduate student (see Schedule 2) in connection with an application for a disabled postgraduate student's grant—

- (i) for an earlier year of the present postgraduate course, or
- (ii) in connection with a course from which P's status as an eligible postgraduate student has been transferred to the present postgraduate course under paragraph 15, and

- (b) as at the end of the day before the first day of the academic year in respect of which P is applying for a disabled postgraduate student's grant, the period for which—

- (i) P, or
- (ii) the person who, as a result of having leave to enter or remain, caused P to be a category 3 eligible postgraduate student,

is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002).

(2) Where this paragraph applies, P's status as an eligible postgraduate student terminates immediately before the first day of the academic year in respect of which P is applying for a disabled postgraduate student's grant.

Becoming eligible during an academic year

14.—(1) Where one of the events in paragraph (3) occurs, the student may become eligible for a disabled postgraduate student's grant.

(2) But the amount of grant payable to the eligible postgraduate student will only be in respect of the quarter or quarters of the academic year beginning after the relevant event occurs.

(3) The events are—

- (a) the student's course becomes a designated postgraduate course;
- (b) the student becomes an eligible postgraduate student on the grounds that—
 - (i) the student or the student's spouse, civil partner or parent is recognised as a refugee or becomes a person with leave to enter or remain;
 - (ii) a state of which the student is a national accedes to the European Union where the student 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;
 - (iii) the student acquires the right of permanent residence;
 - (iv) the student becomes a child of a Turkish worker;
 - (v) the student becomes a person described in paragraph 4(1)(a) of Schedule 2;
 - (vi) the student becomes the child of a Swiss national.

(4) In sub-paragraph (3), the following terms have the same meaning as in Schedule 2—

“child” (*“plentyn”*);

“parent” (*“rhiant”*);

“person with leave to enter or remain” (*“person sydd â chaniatâd i ddod i mewn neu i aros”*);

“refugee” (*“ffoadur”*);

“right of permanent residence” (*“hawl i breswyllo'n barhaol”*);

“Turkish worker” (*“gweithiwr Twrcaidd”*).

Transferring between postgraduate courses

15.—(1) Where an eligible postgraduate student transfers from a designated postgraduate course to another designated postgraduate course, the Welsh Ministers must transfer the student's status as an eligible postgraduate student to the other course if—

- (a) they receive a request from the student to do so,
- (b) they are satisfied that one of the grounds of transfer applies (see sub-paragraph (2)), and
- (c) the student's period of eligibility has not ended or been terminated.

(2) The grounds of transfer are—

First ground

The eligible postgraduate student ceases one designated postgraduate course and undertakes another designated postgraduate course at the same institution.

Second ground

The eligible postgraduate student undertakes a designated postgraduate course at another institution.

Effect of transfer

16.—(1) Where the Welsh Ministers transfer an eligible postgraduate student's ("P's") status under paragraph 15—

- (a) they may re-assess the amount of disabled postgraduate student's grant payable to P after the transfer;
- (b) but if no re-assessment is made, P is entitled, in respect of the academic year of the course to which P transfers, to receive the remainder of the disabled postgraduate student's grant which the Welsh Ministers assessed P was entitled to receive in respect of the academic year of the course from which P transferred.

(2) Where an eligible postgraduate student ("P") transfers—

- (a) after the Welsh Ministers have assessed P's entitlement to disabled postgraduate student's grant in respect of the academic year of the course from which P transferred, but
- (b) before P completes that year,

P may not apply for a disabled postgraduate student's grant in respect of that academic year in connection with the course to which P has transferred.

Applications and decisions

17.—(1) A person does not qualify for a disabled postgraduate student's grant in relation to an academic year unless the person makes an application for the grant in relation to that year.

(2) An application under sub-paragraph (1) must—

- (a) be in such form and contain such information as the Welsh Ministers may specify,
- (b) be accompanied by such documentation as the Welsh Ministers may require, and

- (c) reach the Welsh Ministers as soon as is reasonably practicable.

18.—(1) The Welsh Ministers may take such steps and make such inquiries as they think necessary to make a decision on an application.

(2) Those steps may include requiring the applicant to provide further information or documentation.

(3) The Welsh Ministers may make a provisional decision on an application (see paragraph 21 for provision about payments made on the basis of a provisional decision).

(4) A decision made by the Welsh Ministers after a provisional decision has been made may—

- (a) confirm the provisional decision, or
- (b) substitute it with a different decision.

(5) The Welsh Ministers must notify the applicant of a decision (including a provisional decision) on an application.

(6) The notification must state—

- (a) whether the Welsh Ministers consider the applicant to be an eligible postgraduate student,
- (b) if so, whether the eligible postgraduate student qualifies for a disabled postgraduate student's grant in relation to the academic year,
- (c) if the student does qualify, the amount payable in relation to the academic year,
- (d) a breakdown specifying the amounts of grant payable in respect of each of the purposes mentioned in paragraph 20(2), and
- (e) in the case of a provisional decision, the fact that the decision is provisional and the consequences of that fact.

Requirements on eligible postgraduate students to provide information

19.—(1) An eligible postgraduate student must, as soon as reasonably practicable after being requested to do so, provide the Welsh Ministers with such information or documentation as the Welsh Ministers may require for the purposes of this Schedule.

(2) Where an event mentioned in paragraph (3) occurs in respect of an eligible postgraduate student, the student must inform the Welsh Ministers as soon as is reasonably practicable after the event occurs.

(3) The events are—

- (a) the student withdraws from, abandons or is expelled from the present postgraduate course;

- (b) the student transfers to another postgraduate course (whether at the same or at a different institution);
- (c) the student otherwise ceases to undertake the present postgraduate course and does not intend to or is not permitted to continue it for the remainder of the academic year;
- (d) the student is absent from the present postgraduate course—
 - (i) for more than 60 days due to illness, or
 - (ii) for any period for any other reason;
- (e) the month for the start or completion of the present postgraduate course changes;
- (f) the student's home or term-time—
 - (i) address,
 - (ii) telephone number, or
 - (iii) email address,
 changes.

(4) Information or documentation that is required to be provided to the Welsh Ministers under this Schedule must be provided in such form as the Welsh Ministers may specify.

(5) The Welsh Ministers may require that—

- (a) an application under paragraph 17;
- (b) any other documentation provided to them under this Schedule,

must be signed in such manner (including electronically) as they may specify.

(6) The reference to an eligible postgraduate student in sub-paragraph (1) is to be treated as including a person who makes an application under paragraph 17 even if the Welsh Ministers' decision on the application is that the person is not an eligible postgraduate student.

(7) See paragraph 10 for provision about the consequences of failing to comply with a requirement imposed by this paragraph.

Amount of disabled postgraduate student's grant

20.—(1) The amount of disabled postgraduate student's grant payable to an eligible postgraduate student in respect of an academic year is the lesser of—

- (a) £10,590, or
- (b) the amount of eligible expenditure which the Welsh Ministers think that the student is obliged to incur in connection with the present postgraduate course by reason of the student's disability.

(2) For the purposes of sub-paragraph (1)(b), “eligible expenditure” is expenditure for any of the following purposes—

- (a) expenditure on a non-medical personal helper;
- (b) expenditure on major items of specialist equipment;
- (c) expenditure incurred—
 - (i) within the United Kingdom for the purpose of attending the institution, and
 - (ii) within or outside the United Kingdom for the purpose of attending, as part of the present postgraduate course, any period of study at an overseas institution (including the University of London Institute in Paris).

Payment

21.—(1) A disabled postgraduate student’s grant is payable in respect of the four quarters of the academic year.

(2) The Welsh Ministers may pay a disabled postgraduate student’s grant in such instalments (if any) and at such times as they think appropriate.

(3) The Welsh Ministers may, if they think it appropriate, pay any amount of disabled postgraduate student’s grant payable for the purpose of assisting with expenditure on major items of specialist equipment as a single amount in respect of the whole academic year.

(4) Where the Welsh Ministers make a provisional decision on an application for disabled postgraduate student’s grant, the Welsh Ministers may make a payment based on that decision.

(5) If the Welsh Ministers think it appropriate to make payments by transfer into a bank or building society account they may require an eligible postgraduate student to provide details of such an account in the United Kingdom into which payments may be made.

(6) If that requirement is imposed, the Welsh Ministers may not make any payment of the disabled postgraduate student’s grant until the eligible postgraduate student has complied.

Overpayments

22.—(1) Where an eligible postgraduate student has been paid an amount of disabled postgraduate student’s grant which exceeds the amount to which the student is entitled, the student must repay the excess amount if required to do so by the Welsh Ministers.

(2) In this paragraph, references to an eligible postgraduate student are to be treated as including a

person who has received an amount of disabled postgraduate student's grant but is not, or is no longer, an eligible postgraduate student.

(3) The Welsh Ministers must recover any overpayment of a disabled postgraduate student's grant unless they think it is not appropriate to do so.

(4) A payment of a disabled postgraduate student's grant made before the day on which the course begins is an overpayment if the eligible postgraduate student withdraws from the course before that day.

(5) A payment of disabled postgraduate student's grant is an overpayment if either of the following cases apply—

Case 1

An amount of the grant has been paid for the purpose of assisting with expenditure on major items of specialist equipment but the equipment has not been delivered to the eligible postgraduate student before the student's period of eligibility ends or is terminated.

Case 2

Payment of an amount of the grant for the purpose of assisting with expenditure on major items of specialist equipment is made after the eligible postgraduate student's period of eligibility ends or is terminated.

(6) Overpayment of a disabled postgraduate student's grant may be recovered by subtracting the overpayment from any grant payable to the eligible postgraduate student from time to time under these Regulations or any other regulations made by the Welsh Ministers under section 22 of the 1998 Act.

(7) Where—

- (a) there is an overpayment of a disabled postgraduate student's grant, and
- (b) any amount of the grant was paid for the purpose of assisting with expenditure on major items of specialist equipment,

the Welsh Ministers may accept the return of specialist equipment by way of recovery of all or part of the overpayment.

(8) Sub-paragraphs (6) and (7) do not prevent the Welsh Ministers from recovering an overpayment by any other method available to them.

SCHEDULE 5 Regulation 99

Oxbridge college fee loans

Oxbridge college fee loans

1.—(1) An Oxbridge college fee loan is a loan made available by the Welsh Ministers to an eligible Oxbridge student for the payment of college fees in

respect of an academic year of a designated Oxbridge course.

(2) “College fees” means the fees payable by an eligible Oxbridge student to a college or permanent private hall of the University of Oxford, or to a college of the University of Cambridge, in connection with the student’s undertaking of a designated Oxbridge course.

Designated Oxbridge courses

2. A course is a designated Oxbridge course if it meets each of the following conditions—

Condition 1

The course is a designated course (see Chapter 1 of Part 4).

Condition 2

It is a full-time course.

Condition 3

It is provided by the University of Oxford or the University of Cambridge.

Condition 4

The course either—

- (a) leads to a qualification as a—
 - (i) social worker,
 - (ii) medical doctor,
 - (iii) dentist,
 - (iv) veterinary surgeon, or
 - (v) architect, or
- (b) is a course where at least one academic year is one in relation to which the eligible Oxbridge student is eligible to apply for—
 - (i) a bursary or award of similar description under section 63 of the Health Services and Public Health Act 1968 or Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972, or
 - (ii) a Scottish healthcare allowance, provided that the bursary or similar award or allowance is calculated by reference to the student’s income (whether or not the calculation results in a nil amount).

Condition 5

The course is not a distance learning course (but see paragraph 3(4)).

Eligible Oxbridge students

3.—(1) A person (“P”) is an eligible Oxbridge student if P—

- (a) satisfies each of the conditions in sub-paragraph (2), and
- (b) does not fall within the exception in sub-paragraph (3).

(2) The conditions are—

Condition 1

P is an eligible student (see Section 1 of Chapter 2 of Part 4).

Condition 2

P has an honours degree from an institution in the United Kingdom.

Condition 3

P is undertaking a designated Oxbridge course.

Condition 4

P is a member of—

- (a) a college or permanent private hall of the University of Oxford, or
- (b) a college of the University of Cambridge.

Condition 5

P is under the age of 60 on the first day of the first academic year of the designated Oxbridge course.

(3) The exception is that P is ordinarily resident in England, Scotland or Northern Ireland.

(4) Despite Condition 5 of paragraph 2, P is an eligible Oxbridge student if P—

- (a) has a disability,
- (b) is undertaking a designated Oxbridge course in the United Kingdom,
- (c) is not attending the course by reason of P's disability, and
- (d) otherwise satisfies the criteria stated in sub-paragraph (1).

Students becoming eligible during the course of an academic year

4.—(1) Where a student becomes an eligible student because one of the events listed in sub-paragraph (2) occurs in the course of an academic year, the student may qualify for an Oxbridge college fee loan in accordance with this Schedule in respect of that academic year provided that the event occurred within the first three months of the academic year.

(2) The events are—

- (a) the student or the student's spouse, civil partner or parent is recognised as a refugee or becomes a person with leave to enter or remain;

- (b) a state accedes to the European Union where the student is a national of that state or a family member of a national of that state;
- (c) the student becomes a family member of an EU national;
- (d) the student acquires the right of permanent residence;
- (e) the student becomes a child of a Turkish worker;
- (f) the student becomes a person described in paragraph 4(1)(a) of Schedule 2;
- (g) the student becomes the child of a Swiss national.

(3) In sub-paragraph (2), the following terms have the same meaning as in Schedule 2—

“child” (*“plentyyn”*);

“family member” (*“aelod o deulu”*) (within the meaning given by paragraph 6(5) of Schedule 2);

“parent” (*“rhiant”*);

“person with leave to enter or remain” (*“person sydd â chaniatâd i ddod i mewn neu i aros”*);

“refugee” (*“ffoadur”*);

“right of permanent residence” (*“hawl i breswyllo’n barhaol”*);

“Turkish worker” (*“gweithiwr Twrcaid”*).

Period of eligibility

5.—(1) An Oxbridge college fee loan is available in respect of each standard academic year of the designated Oxbridge course and in respect of one academic year of the course that is not a standard academic year.

(2) Where an eligible Oxbridge student is allowed to study the content of one standard academic year of the designated Oxbridge course over two or more academic years, for the purpose of determining whether the student qualifies for an Oxbridge college fee loan for those years, the first of such years of study is to be treated as a standard academic year and the following years of that kind are to be treated as academic years that are not standard academic years.

(3) In this paragraph, “standard academic year” means an academic year of the designated Oxbridge course that would be undertaken by a person who does not repeat any part of the course and who enters the course at the same point as the eligible Oxbridge student.

Amount of the college fee loan

6.—(1) The amount of an Oxbridge college fee loan in respect of an academic year of a designated Oxbridge course must not exceed the amount equal to the college fees payable by the eligible Oxbridge student to the student's college or permanent private hall in connection with that year.

(2) Where an eligible Oxbridge student has applied for an Oxbridge college fee loan of less than the maximum amount available in relation to the academic year, the student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed the maximum amount available.

Transfers

7.—(1) Where an eligible Oxbridge student transfers from one designated Oxbridge course to another, the Welsh Ministers must transfer the student's status as an eligible Oxbridge student to the other course if—

- (a) they receive a request from the student to do so, and
- (b) the student's period of eligibility has not ended or been terminated.

(2) If the eligible Oxbridge student transfers before the end of the academic year but after applying for an Oxbridge college fee loan, the amount applied for is to be paid to the relevant college or permanent private hall in respect of the designated Oxbridge course to which the student transfers (unless sub-paragraph (4) applies).

(3) Where sub-paragraph (2) applies, the eligible Oxbridge student may not apply for another Oxbridge college fee loan in respect of that academic year.

(4) If an eligible Oxbridge student transfers after the Oxbridge college fee loan is paid and before the end of the academic year, the student cannot apply for another Oxbridge college fee loan in connection with the academic year of the designated Oxbridge course to which the student transfers.

Payment

8.—(1) The Welsh Ministers must pay an Oxbridge college fee loan for which an eligible Oxbridge student qualifies to the college or permanent private hall to which the student is liable to make payment.

(2) The loan must be paid in a single lump sum.

(3) The Welsh Ministers may not pay the loan before—

- (a) they have received from the college or permanent private hall—

- (i) a request for payment in writing, and
- (ii) an attendance confirmation in such form as the Welsh Ministers may specify, and
- (b) the period of three months beginning with the first day of the academic year to which the loan relates has expired.

(4) The Welsh Ministers may pay an Oxbridge college fee loan without receiving an attendance confirmation if they think that owing to exceptional circumstances it would be appropriate to do so.

(5) In this paragraph, “attendance confirmation” means a confirmation such as is referred to in regulation 87(1).

(6) The Welsh Ministers must not make a payment of an Oxbridge college fee loan in respect of an academic year of a designated Oxbridge course if—

- (a) the eligible Oxbridge student ceases to undertake the course before the expiry of the period of three months beginning with the first day of the academic year, and
- (b) the college or permanent private hall has determined or agreed that the student will not commence undertaking the course in the United Kingdom again during the academic year.

(7) Paragraphs 9 and 10 set out other circumstances in which payment of an Oxbridge college fee loan may not be made or may be withheld.

Requirement to provide national insurance number

9.—(1) The Welsh Ministers may make it a condition of entitlement to payment of an Oxbridge college fee loan that an eligible Oxbridge student must provide them with the student’s United Kingdom national insurance number.

(2) If that condition is imposed, the Welsh Ministers may not make any payment of the loan until the eligible Oxbridge student has complied with it, unless the Welsh Ministers are satisfied that, owing to exceptional circumstances, it would be appropriate to make a payment despite the condition not being complied with.

Information requirements and agreements for repayment

10.—(1) The Welsh Ministers may at any time request from an eligible Oxbridge student such information or documentation as they may require for the purposes of—

- (a) determining eligibility for an Oxbridge college fee loan, or
- (b) recovering a loan.

(2) A request under sub-paragraph (1) may include requesting sight of an eligible Oxbridge student's—

- (a) valid passport issued by the state of which that student is a national,
- (b) valid national identity card, or
- (c) birth certificate.

(3) Where the Welsh Ministers have requested information or documentation under sub-paragraph (1), they may withhold any payment of an Oxbridge college fee loan until the student provides what has been requested or provides a satisfactory explanation for not complying with the request.

(4) The Welsh Ministers may at any time require an eligible Oxbridge student to enter into an agreement to repay an Oxbridge college fee loan by a particular method.

(5) Where the Welsh Ministers have requested an agreement as to the method of repayment, they may withhold any payment of an Oxbridge college fee loan until the student provides what has been requested.

Overpayment

11. Any overpayment of an Oxbridge college fee loan is recoverable by the Welsh Ministers from the college or permanent private hall.

SCHEDULE 6 Regulation 100

Amendments to the Education (Student Support) (Wales) Regulations 2017

1. The Education (Student Support) (Wales) Regulations 2017 are amended as follows.

2. In regulation 1 (title, commencement and application), after paragraph (2) insert—

“(3) These Regulations do not apply to the provision of support to students in relation to a course which begins on or after 1 August 2018 unless Regulation 2(3) of the Education (Student Support) (Wales) Regulations 2018 applies to the course.”

3. In regulation 2(1) (interpretation)—

- (a) in the definition of “2012 accelerated graduate entry student”, at the end insert “and before 1 August 2018”;
- (b) in the definition of “2012 cohort student”, after “1 September 2012” where it first occurs insert “and before 1 August 2018 (but including a course starting on or after 1 August 2018 if the course is one in relation to which the student's status has transferred

under regulation 8, 75 or 102 or is an end-on course)”;

- (c) in the definition of “accelerated graduate entry course”, in sub-paragraph (c), after “1 September 2012” insert “and before 1 August 2018”;
- (d) in the definition of “compressed degree student”, in sub-paragraph (b)(ii), after “1 September 2013” insert “and before 1 August 2018”;
- (e) in the definition of “compressed first year course”, in sub-paragraph (a), after “1 September 2013” insert “and before 1 August 2018”;
- (f) in the definition of “distance learning course”, after “1 September 2012” insert “and before 1 August 2018”;
- (g) in the definition of “eligible part-time prisoner”, in sub-paragraph (a), after “1 September 2014” insert “and before 1 August 2018”;
- (h) in the definition of “eligible prisoner”, in sub-paragraph (a), after “1 September 2012” insert “and before 1 August 2018”;
- (i) in the definition of “Erasmus year”, in both sub-paragraphs (b) and (c), after “1 September 2012” insert “and before 1 August 2018”;
- (j) in the definition of “healthcare bursary”, after “1968” insert “but not a payment made out of the Learning Support Fund”;
- (k) in the definition of “new eligible part-time student”, after “1 September 2014” where it first occurs insert “and before 1 August 2018 (but including a course starting on or after 1 August 2018 if the course is one in relation to which the student’s status has transferred under regulation 8, 75 or 102 or is an end-on course)”;
- (l) in the definition of “qualifying course”, after “full-time designated course” insert “beginning before 1 August 2018”;
- (m) in the definition of “recognised educational institution”, in sub-paragraph (b), after “1 September 2017” insert “and before 1 August 2018”;
- (n) in the appropriate place insert ““Learning Support Fund” means the fund made available by NHS England to certain students in respect of qualifying healthcare courses;”.

4. In regulation 3(16) (application)—

- (a) at the beginning insert “Subject to regulation 1(3)”;

- (b) after “1 September 2017” where it first occurs, insert “and before 1 August 2018”.

5. For paragraph (7) of regulation 4 (eligible students), substitute—

“(7) Subject to paragraphs (9) to (11), if a person satisfies the conditions in paragraph (8)(a),(b) or (c) and does not satisfy paragraph (3)(c) the person is an eligible student for the purpose of these Regulations and accordingly, paragraphs (2) and (3)(a), (b), (d), (e) and (f) do not apply to the person.”

6. In regulation 16 (new fee grant)—

(a) in paragraph (3)—

- (i) in sub-paragraph (a), for “£4,954” substitute “£4,800”;
- (ii) in sub-paragraph (b), for “£4,046” substitute “£4,200”;

(b) in paragraph (4)—

- (i) in sub-paragraph (a), for “£2,560” substitute “£2,480”;
- (ii) in sub-paragraph (b), for “£1,940” substitute “£2,020”.

7. In regulation 19 (new fee loan in respect of courses beginning on or after 1 September 2012)—

- (a) in paragraph (3)(a), for “£4,046” substitute “£4,200”;
- (b) in paragraph (4)(a), for “£1,940” substitute “£2,020”.

8. In regulation 30 (grants for dependants – interpretation)—

- (a) in paragraph (1)(o), in the full-out words following paragraphs (i) to (iii), for “party—” substitute “party;”
- (b) correct the numbering after paragraph (1)(o) so that—
 - (i) “(p)” is substituted for “(a)”;
 - (ii) “(q)” is substituted for “(b)”;
 - (iii) “(r)” is substituted for “(c)”;
- (c) in paragraph (3), for “regulation 28” substitute “regulation 27”.

9. In regulation 43 (maximum amount loans for certain students)—

(a) in paragraph (2)—

- (i) in sub-paragraph (i), after “£5,358” insert “for a 2010 cohort student, otherwise £5,529”;

- (ii) in sub-paragraph (ii), after “£9,697” insert “for a 2010 cohort student, otherwise £10,007”;
- (iii) in sub-paragraph (iii), after “£8,253” insert “for a 2010 cohort student, otherwise £8,517”;
- (iv) in sub-paragraph (iv), after “£8,253” insert “for a 2010 cohort student, otherwise £8,517”;
- (v) in sub-paragraph (v), after “£6,922” insert “for a 2010 cohort student, otherwise £7,143”;
- (b) in paragraph (3)—
 - (i) in sub-paragraph (i), after “£4,851” insert “for a 2010 cohort student, otherwise £5,006”;
 - (ii) in sub-paragraph (ii), after “£8,830” insert “for a 2010 cohort student, otherwise £9,112”;
 - (iii) in sub-paragraph (iii), after “£7,179” insert “for a 2010 cohort student, otherwise £7,408”;
 - (iv) in sub-paragraph (iv), after “£7,179” insert “for a 2010 cohort student, otherwise £7,408”;
 - (v) in sub-paragraph (v), after “£6,412” insert “for a 2010 cohort student, otherwise £6,617”.

10. In regulation 45 (students with reduced entitlement)—

- (a) in paragraph (1)(a)—
 - (i) in paragraph (i), for “£2,544” substitute “£2,625”;
 - (ii) in paragraph (ii), for “£4,768” substitute “£4,920”;
 - (iii) in paragraph (iii), for “£3,392” substitute “£3,500”;
 - (iv) in paragraph (iv), for “£3,392” substitute “£3,500”;
 - (v) in paragraph (v), for “£3,392” substitute “£3,500”;
- (b) in paragraph (1)(b)—
 - (i) in paragraph (i), for “£2,544” substitute “£2,625”;
 - (ii) in paragraph (ii), for “£4,768” substitute “£4,920”;
 - (iii) in paragraph (iii), for “£4,056” substitute “£4,186”;
 - (iv) in paragraph (iv), for “£4,056” substitute “£4,186”;

- (v) in paragraph (v), for “£3,392” substitute “£3,500”;
- (c) in paragraph (1)(c)—
 - (i) in paragraph (i), for “£4,019” substitute “£4,147”;
 - (ii) in paragraph (ii), for “£7,273” substitute “£7,505”;
 - (iii) in paragraph (iii), for “£6,190” substitute “£6,388”;
 - (iv) in paragraph (iv), for “£6,190” substitute “£6,388”;
 - (v) in paragraph (v), for “£5,191” substitute “£5,357”;
- (d) in paragraph (2)(a)—
 - (i) in paragraph (i), for “£1,934” substitute “£1,996”;
 - (ii) in paragraph (ii), for “£3,646” substitute “£3,763”;
 - (iii) in paragraph (iii), for “£2,643” substitute “£2,727”;
 - (iv) in paragraph (iv), for “£2,643” substitute “£2,727”;
 - (v) in paragraph (v), for “£2,643” substitute “£2,727”;
- (e) in paragraph (2)(b)—
 - (i) in paragraph (i), for “£1,934” substitute “£1,996”;
 - (ii) in paragraph (ii), for “£3,644” substitute “£3,763”;
 - (iii) in paragraph (iii), for “£2,965” substitute “£3,060”;
 - (iv) in paragraph (iv), for “£2,965” substitute “£3,060”;
 - (v) in paragraph (v), for “£2,643” substitute “£2,727”;
- (f) in paragraph (2)(c)—
 - (i) in paragraph (i), for “£3,638” substitute “£3,755”;
 - (ii) in paragraph (ii), for “£6,623” substitute “£6,834”;
 - (iii) in paragraph (iii), for “£5,384” substitute “£5,556”;
 - (iv) in paragraph (iv), for “£5,384” substitute “£5,556”;
 - (v) in paragraph (v), for “£4,809” substitute “£4,963”.

11. In regulation 50 (increases in maximum amount)—

- (a) in paragraph (1), for “regulation 44” substitute “regulation 43 or, as the case may be, 44”;
- (b) in paragraph (2), for “regulation 44” substitute “regulation 43 or, as the case may be, 44”.

12. In regulation 56 (application of contribution)—

- (a) in paragraph (3)—
 - (i) in sub-paragraph (a), for “£4,019” substitute “£4,147”;
 - (ii) in sub-paragraph (b), for “£7,273” substitute “£7,505”;
 - (iii) in sub-paragraph (c), for “£6,190” substitute “£6,388”;
 - (iv) in sub-paragraph (d), for “£6,190” substitute “£6,388”;
 - (v) in sub-paragraph (e), for “£5,191” substitute “£5,357”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (a), for “£3,638” substitute “£3,755”;
 - (ii) in sub-paragraph (b), for “£6,623” substitute “£6,834”;
 - (iii) in sub-paragraph (c), for “£5,384” substitute “£5,556”;
 - (iv) in sub-paragraph (d), for “£5,384” substitute “£5,556”;
 - (v) in sub-paragraph (e), for “£4,809” substitute “£4,963”.

13. In regulation 92(3)(b) (part-time childcare grant), at the beginning insert “the eligible part-time student or the eligible part-time student’s partner”.

14. In regulation 95(1)(i) (part-time grants for dependants – interpretation), for “(6)” substitute “(7)”.

15. In Schedule 2, paragraph 3(a), for “Technician” substitute “Technology”.

SCHEDULE 7 Regulation 4(2)

Index of defined terms

1. Table 16 lists expressions defined or otherwise explained in these Regulations.

Table 16

<i>Expression</i>	<i>Defined or referred to in...</i>
“the 1998 Act”	Regulation 5
“the 2017 Regulations”	Regulation 2(3)(a)

“academic authority”	Schedule 1, paragraph 6(1)
“academic year”	Schedule 1, paragraph 1
“accelerated graduate entry course”	Schedule 1, paragraph 6(1)
“adult dependants grant”	Regulation 68(1)
“adult dependant”	Regulation 70(1)
“applicable financial year”	Schedule 3, paragraph 23(2)
“base grant”	Regulation 43
“bursary grant for living costs”	Regulation 10(2)
“care leaver”	Regulation 49
“childcare grant”	Regulation 68(1)
“close relative”	Schedule 1, paragraph 6(1)
“college fees”	Schedule 5, paragraph 1(2)
“compressed degree course”	Schedule 1, paragraph 6(1)
“compressed first year course”	Schedule 1, paragraph 6(1)
“course for the initial training of teachers”	Schedule 1, paragraph 6(1)
“current academic year” (for the purposes of calculating income under Schedule 3)	Schedule 3, paragraph 23(2)
“current academic year” (for the purposes of determining a student’s entitlement to GfDs)	Regulation 70(1)
“CY”	Schedule 3, paragraph 23(2)
“dependent child”	Regulation 70(1) (but see also Regulation 75(3) in relation to childcare grant)
“designated course”	Chapter 1 of Part 4
“designated Oxbridge course”	Schedule 5, paragraph 2
“designated postgraduate course”	Schedule 4, paragraphs 2 and 3
“Directive 2004/38”	Schedule 2, paragraph 11
“disability”	Regulation 61(2)
“disabled postgraduate student’s grant”	Schedule 4, paragraph 1(1)
“disabled student’s grant”	Regulation 61(1)
“distance learning course”	Schedule 1, paragraph 6(1)
“earlier course”	Regulation 11(3)
“EEA”	Schedule 2, paragraph 11
“EEA frontier self-employed person”	Schedule 2, paragraph 4(3)

“EEA frontier worker”	Schedule 2, paragraph 4(3)
“EEA migrant worker”	Schedule 2, paragraph 4(3)
“EEA national”	Schedule 2, paragraph 4(4)
“EEA self-employed person”	Schedule 2, paragraph 4(3)
“eligible expenditure” (in relation to disabled postgraduate student’s grant)	Schedule 4, paragraph 20(2)
“eligible Oxbridge student”	Schedule 5, paragraph 3
“eligible postgraduate student”	Schedule 4, paragraphs 4, 5 and 6
“eligible student”	Regulation 9(1)
“employed person”	Schedule 2, paragraph 4(4)
“employment based teacher training scheme”	Regulation 7(2)
“end-on course”	Schedule 1, paragraph 6(1)
“English regulated institution”	Schedule 1, paragraph 2(c)
“ERASMUS scheme”	Schedule 1, paragraph 4(3)
“Erasmus year”	Schedule 1, paragraph 4(1)
“family member” (for the purposes of determining the category of a person under Schedule 2)	Schedule 2, paragraphs 4(3), 5(5) and 6(5)
“fees”	Schedule 1, paragraph 6(1)
“financial year”	Schedule 3, paragraph 23(2)
“former Metropolitan Police District”	Schedule 1, paragraph 3(3)
“full amount”	Regulation 95(4)
“full-time equivalent” (for the purposes of calculating intensity of study)	Schedule 1, paragraph 5(3)
“full-time student” (for the purposes of determining a student’s entitlement to a particular category of support)	Regulation 46(1), 55(1)
“graduate”	Regulation 25(1)
“grant for travel”	Regulation 64
“grants for dependants” (“GfDs”)	Regulation 68
“healthcare bursary”	Regulation 10(4)

“honours graduate”	Regulation 24(1)
“household income”	Schedule 3, Part 2
“independent eligible student”	Schedule 3, paragraph 4
“intensity of study” (in relation to a part-time course)	Schedule 1, paragraph 5
“Islands”	Schedule 2, paragraph 11
“the Joint Academic Coding System”	Regulation 25(3)
“Learning Support Fund”	Regulation 10(4)
“living at home”	Schedule 1, paragraph 3(1)(a)
“living away from home, studying elsewhere”	Schedule 1, paragraph 3(1)(c)
“living away from home, studying in London”	Schedule 1, paragraph 3(1)(b)
“London”	Schedule 1, paragraph 3(2)
“lone parent”	Regulation 70(1)
“looked after”	Schedule 2, paragraph 10(2)
“maintained school”	Regulation 7(3)
“maintenance grant”	Regulation 43
“maintenance loan”	Regulation 53
“member of the armed forces”	Schedule 1, paragraph 6(1)
“net income” (of dependants)	Schedule 3, Part 5
“new course”	Regulation 28(1)
“new total payable”	Regulation 88(4)
“old course”	Regulation 28(1)
“ordinary duration”	Regulation 17(1)
“ordinary provider”	Regulation 40(2)(c)(i)
“Oxbridge college fee loan”	Schedule 5, paragraph 1(1)
“parents’ learning grant”	Regulation 68(1)
“parent” and “child” (for the purposes of determining the category of a person under Schedule 2)	Schedule 2, paragraph 11
“partial amount”	Regulation 95(4)
“partner” (for the purposes of calculating income under Schedule 3)	Schedule 3, paragraph 23(1)
“partner” (for the purposes of determining a student’s entitlement to GfDs)	Regulation 70(2)
“part-time student” (for the purposes of	Regulation 47(1), 58(1)

determining a student's entitlement to a particular category of support)	
"payment period"	Regulation 95(9)
"pension arrangements order"	Schedule 3, paragraph 23(2)
"period of eligibility" (in relation to a designated course)	Section 2 of Chapter 2 of Part 4
"period of eligibility" (in relation to a designated Oxbridge course)	Schedule 5, paragraph 5
"period of eligibility" (in relation to a designated postgraduate course)	Schedule 4, paragraph 7
"period of work experience"	Schedule 1, paragraph 6(1)
"period ordinarily required to complete the full-time equivalent" (for the purposes of calculating intensity of study)	Schedule 1, paragraph 5(3)
"person with leave to enter or remain"	Schedule 2, paragraph 3(4)
"the placement"	Regulation 66(1)
"preliminary course"	Regulation 16(1)
"prescribed charges" (in relation to childcare grant)	Regulation 75(3)
"present course"	Schedule 1, paragraph 6(1)
"present postgraduate course"	Schedule 4, paragraph 1(2)
"previous course"	Regulation 17(3)
"prisoner"	Schedule 1, paragraph 6(1)
"private institution"	Regulation 40(2)(c)(ii)
"public body"	Schedule 3, paragraph 23(2)
"publicly funded institution"	Schedule 1, paragraph 6(1)
"PY"	Schedule 3, paragraph 23(2)
"PY-1"	Schedule 3, paragraph 23(2)
"qualified teacher"	Schedule 1, paragraph 6(1)
"qualifying quarter"	Regulation 66(1)
"quarter"	Schedule 1, paragraph 6(1)
"recognised educational institution"	Schedule 1, paragraph 2(a)
"refugee"	Schedule 2, paragraph 11

“relevant degree course” (for the purposes of defining “end on course”)	Schedule 1, paragraph 6(1)
“relevant education course” (for the purposes of defining “end on course”)	Schedule 1, paragraph 6(1)
“relevant support”	Regulation 27(2)
“relevant year” (for the purposes of calculating net income)	Schedule 3, paragraph 21(3)
“Research Council”	Schedule 1, paragraph 6(1)
“residual income”	Schedule 3, Part 4
“right of permanent residence”	Schedule 2, paragraph 11
“sandwich course”	Schedule 1, paragraph 6(1)
“Scottish healthcare allowance”	Regulation 10(4)
“self-employed person”	Schedule 2, paragraph 4(4)
“settled”	Schedule 2, paragraph 11
“special support payment”	Regulation 50
“standard academic year” (in relation to a designated Oxbridge course)	Schedule 5, paragraph 5(3)
“standard full-time student” (for the purposes of calculating intensity of study)	Schedule 1, paragraph 5(3)
“statutory award”	Schedule 1, paragraph 6(1)
“student loan” (for the purposes of determining whether a student is an eligible student)	Regulation 10(3)
“student loan” (for the purposes of determining whether a student is an eligible postgraduate student)	Schedule 4, paragraph 5(2)
“support”	Schedule 1, paragraph 6(1)
“Swiss Agreement”	Schedule 2, paragraph 11
“Swiss employed person”	Schedule 2, paragraph 4(3)
“Swiss frontier employed person”	Schedule 2, paragraph 4(3)
“Swiss frontier self- employed person”	Schedule 2, paragraph 4(3)
“Swiss self-employed person”	Schedule 2, paragraph 4(3)

“taxable income”	Schedule 3, paragraph 9
“teacher training student”	Regulation 15(6)
“tuition fee loan”	Regulation 38
“Turkish worker”	Schedule 2, paragraph 8(2)
“Welsh local authority”	Schedule 2, paragraph 10(2)
“Welsh regulated institution”	Schedule 1, paragraph 2(b)
“worker”	Schedule 2, paragraph 4(4)

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT SUPPORT) (WALES) REGULATIONS 2018

The Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales under Standing Order 27.1.

Cabinet Secretary's declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Support) (Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Cabinet Secretary for Education

16 February 2018

Description

The Education (Student Support) (Wales) Regulations 2018 ('the Regulations') provide the basis for the system of financial support for students who are ordinarily resident in Wales (subject to exceptions) taking designated higher education courses in respect of academic years beginning on or after 1 August 2018. Support includes tuition fee loans, maintenance grants and maintenance loans.

Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

Legislative background

Section 22 of the Teaching and Higher Education Act 1998 ('the 1998 Act') provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. In particular, this power enables the Welsh Ministers to prescribe amounts of financial support (grant or loan) and categories of attendance on higher education courses. This provision, together with sections 42(6) and 43(1) of the 1998 Act, provide the Welsh Ministers with the power to make the Regulations.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under sections 42(6) and 43(1) of the 1998 Act were transferred, so far as exercisable in relation to Wales, 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 were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument is made by the negative resolution procedure.

Purpose and intended effect of the legislation

The Welsh Ministers make regulations annually to provide the basis for the system of financial support for students who are ordinarily resident in Wales and taking designated courses of higher education. The Regulations apply to courses beginning on or after 1 August 2018 and introduce a number of changes to student support, as set out below.

Changes to the principal student support package

Tuition fee support

Since the introduction of a maximum fee level of £9,000 in 2012, students ordinarily resident in Wales have had access to financial support to cover the cost of the tuition fees charged by providers of higher education. This means students do not have to meet tuition fees upfront. This has comprised a tuition fee grant and a tuition fee loan.

The Regulations modify fee support arrangements for eligible full-time and part-time undergraduate students, including those on distance learning courses. The Regulations make provision for:

- the current tuition fee grant for full-time students ordinarily resident in Wales to be replaced with an additional subsidised¹ student loan, up to the maximum fee level applicable in 2018/19. This will be available wherever students study in the UK; and
- tuition fee loans to continue to be available for those part-time students ordinarily resident in Wales, studying at an intensity of at least 25%.

¹ The tuition fee loan is considered to be subsidised as the provision of student loans carries a significant public cost, as not all loans will be paid back, and the interest payable by the borrower is generally lower than the interest the government has to pay on its debt.

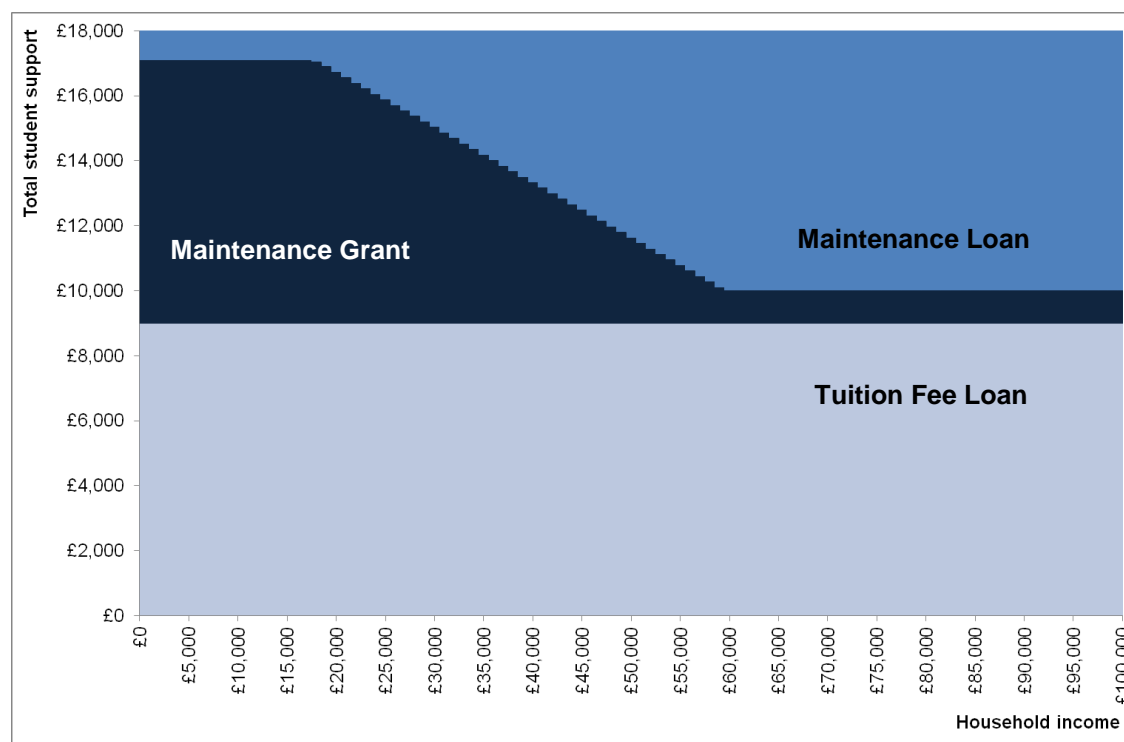
Maintenance support

The Regulations make provision for the following maintenance support for students (including those undertaking full-time and part-time distance learning courses):

- A £1,000 non-means-tested grant (the 'base grant') will be available to eligible students ordinarily resident in Wales (subject to exceptions). This will be pro rated for part-time students (e.g. students studying at 50% intensity will receive £500).
- An additional means-tested maintenance grant will be available to support living and study costs. The amount of maintenance grant payable to full-time students will be determined by reference to where the student lives, their household income and whether they are a care leaver, with more available to students from the lowest income backgrounds and a gradual taper to a £59,200 threshold at which point a student will receive no means-tested grant.
- Full-time students with a household income up to £18,370 will receive the maximum grant (of £6,685 if living with parents, £10,124 if living away from parental home and studying in London, and £8,100 if living away from parental home and studying elsewhere).
- A maintenance loan will also be available to eligible students with the intention of ensuring that students receive adequate overall maintenance support. A non-means-tested loan will be available to make up the difference between the maximum level of total maintenance support and the amount of maintenance grant to which a student is entitled. The overall amount of maintenance support is based on the UK National Living Wage.
- Part-time students will receive the maintenance support available to full-time undergraduate students but on a pro rata basis. The amount of maintenance grant payable to part-time students is determined by reference to household income, whether they are a care leaver and the intensity of their study (i.e. a proportion of the £1,000 non-means-tested base grant up to a maximum based on £6,000 full-time equivalent, but with the maximum grant available up to a household income of £25,000).
- Targeted grants, namely the Childcare Grant, Adult Dependents Grant, Parents' Learning Grant and Disabled Students' Grant and Grant for Travel are also provided for by the Regulations.

Full-time undergraduate student support by household income

The following provides an illustration of support by household income levels for tuition fees and maintenance support from 2018/19 for a student living away from home, outside London.

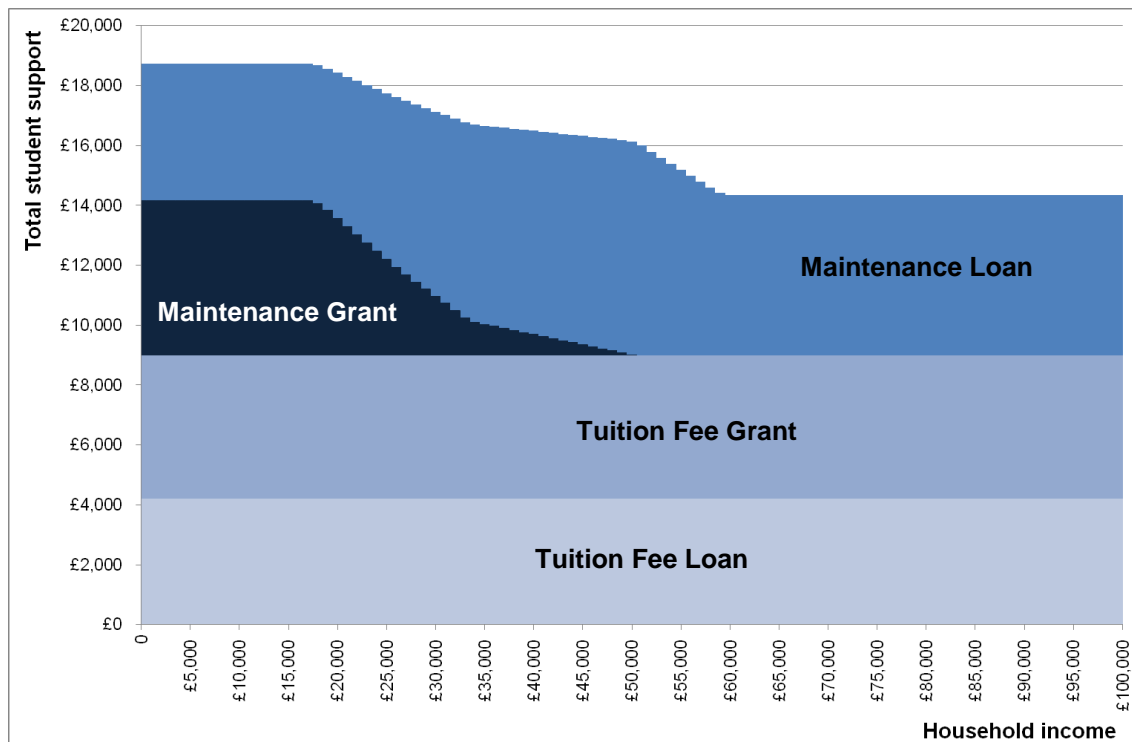


Household income	Tuition Fee Loan*	Maintenance support	
		Grant†	Loan
<£18,370	£9,000	£8,100	£900
£25,000	£9,000	£6,947	£2,053
£35,000	£9,000	£5,208	£3,792
£50,000	£9,000	£2,600	£6,400
>£60,000	£9,000	£1,000	£8,000

* Fee loan amounts based on a £9,000 fee; institutions outside Wales may be able to charge more and the tuition fee loan increases accordingly to a maximum of £9,250.

† Includes the base grant of £1,000.

For comparative purposes, the following provides an illustration of the support that will be available to full-time undergraduates continuing under the current system, in 2018/19.



Household income	Tuition fee support*		Maintenance support	
	Grant	Loan	Grant	Loan
<£18,370	£4,800	£4,200	£5,161	£4,563
£25,000	£4,800	£4,200	£3,347	£5,470
£34,000	£4,800	£4,200	£1,142	£6,572
£50,020	£4,800	£4,200	£50	£7,118
>£60,000	£4,800	£4,200	£0	£5,357

* Fee loan amounts based on a £9,000 fee; institutions outside Wales may be able to charge more and the tuition fee loan increases accordingly to a maximum of £9,250.

Additional policy changes

In addition to the key elements of student support described above, a number of other policy changes are provided for by the Regulations.

Removal of the overseas rate

Analysis indicates that the 'living away from home (outside London)' category of the maintenance support in the Regulations should provide sufficient funds for living costs in the vast majority of potential global study destinations. The

Regulations do not make provision for a separate category of support for those studying overseas, and eligible students studying at institutions abroad will receive support at the same rate as those 'living away from home (outside London)'.

Comparative price levels, based on purchasing power parities, provide measures of the differences in prices between countries². In 2009, the UK was ranked 17th in the OECD comparative price levels, only marginally above the OECD average. Between 2009 and 2015, the UK has moved up to 7th place and is notably higher than the OECD average. Over the same period, the average index level for the Euro area has decreased, from 9 places above the OECD average to below 5 places below it.

These figures indicate that the cost of living in the UK is relatively high among the countries of the OECD. In addition, UK living costs appear to have risen relatively more rapidly than the average for countries of the OECD and Euro zone, in recent years. Given the link between the new maintenance support package and the UK National Living Wage, as well as the continued availability of a Travel Grant, it was concluded that the rationale that once existed for a distinct maintenance loan rate for students studying overseas no longer applies.

Part-time study intensity

The Regulations provide:

- a student's period of eligibility in respect of a part-time course will be limited to the time taken to complete the course unless terminated early;
- a student will not receive support for years when they study at below 25% intensity and credits studied in those years will not be counted when determining support;
- for how the intensity of study is to be calculated and may change each year;
- a student will be paid support subject to a limit, based on their intensity of study; and
- overall, a student should not be funded for more credits than it would take to complete the course on a full-time basis.

² See: <https://www.oecd.org/std/prices-ppp/purchasingpowerparitiespppsdata.htm>

Special Support Payment

The Regulations make provision to continue with the Special Support Grant (renamed the Special Support Payment) as part of the support package for students studying full-time (including those on distance learning courses), with the maximum level being maintained at £5,161, which includes the non-means-tested base grant. The Special Support Payment is intended to cover costs associated with for example studying, books, course equipment and travel. The SSP replaces some or all of the Base Grant and Maintenance Grant for eligible students. The amounts, tapers and thresholds for the Special Support Payment are the same as those that apply to the maintenance grant. However, unlike the maintenance grant, the Special Support Payment does not serve to reduce the amount of maintenance loan to which students are entitled.

The Regulations also provide for eligible part-time students (including those on distance learning courses) to be able to apply for a Special Support Payment for the first time on the basis that this helps to deliver equal access to support. The non-means-tested element will be pro rated for part time students.

Grants for Dependants

Eligible students with adult or child dependants can receive help with certain extra costs. The Regulations introduce new rules to clarify and simplify the calculation of the grant for dependants for students enrolling from 2018/19 onwards.

Support for care leavers

The Regulations make provision for eligible students who are “care leavers”, to receive the maximum maintenance grant, regardless of income and of any other financial support to which they are entitled.

The definition of care leavers in the Regulations is as set out in section 104 of the Social Services and Wellbeing (Wales) Act 2014. In order to be eligible for support an individual must have been in care for a total period of 13 weeks between the ages of 14 and the first day of the first academic year of their course, and must be aged under 25 at the start of their course. The part-time package will be pro rated, as it is for other students, based on the level of intensity of study.

Care leavers who are accommodated outside Wales under arrangements made by a Welsh local authority, will be treated as ordinarily resident in Wales for the purpose of the Regulations.

Removal of assessed contributions

Assessed contributions formed the basis for means-tested deductions against the maintenance loan and targeted grants (Adult Dependents Grant, Parental Learning Allowance, Childcare Grant and Travel Grant) previously. Provision in respect of assessed contributions has not been made in the Regulations as the maintenance support provided for is not subject to deductions based on income.

Removal of split parental contributions in multiple student households

Under current student support provisions, where the same household income is used to assess the entitlement for all students of the household, the assessed contribution payable in respect of an eligible student is divided by the number of all eligible students in the household. This ensures that parents with more than one child in higher education do not have to contribute more overall compared to parents with only one child in higher education.

Assessed contributions will be removed in respect of students studying from 2018/19, as a student's entitlement to overall maintenance support will not be subject to deductions based on income. The removal of assessed contributions will benefit all students that would in previous years have been subject to them, whether from a single or multiple student household.

Armed forces personnel undertaking distance learning courses

Currently, eligible students will qualify for fee loans and, where applicable, disabled student allowances for their full or part-time distance learning course where they meet the necessary qualifying conditions. However, to be eligible for support in respect of a distance learning course, a student must be present in Wales on the first day of the first academic year of the course.

These Regulations make provision for eligible students to qualify for fee loans, base grants, maintenance grants, maintenance loans and disabled student allowances for their full-time or part-time distance learning course where they meet the necessary qualifying conditions. However, the requirement for the student to be present in Wales on the first day of the first academic year of the distance learning course will not apply where the student or their close relative

is a member of the armed forces and the student is not in Wales on the first day of the first academic year of the course by reason of the fact that they, or their close relative, is serving as a member of the armed forces outside Wales. This recognises the reality of military service, and increases the accessibility of support in respect of distance learning courses to students where they, or their close family relatives, are serving as members of the armed forces. This change is consistent with the underlying principle of the Armed Forces Covenant. The Armed Forces Covenant sets out the relationship between the Nation, the Government and the Armed Forces.

IMPLEMENTATION

The Regulations provide the basis for the implementation of the Welsh Ministers' policy for student support for the 2018/19 academic year, enable the Welsh Government's delivery partner (the Student Loans Company) to implement system changes, and allow applications for support to commence in 2018.

CONSULTATION

Details of consultation are included in the Regulatory Impact Assessment section below.

REGULATORY IMPACT ASSESSMENT

The policy underpinning the Regulations has been developed as a direct response to the *Independent review of higher education funding and student finance arrangements*. That process considered a wide range of options for student support, settling on a set of recommendations to the Cabinet Secretary for Education, recommendations that were largely accepted. With the Regulations, these changes are implemented, without, the existing regime for student support would continue.

Student support

To offset the increase in tuition fees in Wales in 2012 and a similar rise in England, the Welsh Government introduced new support arrangements. From 2012/13, new entrant full-time undergraduate students ordinarily resident in Wales became eligible to receive a tuition fee grant to cover any increase in fees (up to the £9,000 maximum) beyond the level set in 2011/12, regardless of where in the UK they wished to study. EU students studying in Wales also became eligible for the grant if studying at Welsh higher education institutions

('HEIs'). Other changes included raising the income threshold for student loan repayments from £15,000 to £21,000.

Maintenance support for living costs, in the form of grants and loans, continued to be made available. With only minor changes, support has continued on this basis until now. From 2013/14, part-time students were given access to a tuition fee loan of up to £2,625 (depending on the level of intensity of their course). Alongside this, the institutional learning and teaching grant paid by the Higher Education Funding Council for Wales to universities was retained in respect of part-time students, in order to compensate for the lower fees charged. Maintenance support has not previously been available for part-time undergraduates.

Participation in higher education

For 2016/17, data from the Higher Education Statistics Authority shows that there were 97,095 Welsh domiciled higher education enrolments at UK HEIs, showing a decrease of less than 1% from the previous year. This reflects a continued decline in enrolments by part-time undergraduate and postgraduate students. For undergraduate Welsh domiciled students, part-time enrolments at UK HEIs decreased by 7% in 2016/17 to 22,000. This is 44% below the peak of 39,280 in 2004/05. Enrolments by Welsh domiciled postgraduate students decreased by less than 1% in 2016/17. This is 7% below the peak of 16,460 in 2010/11. In contrast to the trends for postgraduates and part-time undergraduates, full-time undergraduate enrolments (59,745) continued to increase, up 2% between 2015/16 and 2016/17. UCAS data on full-time undergraduate applications for 2018/19 (as at 15th January 2018) show that the Welsh domiciled 18 year-old application rate was up 1% on the same point in the 2017/18 application cycle. This includes a modest increase in application rates from the most disadvantaged group of 18 year olds.

The Independent review of higher education funding and student finance arrangements

The *Independent review of higher education funding and student finance arrangements*, led by Professor Sir Ian Diamond ('the Diamond review'), concluded in September 2016. Professor Diamond and a panel of expert members were asked to conduct a wide ranging review of the funding of higher education and student finance. The Diamond review was tasked to provide clear advice and recommendations for the future funding of the sector

and student finance arrangements in Wales, against a backdrop of concerns about the sustainability of student support. It was to focus on, amongst other things:

- the promotion of social mobility and widening access to higher education;
- student finance arrangements, including maintenance support, with an emphasis on supporting learners from the lowest income backgrounds and most deprived communities in Wales; and
- student debt.

These objectives were reflected in the Welsh Government's priorities for the review:

- widening access – ensuring that any future system has widening access as its core objective, is progressive and equitable;
- supporting the skill needs of Wales;
- strengthening part-time and postgraduate provision in Wales; and
- long term financial sustainability.

Professor Diamond made a number of recommendations that were largely accepted by the Welsh Government. These included:

- The focus of undergraduate support should move towards improved maintenance support arrangements for all full-time and part-time undergraduate students, with the highest level of grant support covering the full cost of maintenance for those who are most in need, together with loans to cover tuition fees.
- The current tuition fee grant for full-time undergraduate students is replaced with an additional student loan, up to a maximum fee level of £9,000.
- A £1,000 “base” grant available to all eligible Welsh domiciled students.
- Additional means-tested grant to cover living costs.
- Maintenance loans to be available (subject to eligibility) for those students who are not eligible for grant.

- The top rate of maintenance grant and/or loan support, for a student living away from home outside London, should be equivalent to the National Living Wage.
- A maximum total grant of 25% more (£10,125) to be available for a student living away from home in London and 15% less (£6,885) for students living at home (based on current differentials in maintenance support).
- The means testing taper for maintenance grant support should be flatter than the current taper.

These recommendations were accepted and the Regulations make provision for them to be the basis for student support in the 2018/19 academic year.

Comprehensive evidence and analysis was produced and is available at <http://gov.wales/topics/educationandskills/highereducation/reviews/review-of-the-funding-and-student-finance-arrangements/?lang=en>.

Options

Option 1: Do nothing

In the event of the Regulations not being made the principal implication is that the existing policy for student support would continue and the recommendations made as a result of *Independent review of higher education funding and student finance arrangements* would not be implemented.

At the heart of the recommendations is a re-working of the student support package to move towards a simple system that recognises the holistic costs of higher education study to students, namely fees and maintenance. This would mean important changes to support would not be implemented including:

- improvements to maintenance support as an important driver of student participation; and
- bringing support for part-time and distance learning students largely in line with that for full-time to reverse the trend of declining participation.

In the event of do nothing, the long term financial sustainability of student support is not assured.

Option 2: Do minimum – make the Regulations

Making the Regulations ensures that the recommendations are implemented and that student support is sustainable. In turn, it is anticipated this will contribute to maintaining or improving participation levels in higher education. In particular, the Diamond Review recommendation for the provision of maintenance support for part-time undergraduates aims to halt the significant decline in this mode of study. The Regulations ensure that student support is put on a financially sound basis and will cost less than the do nothing option.

Costs and benefits

Option 1: Do nothing

Leaving the previous regulations (the Education (Student Support) (Wales) Regulations 2017) in place would mean no additional costs are incurred via the student support system. However, this would leave the recommendations on student support made as a result of the Diamond review unimplemented.

Option 2: Do minimum – make the Regulations

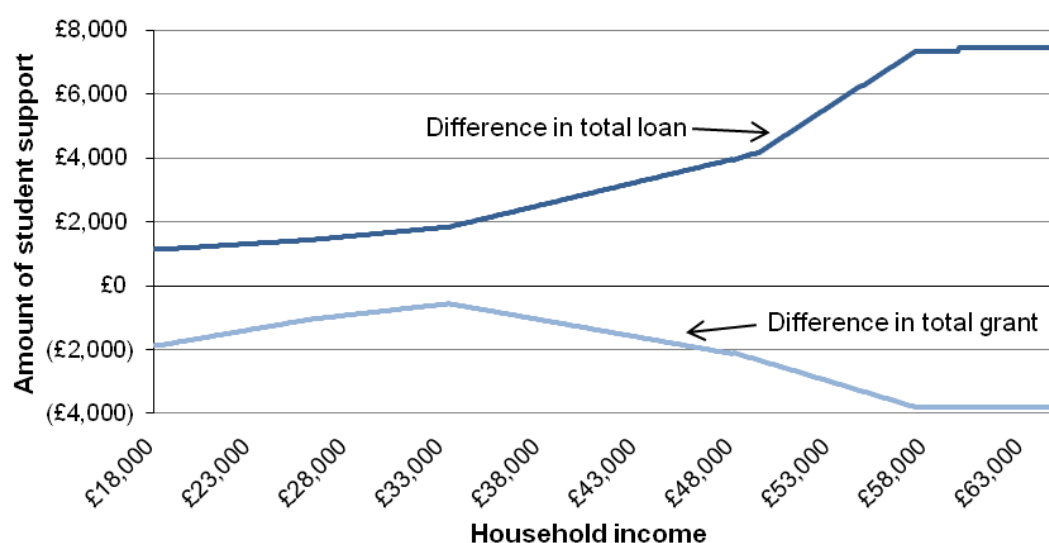
By making the Regulations the Welsh Ministers ensure that the new provisions for the Welsh student support system has an appropriate underpinning legal framework and helps to ensure that policy commitments to higher education and students can be met. The Regulations will reflect policy developed as a result of the *Independent review of higher education funding and student finance arrangements*. Students who are ordinarily resident in Wales will benefit from the changes to support outlined above. The benefits of a higher education to the individual, to the economy and to society are well known.

Distributional impact and student debt

As a result of the Regulations, all eligible full-time undergraduate students will have some level of additional student loan (either for tuition fees or both tuition fees and living costs) available to them, compared with a student continuing under the existing regulations. The scale of this difference depends on the household income of the student, ranging from an additional loan of around £1,100 for those with the lowest income, to around £7,400 for those with income above the upper threshold for means testing. This is illustrated in the chart below. The difference in loan available for students under the Regulations results from a combination of the removal of the tuition fee grant and the provision of additional maintenance support, to ensure that all students, subject to eligibility, are able to access a similar level of support.

Any additional loan taken out by a student will not affect the amount of their monthly repayments, if and when they begin repaying. Only relatively high-earning graduates, that would have fully repaid their loan entitlement under the current system, will end up repaying more under the new system. This will be achieved by making repayments for longer, rather than repaying higher amounts. With the student loan repayment threshold due to rise from £21,000 to £25,000 from April 2018 (to be uplifted annually thereafter), all graduates that do not fully repay will repay less in total (irrespective of any additional loan debt) than they would under current repayment arrangements.

Difference in support for a new student in 2018/19, by household income



Source: Higher Education Division internal analysis, Welsh Government.

Note: Difference reflects a comparison between arrangements for a new student and a continuing full-time undergraduate in 2018/19, where the student is living away from home (but not in London).

All new full-time undergraduate students will have less grant available to them in total when compared to a student continuing under the existing regulations. This reduction will be up to around £2,000 for students from relatively low and middle income (up to around £50,000) households, rising to £3,800 for students with household income above the upper threshold for means-testing. The difference in grant for new students results from the removal of the tuition fee grant balanced by the enhancement of maintenance grants, to varying extents, at all income levels.

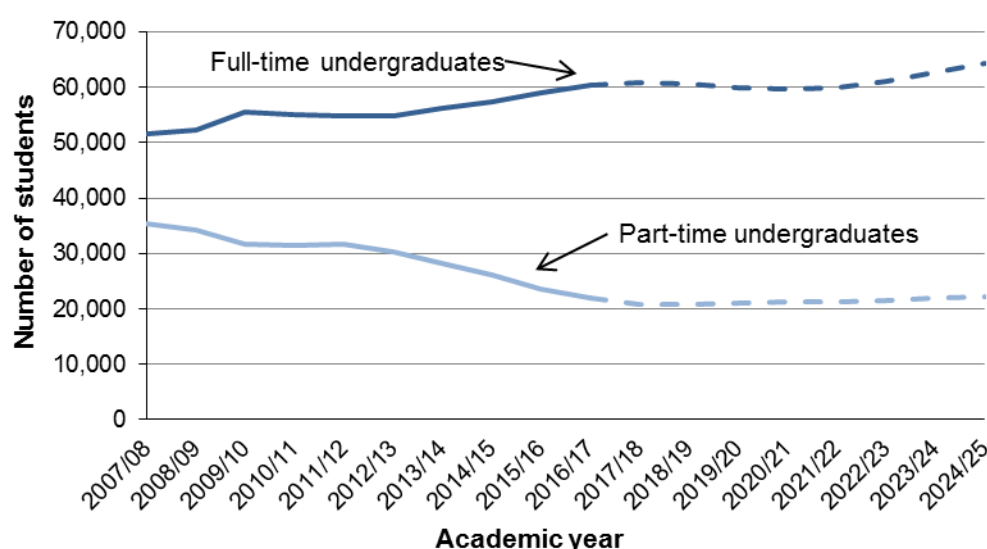
In line with the recommendations of the Diamond Review, the changes outlined above enable funding that is currently used for the tuition fee grant to be re-directed to fund enhanced maintenance grants for full-time undergraduates and the introduction of maintenance grants for part-time undergraduates. This will help to ensure all eligible students are able to access support equivalent to the National Living Wage whilst they are studying.

Participation

The influences on participation in higher education are myriad. Student support is a key but not sole driver. It is anticipated that the new package of student support will at least maintain current participation in full-time undergraduate study as well as reversing the significant decline in

participation in part-time undergraduate study. The chart below illustrates recent and projected Welsh domiciled students on full-time and part-time undergraduate courses. Projections for full-time undergraduates assume a constant participation rate, with overall numbers following forecasts for the 18–19- year old population cohort in Wales. As noted previously, provisional data on applications to full-time higher education courses show an increase in the Welsh domiciled 18 year old application rate for 2018/19.

Recent and projected students from Wales at UK universities



Source: HESA; Higher Education Division internal analysis, Welsh Government
 Note: solid lines are historic figures (HESA) for Welsh-domiciled undergraduate students at UK universities; dashed lines are projections.

Students studying overseas

In 2015/16, there were around 420 Welsh domiciled students receiving the overseas maintenance package administered by the Student Loans Company. Of these, approximately 20% were eligible for the maximum level of maintenance support and 40% were non-means-tested for student support, and hence received a loan for living costs, at the minimum level. Making Regulations will mean that the maximum level of maintenance support available to Welsh domiciled students will be non-means-tested, linked to the UK National Living Wage. As a consequence of this major policy change, approximately 80% of Welsh domiciled students studying overseas will have access to a higher level of maintenance support (markedly so in the majority of cases). As described previously, since the cost of living in the UK is relatively high among the countries of the OECD, the new maintenance support package being set by reference to the current UK National Living Wage, as well as the continued availability of a Travel Grant, will help to

ensure that students studying overseas will have access to sufficient support for living costs and travel.

Cost

The proposed changes to tuition fee and maintenance loan support for academic year 2018/19 will require the provision of additional support for loans from Her Majesty's Treasury. The estimated cost of the additional loan support is around £100m. Overall expenditure on tuition fee and maintenance grants is estimated to be around £20m less than the 'do nothing' option. The preliminary financial implications for the first three academic years under the Regulations are shown in the table below.

Provisional financial implications of the regulations

<i>Academic year difference</i>			
	2018/19	2019/20	2020/21
Provision of student grants	-£20m	-£40m	-£70m
Provision of student loans	£100m	£180m	£270m
Student loan RAB	£60m	£80m	£110m

Source: Higher Education Division internal analysis, Welsh Government

Notes: Figures are derived from a comparison of forecasts for the proposed and 'do nothing' options, rounded to the nearest £10m. Preliminary estimates are based on several inputs and forecasting assumptions, which are subject to continual review based on latest information.

In addition, as shown, the Government subsidy on the provision of loans (Resource Accounting and Budgeting (RAB) charge, or non-cash) will increase by around £60m. (The RAB charge is the estimated cost to Government of borrowing to support the student finance system. It is based on future loan write-offs and interest subsidies in net present value terms.) The RAB charge for the 2018/19 full-time undergraduate cohort is expected to be around 40%, approximately 10 percentage points higher than for the current cohort ('do nothing'). This is a consequence of greater loan balances for borrowers, in particular those from higher income backgrounds. The additional loan and Government subsidy requirements estimated above imply a greater RAB than is the reality. This is a consequence of the combined effect of both increased provision of loans and an increased RAB rate applicable to the total loans provided. The RAB charge is expected to remain lower than that in England.

CONSULTATION

There is no statutory requirement to consult on the Regulations. The Regulations have been developed as a response to the *Independent review of higher education funding and student finance arrangements*. This included a wide-ranging and sustained programme of engagement with stakeholders over more than two years which substantially shaped both the policy for student support and its implementation, both of which underpin the Regulations.

The panel which supported Professor Sir Ian Diamond in his review comprised members drawn from the National Union of Students Wales, universities, the further education sector, and the private sector.

A call for evidence was made during 2014 and ran until February 2015. It attracted 166 responses, a very large number for a consultation on higher education in Wales. A summary is available at <https://consultations.gov.wales/consultations/support-funding-for-students-resident-in-wales>.

Focus group discussions were also undertaken with five target stakeholder groups during early 2015 to further inform the evidence base. A summary of findings is available at <http://gov.wales/topics/educationandskills/highereducation/reviews/review-of-the-funding-and-student-finance-arrangements/?lang=en>.

A consultation was undertaken during 2016 and into 2017 (*Student support funding for students ordinarily resident in Wales*, WG30133). A summary of responses is available at <https://consultations.gov.wales/consultations/support-funding-for-students-resident-in-wales>.

Finally, in line with usual practice, engagement was undertaken late in 2017, in the form of a Student Finance Wales Information Notice.

A brief summary of stakeholders invited to respond to the consultations is at annex A. Details can be found in the various reports and summaries of each exercise.

COMPETITION ASSESSMENT

The making of these Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

POST IMPLEMENTATION ASSESSMENT

The main regulations governing the student support system are revised annually and are continually subject to detailed review, both by policy officials and delivery partners in their practical implementation of the regulations. An evaluation plan (the Diamond Analytical Plan) for the Welsh Government Response to the Diamond Review has been developed. This will monitor, among other things, numbers, participation and retention of higher education students.

SUMMARY

The making of these Regulations is necessary to establish the basis for, and update aspects of, the higher education student support system for students ordinarily resident in Wales and EU students studying in Wales in the 2018/19 academic year.

Annex A

Summary list of consultees

Higher education institutions
Universities Wales
Further education colleges in Wales
Colegau Cymru/College Wales
National Union of Students Wales
Student Loans Company
The Higher Education Funding Council for Wales (HEFCW)
Universities and Colleges Admissions Service (UCAS)
National Institute of Adult Continuing Education (NIACE)
National Association of Student Money Advisers (NASMA)
Charities with an interest in higher education
Trade unions with an interest in higher education
The general public

SL(5)189 – The Education (Student Support) Wales Regulations 2018

Background and Purpose

These Regulations provide the basis for the system of financial support for students who are ordinarily resident in Wales (subject to exceptions) taking designated higher education courses in respect of academic years beginning on or after 1 August 2018. Support includes tuition fee loans, maintenance grants and maintenance loans.

Procedure

Negative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. There is no definition provided for ‘an NHS foundation trust’ in Regulation 44 (4) (c). This is at odds with other bodies who are defined in Regulation 44 (4). A definition would put beyond doubt what is meant by the term. Definitions of the term are used in the Social Services and Well-being (Wales) Act (2014) and the Additional Learning Needs and Education Tribunal (Wales) Act 2018. **[Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements]**
2. Paragraph 2(2)(c) of Schedule 4 of the Welsh text refers specifically to grants, loans or other payments made by the Higher Education Funding Council for Wales. There is no reference to that body in the English text, so that the grants loans or other payments are not limited in that way. **[Standing Order 21.2 (vii) – inconsistencies between the meaning of the English and Welsh texts]**
3. Regulation 53 provides that a person is not eligible for a maintenance loan (in respect of living costs) if they have reached the age of 60 on the first day of the academic year in which the course starts. Students over 60 are however eligible to apply for a base grant, maintenance grant and other targeted grants.

Regulation 99 and Schedule 5 provide that a person is not eligible for an Oxbridge college fee loan (a loan made available for the payment of college fees in respect of certain designated courses offered by Oxbridge e.g. dentistry,



social work) if they have reached the age of 60 on the first day of the academic year in which the course starts.

The Committee raises the following human rights concern in respect of this age limit.

Article 2 of Protocol 1 to the European Convention on Human Rights (ECHR) contains a free-standing right to education.

Article 14 of the ECHR provides that the enjoyment of the rights and freedoms set out in the ECHR shall be secured without discrimination on various protected grounds, including age.¹

The Committee believes that the issues raised by regulations 53 and 99 relate to the right to education. Therefore, by setting an upper age limit of 60, the Committee asks whether they discriminates against people over 60 in relation to their enjoyment of the right to education?

Whether the upper age limit is discriminatory will depend on whether it can be **justified**. If it can be justified, there is no discrimination and no breach of the ECHR.

The Explanatory Memorandum provides no justification as to the setting of the upper age limit. The Committee therefore asks the Welsh Government to provide an analysis of the Welsh Government's justification using the well-established fourfold test set out by the Supreme Court, i.e.

- Does the measure have a legitimate aim sufficient to justify the limitation of a fundamental right?
- Is the measure rationally connected to that aim?
- Could a less intrusive measure have been used?
- Has a fair balance been struck

[Standing Order 21.2 (i) – that there appears to be doubt as to whether it is intra vires.]

¹ The European Court of Human Rights ECtHR has found that 'age' is included among 'other status' in Article 14, *Schizgebel v Switzerland* (No. 25762/07).

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

The *Independent review of higher education funding and student finance arrangements*, led by Professor Sir Ian Diamond (“the Diamond review”) concluded in September 2016. Professor Diamond was asked to conduct a wide ranging review of higher education and student finance.

Professor Diamond made a number of recommendations which are reflected in these Regulations e.g.:–

- The current tuition fee grant for full-time undergraduate students is replaced with an additional student loan, up to a maximum level of £9,000.
- A £1,000 “base” grant available to all eligible welsh domiciled students.
- Additional means-tested grant to cover living costs.
- Maintenance loans to be available (subject to eligibility) for those students who are not eligible for grant.

[Standing Order 21.3 (ii) – that is of political or legal importance or gives rise to issue of public policy likely to be of interest to the Assembly.]

Implications arising from exiting the European Union

The eligibility requirements for student finance are drafted to take account of UK membership of the European Union. Therefore certain EU students will be eligible for support under the Regulations. There is also reference in the Regulations to the ‘Erasmus programme’. This is a programme which offers university students a possibility of studying or doing an internship abroad in another country. It is not clear at this stage what affect Brexit will have on programmes such as Erasmus and the mobility of students.



Government Response

A government response is required

Legal Advisers

Constitutional and Legislative Affairs Committee

8th March 2018



Agenda Item 3.2

WELSH STATUTORY INSTRUMENTS

2018 No. 196 (W. 45)

PROCEEDS OF CRIME, WALES

**The Proceeds of Crime Act 2002
(References to Welsh Revenue
Authority Financial Investigators)
Order 2018**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides that references to accredited financial investigators in the Proceeds of Crime Act 2002 (“the Act”) are to be read as references to accredited financial investigators who are members of staff of the Welsh Revenue Authority.

The Schedule to this Order sets out the powers that can be exercised by an accredited financial investigator under the Act.

Accredited financial investigators may apply for restraint orders under Part 2 of the Act and may seize property to which any such restraint order applies. Accredited financial investigators may also search for, seize, detain and apply for the forfeiture of cash under Chapter 3 of Part 5 of the Act. Before exercising powers of search they must (unless in the circumstances it is impracticable to do so) obtain prior approval from either a justice of the peace or a senior officer who must also be an accredited financial investigator. Accredited financial investigators may also apply for orders and warrants in relation to confiscation, money laundering and detained cash investigations under Part 8 of the Act for the purpose of, amongst other things, requiring a specified person to produce certain material; permitting the search of and seizure of material from specified premises and requiring a financial institution to provide customer information relating to a specified person. Only an accredited financial investigator who is, depending on the nature of the order or warrant, either an appropriate person, appropriate officer or senior appropriate officer can apply for and/or exercise the powers under such orders and warrants.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY
INSTRUMENTS

2018 No. 196 (W. 45)

**PROCEEDS OF CRIME,
WALES**

**The Proceeds of Crime Act 2002
(References to Welsh Revenue
Authority Financial Investigators)
Order 2018**

Made 20 February 2018

Laid before the National Assembly for Wales
21 February 2018

Coming into force 1 April 2018

The Welsh Ministers make this Order in exercise of the powers conferred on them by section 453(1A) and (2) of the Proceeds of Crime Act 2002⁽¹⁾.

Title and commencement

1.—(1) The title of this Order is the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018.

(2) This Order comes into force on 1 April 2018.

Interpretation

2. In this Order—

“the Act” (“*y Ddeddf*”) means the Proceeds of Crime Act 2002;

“WRA” (“*ACC*”) means the Welsh Revenue Authority.

Reference to an accredited financial investigator

3. A reference to an accredited financial investigator in a provision of the Act specified in Part 1 of the

(1) 2002 c. 29. Section 453(1A) was inserted by section 186(4) of the Tax Collection and Management (Wales) Act 2016 (anaw 6).

Schedule is a reference to an accredited financial investigator who is a member of staff of WRA.

4. A reference to an accredited financial investigator in a provision of the Act specified in Part 2 of the Schedule is a reference to an accredited financial investigator who is a member of staff of WRA and is at or above grade 7 or equivalent.

Mark Drakeford

Cabinet Secretary for Finance, one of the Welsh Ministers

20 February 2018

SCHEDULE Articles 3 and 4

Reference to an accredited financial investigator

PART 1

1. Section 42(2)(c) (application for restraint order under Part 2 – subject to authorisation under section 68(3)(c)).

2. Sections 47A(1)(c)(1) (sections 47B to 47S: meaning of “appropriate officer”) and 47M(3)(c) (further detention by magistrates’ court).

3. Chapter 3 of Part 5 (other than the second reference in section 290(4)(c)(2)).

4. Section 352(5)(c)(3) (appropriate person for the purposes of search and seizure warrants under Chapter 2 of Part 8).

5. Section 353(10)(c)(4) (appropriate person for securing immediate entry to premises where production order not available).

6. Section 378(1)(b) (appropriate officers for the purposes of confiscation investigations under Part 8).

7. Section 378(3A)(ab)(5) (appropriate officers for the purposes of detained cash investigations under Part 8).

8. Section 378(4)(a) (appropriate officers for the purposes of money laundering investigations under Part 8).

PART 2

9. Section 47G(3)(c) (appropriate approval).

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- | | |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | Sections 47A to 47S were inserted by the Policing and Crime Act 2009 (c. 26), section 55(1) and (2). |
| (2) | Section 290(4)(c) was inserted by the Serious Crime Act 2007 (c. 27), section 79 and Schedule 11, paragraphs 1 and 3(1) and (2). |
| (3) | Section 352(5)(c) was inserted by the Serious Crime Act 2007, section 77 and Schedule 10, paragraphs 1 and 7(1) and (3). It was amended by section 80(1)(b) of that Act. |
| (4) | Section 353(10)(c) was inserted by the Serious Crime Act 2007, section 77 and Schedule 10, paragraphs 1 and 8(1) and (3). It was amended by section 80(3)(b) of that Act. |
| (5) | Section 378(3A) was inserted by the Serious Crime Act 2007, section 77 and Schedule 10, paragraphs 1 and 13. Paragraph (ab) was inserted by section 80(7) of that Act. |

10. Section 68(3)(c) (authorisation for applications and appeals under Part 2).

11. Section 290(4)(c) (prior approval by a senior officer for search of cash under Chapter 3 of Part 5).

12. Section 378(2)(d) (senior appropriate officers for the purposes of confiscation investigations).

13. Section 378(3AA)(b)(1) (senior appropriate officers for the purposes of detained cash investigations).

14. Section 378(6)(c) (senior appropriate officers for the purposes of money laundering investigations).

(1) Section 378(3AA)(b) was inserted by the Crime and Courts Act 2013 (c. 22), section 49(b) and Schedule 19, Part 2, paragraphs 24 and 27(1) and (2).

Explanatory Memorandum to:

- 1. The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018**
- 2. The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018**

This Explanatory Memorandum has been prepared by the Welsh Revenue Authority Implementation Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

1. The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018; and
2. The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018

I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance

21 February 2018

1. Description

- 1.1 Part 9 of the Tax Collection and Management (Wales) Act 2016 (“TCMA”) amended the Police and Criminal Evidence Act 1984 (“the 1984 Act”), the Criminal Justice and Police Act 2001 (“the 2001 Act”) and the Proceeds of Crime Act 2002 (“the 2002 Act”) to allow the Welsh Ministers, by regulation and order, to confer powers on the Welsh Revenue Authority (“WRA”) to investigate devolved tax crime.

The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018.

- 1.2 These Regulations provide that the following provisions contained in the 1984 Act apply to WRA when it investigates devolved tax crime:
- a power to apply for and obtain a warrant from a justice of the peace to authorise entry and search of premises (section 8 of the 1984 Act);
 - a power to obtain access to “excluded material” or “special procedure material” (defined Part 2 of the 1984 Act), subject to obtaining a warrant from a judge in accordance with the procedure in Schedule 1 to the 1984 Act (section 9 of the 1984 Act);
 - a power to seize relevant items found during the course of a search (section 19);
 - the extension of seizure powers to require information contained in an electronic format to be produced during the course of a search (section 20);
 - a power which enables WRA to copy information which has been seized during the course of a search (section 21);
 - a power to retain anything seized during the course of a search (section 22).
- 1.3 In addition to these powers, the Regulations apply appropriate safeguards and governance on their potential use. These include safeguards in relation to execution of searches and the seizure of items found during the course of a search (sections 15 and 16), and accompanying rights for the owners of property seized during the course of a search (section 21). WRA will also be under a duty to notify in writing a person interviewed in relation to an offence when a decision is taken not to proceed (section 60B). More generally, WRA must comply with the statutory codes of practice issued under sections 66 and 67 of the 1984 Act when investigating criminal offences.
- 1.4 These Regulations will also apply provisions in Part 2 of the 2001 Act to investigations conducted by WRA, which, among other things, provide for additional powers of seizure during the course of a search. As with the 1984 Act, various safeguards are also applied to the use of those powers. For example, section 52 of the 2001 Act imposes a requirement on WRA when relying on the powers of seizure provided by sections 50 or 51 to provide the owner of the property with a written notice setting down various details, including what has been seized, the grounds of seizure and the scope to apply to a judge for the return of the seized

items. Section 59 of the 2001 Act gives any person with an interest in property seized using these powers the right to apply to the court for it to be returned, subject to certain conditions being met.

- 1.5 Regulation 3 provides that further to the provisions listed in the Schedule to the Regulations, any applicable safeguards, and procedural elements in the 1984 Act will also apply. Consequently, any terms defined by other provisions in the 1984 Act will also apply to WRA when the provisions listed in the Schedule are applied to WRA investigations.
- 1.6 Regulation 3(3) substitutes references to police officers, constables and the police with references to WRA.
- 1.7 Regulation 4 allows a person exercising a function conferred on WRA by the Regulations to use reasonable force if that person considers it necessary in the exercise of that function. This could range from guiding a person to stand aside by placing a hand on their arm through to stopping a person by restraining them to prevent violence or injury against another person or officer, for example.
- 1.8 Regulation 5 makes provision for WRA to search any person found on the premises which is the subject of a search in reliance of a warrant issued under the 1984 Act. However, WRA may only search a person where there is reasonable cause to believe the person is in possession of something which is likely to be of “substantial value” to the investigation. This may be concealing/hiding something which may be relevant to the investigation, whether by itself, such as a relevant document in a briefcase, or something which when considered alongside other material could be of value, such as a mobile phone with passwords for electronic files or a key in a persons pocket which would open a filing cabinet on the premises.
- 1.9 Regulation 6 modifies section 16 of the 1984 Act, which makes provision in relation to the authorisation required before multiple premises warrants can be executed on a second or subsequent occasion, and where an all premises warrant can be executed in respect of property not specified in the warrant. The modification made by regulation 6 has the effect of substituting the requirement of obtaining a police inspector’s approval with a requirement that approval may only be provided by a person exercising WRA functions of at least civil service Grade 7 (or equivalent).
- 1.10 Regulation 7 modifies section 77 of the 1984 Act, which makes provision in relation to the treatment of confessions made by a person with a learning disability. Where such a confession is received as evidence in criminal proceedings, section 77 of the 1984 Act requires the court to exercise caution before relying on that evidence where (among other things) it has not been made in the presence of an “independent person”. The modification made by regulation 7 ensures that a person

exercising a function conferred on WRA by these Regulations is not regarded as an “independent person”.

1.11 Regulation 8 specifies that the functions conferred by these Regulations may only be exercised by a person with written authorisation from WRA to conduct relevant investigations.

1.12 These Regulations will come into force on 1 April 2018.

The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018

1.13 The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018 (“the Order”) enables accredited financial investigators who are members of staff of the WRA to exercise the following powers under the 2002 Act:

- apply for a restraint order under Part 2;
- seize property to which a restraint order applies;
- search for, seize, detain and apply for the forfeiture of cash under Chapter 3, Part 5 (recovery of cash in summary proceedings); and
- apply for orders and warrants in relation to confiscation, money laundering and detained cash investigations under Part 8, including an application to the courts for an order requiring a financial institution to provide customer information in relation to a specified person.

1.14 The types of investigations referred to in relation to Part 8 can be described as follows:

- **Confiscation** – A confiscation investigation is an investigation into whether a person has benefited from his criminal conduct or to the extent or whereabouts of his benefit from his criminal conduct, following criminal prosecution.
- **Detained Cash** – A detained cash investigation is an investigation for the purposes of Chapter 3 of Part 5 of the 2002 Act into the derivation of cash detained under that chapter or a part of such cash, or whether cash detained under that chapter is intended by any person to be used in unlawful conduct.
- **Money laundering** – A Money laundering investigation is an investigation into whether a person has committed a money laundering offence. This could occur where for example, there is a reasonable suspicion that a person has converted criminal property.

1.15 In addition, the Order applies appropriate safeguards and governance on the potential use of these powers, including the requirement that certain powers can only be exercised after obtaining senior officer approval.

1.16 Article 3 of the Order provides that a reference to an accredited financial investigator in a provision of the 2002 Act specified in Part 1 of the Schedule to the Order, is a reference to an accredited financial investigator who is a member of staff of WRA.

1.17 Article 4 of the Order provides that a reference to an accredited financial investigator in a provision of the 2002 Act specified in Part 2 of the Schedule, is a reference to an accredited financial investigator who is a member of staff of WRA and is at or above grade 7 or equivalent.

1.18 This Order comes into force on 1 April 2018.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This Explanatory Memorandum covers two Statutory Instruments; The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018, which is subject to the affirmative procedure and the Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018, which is subject to the negative procedure.

2.2 These Statutory Instruments are interlinked and it is beneficial to interpret the impacts of each Statutory Instrument jointly to explain the wider legislative context. Thus, an Explanatory Memorandum incorporating a Regulatory Impact Assessment has been prepared to describe both Statutory Instruments.

3. Legislative background

3.1 The Welsh Revenue Authority (Powers to Investigate Criminal Offences) Regulations 2018 are made under section 114ZA of the Police and Criminal Evidence Act 1984 and section 67A into the Criminal Justice and Police Act 2001.

3.2 Section 114ZA of the Police and Criminal Evidence Act 1984 was inserted by section 185(1) TCMA and section 67A of the Criminal Justice and Police Act 2001 was inserted by section 185(2) TCMA.

3.3 In accordance with section 114ZA(4) of the 1984 Act and section 67A(4) of the 2001 Act, the regulations must be laid before and approved by the National Assembly for Wales (the affirmative procedure).

3.4 The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial investigators) Order 2018 is made pursuant to section 453(1A) and (2) of the Proceeds of Crime Act 2002. This Order is subject to the negative resolution procedure.

3.5 Section 453(1A) of the Proceeds of Crime Act 2002 was inserted by section 186 TCMA.

4. Purpose & intended effect of the legislation

- 4.1 The Tax Collection and Management (Wales) Act 2016 creates three criminal offences: wrongful disclosure of protected taxpayer information under section 20; concealing or destroying documents following an information notice under section 114 and concealing or destroying documents following notification under section 115. In addition to these offences there are a number of other criminal offences relevant to devolved taxes, including fraud (under the Fraud Act 2006); the common law offence of cheating the public revenue; and facilitating tax evasion (under the Criminal Finances Act 2017).
- 4.2 WRA's functions include promoting compliance with the law relating to devolved taxes (section 12 TCMA). This means that WRA has a role to play in tackling criminal behaviour that impacts on the devolved taxes. The purpose of the Regulations and the Order are to confer relevant investigatory powers on WRA so that it can lawfully and effectively tackle criminal behaviour, exercising powers as a law enforcement agency, by acquiring evidence to enable the prosecution of criminal offences.
- 4.3 Criminal behaviour in this context can be wide ranging, covering both devolved taxes, and could include deliberately providing false information to WRA (e.g. lying in a tax return); deliberately failing to comply with the requirements of the law (e.g. not weighing waste before it is sent to landfill or misstating the value of a land transaction); or deliberately destroying documents or other information that may be needed to establish a person's true tax position. The criminal intent in each of these circumstances is to make a financial gain or to seek to reduce the amount of money that should be paid to the public revenue.
- 4.4 These criminal investigation powers are additional to the civil investigatory powers conferred on WRA under the devolved tax legislation (Tax Collection and Management (Wales) Act 2016, Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and Land Disposals Tax (Wales) Act 2017), which are primarily intended to allow WRA to identify and collect the correct amount of tax due (by obtaining information and inspecting premises, and where appropriate, imposing financial penalties). In some cases, it may be appropriate for individuals to face criminal sanctions for their behaviour, including fines and custodial sentences and these powers facilitate that.
- 4.5 It may also be considered appropriate to recover the money and assets a person acquires as a result of that criminal behaviour. The 2002 Act enables an accredited financial investigator to look into the financial position of individuals under investigation to identify, trace and freeze the proceeds of crime with a view to asking the courts to make a confiscation order following prosecution.

- 4.6 The Regulations and Order seek to put WRA in a similar position to HMRC in terms of criminal investigation powers, although the powers conferred on WRA by these statutory instruments are narrower than those conferred on HMRC. This reflects the narrower scope of the functions which WRA is able to exercise, for example WRA has no customs functions. WRA will not, for example, have the power to arrest or detain a person, or the powers to stop and search a person or vehicles without a warrant from a justice of the peace.
- 4.7 There is a real possibility of criminal offences in relation to Welsh devolved taxes in the future. The OECD report on Fighting Tax Crime recognises that “criminal law plays an important role... it enhances the general preventive effect that criminal law enforcement can have and reduces non compliance.”¹ Enabling the WRA to investigate devolved tax offences, as HMRC does for LfT and SDLT, with a consistent set of criminal investigation powers will help to ensure Wales is not seen as a soft target for those who may be seeking to evade taxes. Public knowledge that there are the appropriate criminal powers in place will allow WRA to prioritise criminal enforcement in appropriate cases and, therefore, act as a deterrent for those contemplating breaking the law. However, as previously noted, the civil powers conferred on WRA will be used in the majority of compliance cases.
- 4.8 The Regulations and Order are intended to provide WRA with proportionate criminal investigation powers to tackle and deter devolved tax crime. In exercising the powers conferred by these statutory instruments, WRA will be subject to the supervision of the courts and will be required to comply with all relevant safeguards in the same way as the exercise of these powers by other law enforcement agencies such as the police and HMRC. In particular, a person will only be authorised by WRA to exercise these powers where that person has the requisite experience, training and understanding of the relevant legal framework and it is anticipated that these staff will carry specific identification similar to a warrant card. In addition, use of the powers will need to comply with PACE codes of practice and, where specified, be approved at an appropriate level within WRA by a senior, authorised officer with the requisite experience, training, accreditation and understanding of the relevant legal framework.
- 4.9 In relation to the POCA order, accredited financial investigators must be trained, accredited and monitored by the National Crime Agency and the use of these investigatory powers must be by order or warrant from the court. Evidence and information obtained through the use of these powers must be retained and stored in a safe and secure way and used only for the purpose for which it was obtained, as is the case for all protected taxpayer information.

¹ Fighting Tax Crime: The Ten Global Principles OECD 2017, p.14 - <http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.pdf>

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

Option 1: Do Nothing

- 1.1 Under this option, the Regulations and Order would not be introduced.

Option 2: Introduce the regulations

- 1.2 Under this option, the Regulations and Order as described in Part 1 of this Explanatory Memorandum would be introduced. This is the preferred option.

2. Costs & benefits

Option 1: Do Nothing

- 2.1 If these Regulations and Order were not introduced, the WRA would be unable to use the investigative powers in the 1984 Act, the 2001 Act and the 2002 Act to investigate criminality and reclaim the proceeds of that crime for the public purse in relation to the devolved Welsh taxes. In this option, powers to investigate criminality in the devolved Welsh taxes would fall to the police forces in Wales.
- 2.2 It would be possible for the police in Wales to lead on all elements of investigation of devolved tax offences. However, this would be an additional responsibility for police in Wales and any police action would be dependent on their consideration of a range of other priorities. The Home Office are responsible for policing across England and Wales, (though the Welsh Government partially funds the police and, along with Welsh local authorities, have a strong and close relationship with the Welsh police).

Option 2: Introduce the Regulations and Order

- 2.3 The Welsh Government's preferred option is that the WRA investigate tax crime themselves. Financial profit is the driver for almost all serious and organised crime, and other lower-level acquisitive crime. It is difficult to estimate the cost of tax crime in relation to the two devolved taxes, however, HMRC estimate that there is a 10% tax gap for landfill tax and a 1% tax gap for stamp duty land tax². This suggests that the potential lost revenue to the WRA for LDT could be in the region of £2.6 million and for LTT in the region of £2.5 million – although only part of this

² Measuring the Tax Gap 2017, HMRC The tax gap is the difference between the amount of tax that should, in theory, be collected by HMRC, and what is actually collected.

would be due to tax crime.³As tax rules diverge across the UK following the devolution of tax powers to Wales and Scotland, it is imperative that tax crime is tackled consistently and in the best interests of compliant taxpayers and businesses, so no part of the UK is a safe haven for those who evade tax. It will be important that any organisation responsible for investigating devolved tax offences works closely with HMRC and Revenue Scotland to share information and ensure effective enforcement.

- 2.4 It is clear that the application of the 1984 Act, the 2001 Act and the 2002 Act will have resource implications for WRA and the Welsh Government and there is a shared commitment to ensuring that appropriate resources are made available.
- 2.5 Much of the governance and compliance work required to enable the lawful exercise of these powers will be case-specific – the powers under consideration are permissive: WRA would not be required to use them, but would have the option to do so in appropriate circumstances.
- 2.6 This means that the immediate impact of the Regulations and the Order could be relatively limited, for example, to allow staff to receive appropriate training and accreditation. It is anticipated that the initial resource requirements stemming from WRA access to criminal powers can be accommodated within the existing WRA budget allocation of £6m for 2018/19 and 2019/20.
- 2.7 The exercise of the powers in particular cases could imply further cost, for example, relating to the storage of evidence and the appropriate equipment for staff. The ongoing resource will depend on the extent and nature of the case-work that WRA may wish to take forward and the priority attached to it. The costs associated will be dependant upon the nature, volume and extent of criminality uncovered once WRA becomes operational and has access to protected taxpayer information.
- 2.8 However, it may be anticipated that some of those costs may overlap with WRA's civil enforcement powers under TCMA, to inspect premises and to take samples and remove documents during an inspection.
- 2.9 The Office of Budget Responsibility considers the cost and benefits associated with compliance work subject to "high levels of uncertainty since they target specific subsets of taxpayers who are already actively changing their behaviour to lower their tax liabilities. As a result, there is usually relatively high behavioural uncertainty. Similarly, since the measures are directed at uncollected tax, there is usually less reliable data available to inform the costing."⁴

³ Based on information from HMRC Measuring the Tax Gap 2017 and Welsh Government tax forecasts

⁴ Office of Budget Responsibility – "Working Paper No.11: Evaluation of HMRC anti-avoidance and operational measures, September 2017" http://budgetresponsibility.org.uk/docs/dlm_uploads/WP-No.11-Evaluation-of-HMRC-anti-avoidance-and-operational-measures.pdf

- 2.10 However, the benefit of investment in tackling tax crime are seen as not only recovering lost tax, but also in encouraging wider compliance as the risk of being caught outweighs the potential benefit. In addition, OECD states that “the investment is worthwhile, with some jurisdictions being able to calculate the return on investment from the criminal tax investigation teams and reporting recovery of funds well in excess of the expenditure, ranging from 150% to 1500% return on investment.”⁵
- 2.11 The Regulations and Order are not expected to impose costs on business, other than those that may become subject to an investigation from potential criminal activity.
- 2.12 The Regulations and Order are considered as a way of levelling the playing field for legitimate businesses in Wales. The Regulations and Order are designed to tackle tax crime and we anticipate this to be most prevalent in landfill disposals tax, which will have the potential to impact on wider waste crime which can have serious environmental impacts. However, the motive for tax crime is economic and is aimed at the acquisition of financial benefit. As with any crime, waste crime has a cost to the wider economy, taking business away from legitimate, permitted waste operators, who therefore lose income and the ability to invest in their businesses and the wider local economy. However, the profits come largely at the expense of the taxpayer. The Environmental Services Association estimates “each pound spent on enforcement is likely to yield a return of as much as £5.60. Of this £3.20 would be received directly by government in taxes, with the rest benefitting legitimate waste sector businesses and wider society.”⁶
- 2.13 Overall, the benefits of this option are:
- By creating an effective deterrent to criminal behaviour, it has the potential to reduce tax lost as a result of criminal activity;
 - There is the potential to reclaim revenue lost to the public purses as a result of criminal behaviour;
 - It has the potential to create a fairer environment for waste businesses and other tax payers in Wales; and
 - Consultation responses from other law enforcement agencies, including the police, National Crime Agency and NRW were supportive of the proposals.

3. Consultation

- 3.1 On 10 July, the Welsh Government published a consultation on WRA access to criminal powers to tackle tax crime, which closed on 2 October. In total, the Welsh Government received 17 responses from a

⁵ Fighting Tax Crime – The Ten Global Principles: OECD 2017-
<http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.pdf>

⁶ Environmental Services Association Education Trust- Waste Crime: Tackling Britain’s Dirty Secret:
http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

range of stakeholders from various sectors, all from within Wales.

3.2 A full Welsh Government response to the consultation can be viewed here: <https://consultations.gov.wales/consultations/welsh-revenue-authority-powers-tackle-tax-crime>

3.3 Following the consultation, engagement has taken place with the Home Office, HMRC, CPS, NRW, National Crime Agency and the Police as well as other WRA stakeholders. Their views have been taken into account when developing these Regulations and Order.

4. Post implementation review

4.1 The Finance Committee in its Stage 1 Report on the TCMA stated: “the Minister should consider reviewing these powers once the taxes have been established and in operation for a number of years.”⁷

4.2 It is anticipated that TCMA will be reviewed within three to five years. The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 will be reviewed by May 2023 and the Landfill Disposals Tax (Wales) Act 2017 will follow the same timeline. The impact of the powers conferred by the Regulations and Order will be considered as part of the wider review programme.

⁷National Assembly for Wales, Finance Committee, Tax Collection and Management (Wales) Bill Stage 1 Committee Report, November 2015. Paragraph 241.
<http://www.assembly.wales/laid%20documents/cr-ld10451/cr-ld10451-e.pdf>

SL(5)191 – The Proceeds of Crime Act 2002 (References to Welsh Revenue Authority Financial Investigators) Order 2018

Background and Purpose

This Order provides that references to accredited financial investigators in the Proceeds of Crime Act 2002 ('POCA') are to be read as references to accredited financial investigators who are members of staff of the Welsh Revenue Authority (WRA).

Accredited financial investigators may apply for restraint orders under Part 2 of POCA and may seize property to which any such order applies. Accredited financial investigators may also search for, seize, detail and apply for the forfeiture of cash. Before exercising powers of search they must obtain prior approval from either a justice of the peace or a senior officer (unless in the circumstances it is impracticable to do so).

Accredited financial investigators may also apply for orders and warrants in relation to confiscation, money laundering and detained cash investigations. The purpose of such orders and warrants can include e.g. requiring a person to produce certain material, permitting the search and seizure of material from premises and requiring a financial institution to provide customer information. Only an accredited financial investigator who is (depending on the nature of the order or warrant) either an appropriate person, appropriate officer or senior appropriate officer can apply for and/or exercise the powers provided by such orders and warrants.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

This Order gives substantial powers to the WRA. An explanation has been given that does not appear unreasonable. Nevertheless, attention is drawn to the Order on the basis that they are of legal or political importance or give rise to issues of public policy that are likely to be of interest to the Assembly.
[Standing Order 21.3(ii)]

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The Welsh Government notes the report and recognises that this SI does contain matters likely to be of interest to the Assembly.

Legal Advisers

Constitutional and Legislative Affairs Committee

March 2018



Agenda Item 3.3

WELSH STATUTORY INSTRUMENTS

2018 No. 274 (W. 50)

FOOD, WALES

The Jam and Similar Products (Wales) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, provide for the continuing implementation of Council Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption (OJ No L 10, 12.1.2002, p. 67). They also retain existing national measures relating to curds, lemon cheese and mincemeat. The Regulations revoke and replace the Jam and Similar Products (Wales) Regulations 2004 (S.I. 2004/553 (W. 56)).

Regulation 4 and Schedule 1 regulate the use of the names “jam”, “extra jam”, “jelly”, “extra jelly”, “marmalade”, “jelly marmalade”, “sweetened chestnut purée”, “curd”, “lemon cheese” and “mincemeat”. Subject to an exception, those names may only be used if the requirements in the relevant part of Schedule 1 are met by the product.

The Regulations also require particulars to be indicated in relation to jam, extra jam, jelly, extra jelly, marmalade, jelly marmalade and sweetened chestnut purée. Regulation 5 requires the product name to indicate the kinds of fruits used to manufacture the product, regulation 6 requires the labelling of the product to indicate its fruit content, regulation 7 requires the labelling of the product to indicate its total sugar content, and regulation 8 makes provision in relation to residual sulphur dioxide.

Regulation 9 imposes an obligation on food authorities to enforce the Regulations.

Regulation 10 and Schedule 5 apply certain provisions of the Food Safety Act 1990, with modifications. This includes the application, with modifications, of section 10(1), enabling an improvement notice to be served to require compliance with specified provisions of these Regulations, and the

application of section 10(2), making the failure to comply with an improvement notice an offence.

Regulation 11 revokes the Jam and Similar Products (Wales) Regulations 2004 and makes a consequential revocation of a provision in the Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809).

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.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 274 (W. 50)

FOOD, WALES

**The Jam and Similar Products
(Wales) Regulations 2018**

Made 27 February 2018

*Laid before the National Assembly
for Wales* 5 March 2018

Coming into force 26 March 2018

CONTENTS

1. Title, application and commencement
2. Interpretation
3. Scope
4. Use of a product name
5. Indication of kinds of fruits used
6. Fruit content indication
7. Total sugar content indication
8. Residual sulphur dioxide
9. Enforcement
10. Application and modifications of provisions of the Act
11. Revocations

SCHEDULE 1 — Regulated products

- PART 1 — List of products**
- PART 2 — Jam**
- PART 3 — Extra jam**
- PART 4 — Jelly**
- PART 5 — Extra jelly**
- PART 6 — Marmalade**
- PART 7 — Jelly marmalade**
- PART 8 — Sweetened chestnut
purée**
- PART 9 — “X” curd**
- PART 10 — Lemon cheese**

PART 11	— “Y” flavour curd
PART 12	— Mince meat
PART 13	— Interpretation of Schedule 1
SCHEDULE 2	— Authorised additional ingredients for regulated products that are listed in Part 1 of the table in Part 1 of Schedule 1
SCHEDULE 3	— Authorised treatments for regulated products that are listed in Part 1 of the table in Part 1 of Schedule 1
SCHEDULE 4	— Ambulatory references
SCHEDULE 5	— Application and modifications of provisions of the Act

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(4), 16(1)(a) and (e), 17(1) and (2), 26(1) and (3) and 48(1) of the Food Safety Act 1990⁽¹⁾ and paragraph 1A of Schedule 2 to the European Communities Act 1972⁽²⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for references to the European instruments listed in Schedule 4 to be construed as references to those instruments as amended from time to time.

So far as these Regulations are made in exercise of powers under the Food Safety Act 1990, the Welsh

(1) 1990 c. 16. Section 16(1) was amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”). Section 17(1) and (2) was amended by paragraphs 8 and 12 of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 48(1) was amended by paragraph 8 of Schedule 5 to the 1999 Act. Functions formerly exercisable by “the Ministers” so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.

Ministers have had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A)(1) of that Act.

There has been open and transparent public consultation during the preparation and evaluation of these Regulations as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(2).

Title, application and commencement

1.—(1) The title of these Regulations is the Jam and Similar Products (Wales) Regulations 2018.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 26 March 2018.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“aqueous extract of fruit” (“*echdynnyn dyfrllyd ffrwythau*”) means the aqueous extract of fruit which, subject to the losses necessarily occurring in proper manufacturing, contains all the water-soluble constituents of the fruit used;

“authorised additional ingredient” (“*cynhwysyn ychwanegol a awdurdodwyd*”) means an ingredient specified in Schedule 2;

“authorised treatment” (“*triniaeth a awdurdodwyd*”) means a treatment specified in Schedule 3;

“Directive 2001/111/EC” (“*Cyfarwyddeb 2001/111/EC*”) means Council Directive 2001/111/EC(3) relating to certain sugars intended for human consumption;

“Directive 2001/113/EC” (“*Cyfarwyddeb 2001/113/EC*”) means Council Directive 2001/113/EC(4) relating to fruit jams, jellies and

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- (1) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.
- (2) OJ No L 31, 1.2.2002, p. 1, last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ No L 189, 27.6.2014, p. 1).
- (3) OJ No L 10, 12.1.2002, p. 53, last amended by Regulation (EU) No 1021/2013 of the European Parliament and of the Council (OJ No L 287, 29.10.2013, p. 1).
- (4) OJ No L 10, 12.1.2002, p. 67, last amended by Regulation (EU) No 1021/2013 of the European Parliament and of the Council (OJ No L 287, 29.10.2013, p. 1).

marmalades and sweetened chestnut purée intended for human consumption;

“fruit” (*ffrwyth*) means fresh, sound fruit, free from deterioration, containing all of its essential constituents and sufficiently ripe for use, after cleaning, removal of blemishes, topping and tailing, and includes ginger, tomatoes, the edible parts of rhubarb stalks, carrots, sweet potatoes, cucumbers, pumpkins, melons and watermelons;

“fruit pulp” (*mwydion ffrwythau*) means the edible part of the whole fruit, with or without (as appropriate) the peel, skin, seeds, pips or the like, which may have been sliced or crushed but which has not been reduced to a purée;

“fruit purée” (*piwrî ffrwythau*) means the edible part of the whole fruit, with or without (as appropriate) the peel, skin, seeds, pips or the like, which has been reduced to a purée by being sieved or by being subjected to a similar process;

“ginger” (*sinsir*) means the edible root of the ginger plant in a fresh or preserved state, including dried ginger root and ginger root preserved in syrup;

“honey” (*mêl*) means the natural sweet substance produced by *Apis mellifera* bees from the nectar of plants or from secretions of living parts of plants or excretions of plant-sucking insects on the living parts of plants which the bees collect, transform by combining with specific substances of their own, deposit, dehydrate, store and leave in honeycombs to ripen and mature;

“ingredient” (*cynhwysyn*) has the meaning given in Article 2(2)(f) of Regulation (EU) No 1169/2011⁽¹⁾;

“in trade” (*mewn masnach*) has the same meaning as in Directive 2001/113/EC and the expressions “trade in”, “trades in” and “traded” (*masnachu mewn*, *a fasnachir*) are to be construed accordingly;

“labelling” (*labeli*) has the meaning given in Article 2(2)(j) of Regulation (EU) No 1169/2011 and the expression “labelled” (*wedi ei labelu*) is to be construed accordingly;

“regulated product” (*cynnyrch a reoleiddir*) means a product that is listed in any of the entries in the table in Part 1 of Schedule 1 and complies with the requirements for that product set out in the Part of that Schedule specified in the corresponding entry in column 3 of the table;

(1) OJ No L 304, 22.11.2011, p. 18, last amended by Commission Delegated Regulation (EU) No 78/2014 (OJ No L 27, 30.1.2014, p. 7).

“Regulation (EC) No 1924/2006” (“*Rheoliad (EC) Rhif 1924/2006*”) means Regulation (EC) No 1924/2006⁽¹⁾ of the European Parliament and of the Council on nutrition and health claims made on foods;

“Regulation (EC) No 1333/2008” (“*Rheoliad (EC) Rhif 1333/2008*”) means Regulation (EC) No 1333/2008⁽²⁾ of the European Parliament and of the Council on food additives;

“Regulation (EU) No 1169/2011” (“*Rheoliad (EU) Rhif 1169/2011*”) means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;

“sugar” (“*siwgr*”) means any of the following—

- (a) any sugar defined in Part A of the Annex to Directive 2001/111/EC;
- (b) fructose syrup;
- (c) sugar extracted from fruit;
- (d) brown sugar.

(2) Any other expression used in these Regulations and Directive 2001/113/EC has the same meaning in these Regulations as in that Directive.

(3) In these Regulations, any reference to an EU instrument listed in Schedule 4 is a reference to that instrument as amended from time to time.

(4) Part 13 of Schedule 1 has effect in relation to the interpretation of Schedule 1.

Scope

3.—(1) These Regulations apply to products intended for human consumption, except for any product intended for the manufacture of fine bakery wares, pastries or biscuits.

(2) These Regulations do not apply to a product traded using a name listed in Part 2 of the table in Part 1 of Schedule 1 that is brought into Wales from another part of the United Kingdom, from another

(1) OJ No L 404, 30.12.2006, p. 9, last amended by Regulation (EU) No 1047/2012 (OJ No L 310, 9.11.2012, p. 36).

(2) OJ No L 354, 31.12.2008, p. 16, last amended by Commission Regulation (EU) 2017/874 (OJ No L 134, 23.5.2017, p. 18).

EEA State or from the Republic of Turkey, in which it was lawfully marketed.

(3) In paragraph (1) “fine bakery wares, pastries or biscuits” has the same meaning as in Article 1 of Directive 2001/113/EC.

Use of a product name

4.—(1) A person who trades in a product that complies with the requirements of a Part of Schedule 1 specified in column 3 of the table in Part 1 of Schedule 1 must use the name of the product listed in the corresponding entry in column 1 of that table, in trade, as the name of the product.

(2) A person must not use a product name listed in column 1 or 2 of the table in Part 1 of Schedule 1, or the equivalent name in any other language, in trade, as the name of a product unless the product complies with the requirements for that product specified in the Part of that Schedule listed in the corresponding entry in column 3 of the table.

(3) Paragraph (2) does not prevent a product name being used, in trade, as part of the name of another product if—

- (a) the use of the product name in that way is in accordance with practices used to designate the other product; and
- (b) the other product cannot be confused with a regulated product.

(4) In addition to the name of the product that must be used by virtue of paragraph (1), a person may use the Welsh name of the product as listed in the entry in column 2 of the table in Part 1 of Schedule 1 which corresponds to the English name of the product in column 1 of the same table.

(5) Nothing in paragraphs (1) or (4) prevents the product name from being in any other language in addition to Welsh and English.

Indication of kinds of fruits used

5.—(1) A person must not trade in a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 unless the product name is supplemented with an indication of the kinds of fruits used to manufacture the product in accordance, as applicable, with paragraph (2), (3) or (4).

(2) Where a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 is manufactured using a single kind of fruit, the product name must be supplemented with an indication of the kind of fruit used to manufacture the product.

(3) Where a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 is manufactured

from two kinds of fruit, the product name must be supplemented with an indication of those kinds of fruit in descending order of the weight of the raw materials of the fruit used to manufacture the product.

(4) Where a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 is manufactured from three or more kinds of fruit, the product name must be supplemented—

- (a) with an indication of the kinds of fruit used in descending order of the weight of the raw materials of fruit used to manufacture the product;
- (b) with the words “mixed fruit” or similar wording; or
- (c) with the number of kinds of fruit used.

(5) In addition to the wording required by virtue of paragraph (4)(b), the product name may be supplemented with the words “ffrwythau cymysg” or similar Welsh wording.

(6) Nothing in paragraphs (4)(b) or (5) prevents the product name from being supplemented with the required words in any other language in addition to Welsh and English.

Fruit content indication

6.—(1) A person must not trade in a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 unless the labelling of the product indicates the fruit content of the product in accordance with paragraphs (2) to (4).

(2) The fruit content must be indicated by including the words “prepared with x g of fruit per 100 g” with the quantity in grams of fruit from which the fruit pulp, fruit purée, fruit juice, fruit peel and aqueous extract of fruit used for every hundred grams of the finished product are derived being inserted in place of “x”.

(3) If aqueous extracts are used, the fruit content of the finished product as indicated on the labelling of the product must be calculated after deducting the weight of any water used to prepare the aqueous extracts.

(4) The fruit content indication must appear in the same visual field as the product name and be in clearly visible characters.

(5) In addition to the wording required by virtue of paragraph (2), the words “paratowyd â x g o ffrwythau am bob 100g” may be included, with the quantity in grams of fruit from which the fruit pulp, fruit purée, fruit juice, fruit peel and aqueous extract of fruit used for every hundred grams of the finished product are derived being inserted in place of “x”.

(6) Nothing in paragraphs (2) or (5) prevents the wording required by virtue of paragraph (2) from

being included in any other language in addition to Welsh and English.

Total sugar content indication

7.—(1) A person must not trade in a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 unless the labelling of the product indicates the total sugar content of the finished product in accordance with paragraphs (2) to (5).

(2) The total sugar content must be indicated by including the words “total sugar content: x g per 100 g”, with the content in grams of soluble solids in each hundred grams of the finished product inserted in place of “x”.

(3) The total sugar content of the finished product as indicated on the labelling must be determined by a refractometer at 20°C.

(4) The total sugar content of the finished product as indicated on the labelling must be accurate to ± 3 refractometric degrees.

(5) The total sugar content indication must appear in the same visual field as the product name and be in clearly visible characters.

(6) Paragraph (1) does not apply where a claim as regards the sugar content of a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 is made and the product is marked or labelled, as regards its sugar content, with the prescribed nutrition labelling set out in Articles 30 to 35 of Regulation (EU) No 1169/2011.

(7) In addition to the wording required by virtue of paragraph (2), the words “cyfanswm y cynnwys siwgr: x g ym mhob 100 g” may be included, with the content in grams of soluble solids in each hundred grams of the finished product inserted in place of “x”.

(8) Nothing in paragraphs (2) or (7) prevents the wording required by virtue of paragraph (2) from being included in any other language in addition to Welsh and English.

Residual sulphur dioxide

8. A person must not trade in a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 that has a residual sulphur dioxide content of more than 10 milligrams per kilogram unless, in addition to any particular required to be identified in a list of ingredients by Regulation (EU) No 1169/2011, the presence of that residual sulphur dioxide is indicated in the list of ingredients of the product according to the percentage by weight of the residual sulphur dioxide in the product.

Enforcement

9. It is the duty of a food authority within its area to enforce these Regulations.

Application and modifications of provisions of the Act

10. The provisions of the Act specified in column 1 of the table in Schedule 5 apply, with the modifications specified in column 2 of that table, for the purposes of these Regulations.

Revocations

11.—(1) The Jam and Similar Products (Wales) Regulations 2004⁽¹⁾ are revoked.

(2) The entry relating to the Jam and Similar Products (Wales) Regulations 2004 in the table in Part 4 of the Schedule to the Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012⁽²⁾ is revoked.

Vaughan Gething

Cabinet Secretary for Health and Social Services, one
of the Welsh Ministers

27 February 2018

(1) S.I. 2004/553 (W. 56), as amended by S.I. 2005/3254 (W. 247), S.I. 2009/3378 (W. 300), S.I. 2012/1809.

(2) S.I. 2012/1809, to which there are amendments not relevant to these Regulations.

SCHEDULE 1 Regulations 2 to 8

Regulated products

PART 1

List of products

<i>Column 1 Product name in English</i>	<i>Column 2 Product name in Welsh</i>	<i>Column 3 Part of this Schedule containing the specificati on for the product</i>
Part 1		
Jam	Jam	Part 2
Extra jam	Jam ecstra	Part 3
Jelly	Jeli	Part 4
Extra jelly	Jeli ecstra	Part 5
Marmalade	Marmalêd	Part 6
Jelly marmalade	Marmalêd jeli	Part 7
Sweetened chestnut purée	Piwrî castan a felyswyd	Part 8
Part 2		
“X” curd	Ceuled “X”	Part 9
Lemon cheese	Ceuled lemon	Part 10
“Y” flavour curd	Ceuled blas “Y”	Part 11
Mincemeat	Briwfwyd	Part 12

PART 2

Jam

1. Jam is a mixture, brought to a suitable gelled consistency, of—

- (a) sugar;
- (b) fruit pulp, or fruit purée, or both fruit pulp and fruit purée, of one or more kinds of fruit; and
- (c) water.

2. Notwithstanding paragraph 1(a), a permitted sweetener may be used in the manufacture of jam either wholly or partially as a replacement for sugar.

3. Notwithstanding paragraph 1(b), citrus jam may be obtained from the whole fruit, cut into strips, sliced or cut into strips and sliced.

4. The quantity of fruit pulp, or fruit purée, or both, used for every 1,000 grams of the finished product must not be less than—

- (a) 250 grams in the case of any of the following—
 - (i) redcurrants;
 - (ii) rowanberries,
 - (iii) sea buckthorns;
 - (iv) blackcurrants;
 - (v) rosehips;
 - (vi) quinces;
- (b) 150 grams in the case of ginger;
- (c) 160 grams in the case of cashew apples;
- (d) 60 grams in the case of passion fruit; and
- (e) 350 grams in the case of any other fruit.

5. As well as the ingredients mentioned in paragraphs 1 to 3, the product may contain any of the following—

- (a) an authorised additional ingredient, which, where there are restrictions in Schedule 2 relating to its use, is used as specified in Schedule 2;
- (b) citrus fruit juice, in a product obtained from other kinds of fruit;
- (c) red fruit juice, in a product manufactured from any of the following fruits—
 - (i) rosehips;
 - (ii) strawberries;
 - (iii) raspberries;
 - (iv) gooseberries;
 - (v) redcurrants;
 - (vi) plums;
 - (vii) rhubarb;
- (d) red beetroot juice, in a product manufactured from any of the following fruits—
 - (i) strawberries;
 - (ii) raspberries;
 - (iii) gooseberries;
 - (iv) redcurrants;
 - (v) plums;
- (e) other fruit juice;
- (f) citrus peel;
- (g) leaves of *Pelargonium odoratissimum*, in a product made from quince.

6. Any raw materials used to manufacture the product in accordance with this Part that are mentioned in Schedule 3 must not have been treated except using an authorised treatment.

7. The product must have a soluble dry matter content of 60% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

PART 3

Extra jam

8. Extra jam is a mixture, brought to a suitable gelled consistency, of—

- (a) in the case of rosehip extra jam—
 - (i) sugar;
 - (ii) the unconcentrated purée of that fruit, or a mixture of the unconcentrated pulp and purée of that fruit; and
 - (iii) water;
- (b) in the case of seedless raspberry, blackberry, blackcurrant, blueberry and redcurrant extra jam—
 - (i) sugar;
 - (ii) the unconcentrated purée of that fruit, or a mixture of the unconcentrated pulp and purée of that fruit; and
 - (iii) water;
- (c) in other cases—
 - (i) sugar;
 - (ii) the unconcentrated pulp of one or more kinds of fruit; and
 - (iii) water.

9. Notwithstanding sub-paragraphs (a)(i), (b)(i) and (c)(i) of paragraph 8, a permitted sweetener may be used in the manufacture of extra jam either wholly or partially as a replacement for sugar.

10. Notwithstanding paragraph 8(c)(ii), citrus extra jam may be obtained from the whole fruit, cut into strips, sliced or cut into strips and sliced.

11. The following fruits must not be mixed with other fruits in the manufacture of extra jam—

- (a) apples;

- (b) pears;
- (c) clingstone plums;
- (d) melons;
- (e) watermelons;
- (f) grapes;
- (g) pumpkins;
- (h) cucumbers;
- (i) tomatoes.

12. The quantity of fruit pulp (or fruit purée, or fruit purée and fruit pulp, in the case of a product to which paragraph 8(a) or (b) applies) used to manufacture 1,000 grams of the finished product must not be less than—

- (a) 350 grams in the case of any of the following—
 - (i) redcurrants;
 - (ii) rowanberries;
 - (iii) sea buckthorns;
 - (iv) blackcurrants;
 - (v) rosehips;
 - (vi) quinces;
- (b) 250 grams in the case of ginger;
- (c) 230 grams in the case of cashew apples;
- (d) 80 grams in the case of passion fruit; and
- (e) 450 grams in the case of any other fruit.

13. As well as the ingredients mentioned in paragraphs 8 to 10, the product may contain any of the following—

- (a) an authorised additional ingredient, which, where there are restrictions in Schedule 2 relating to its use, is used as specified in Schedule 2;
- (b) citrus fruit juice, in a product obtained from other kinds of fruit;
- (c) red fruit juices, in a product manufactured from any of the following fruits—
 - (i) rosehips;
 - (ii) strawberries;
 - (iii) raspberries;
 - (iv) gooseberries;
 - (v) redcurrants;
 - (vi) plums;
 - (vii) rhubarb;
- (d) citrus peel;
- (e) leaves of *Pelargonium odoratissimum*, in a product made from quince.

14. Any raw materials used to manufacture the product in accordance with this Part that are mentioned in

Schedule 3 must not have been treated except using an authorised treatment.

15. The product must have a soluble dry matter content of 60% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

PART 4

Jelly

16. Jelly is an appropriately gelled mixture of—

- (a) sugar and juice of one or more kinds of fruit;
- (b) sugar and aqueous extract of one or more kinds of fruit; or
- (c) sugar and fruit juice of one or more kinds of fruit and aqueous extract of one or more kinds of fruit.

17. Notwithstanding sub-paragraphs (a), (b) and (c) of paragraph 16, a permitted sweetener may be used in the manufacture of jelly either wholly or partially as a replacement for sugar.

18. The quantity of fruit juice, or aqueous extract of fruit, or both, used for the manufacture of every 1,000 grams of the finished product must not be less than—

- (a) 250 grams in the case of any of the following—
 - (i) redcurrants;
 - (ii) rowanberries;
 - (iii) sea buckthorns;
 - (iv) blackcurrants;
 - (v) rosehips;
 - (vi) quinces;
- (b) 150 grams in the case of ginger;
- (c) 160 grams in the case of cashew apples;
- (d) 60 grams in the case of passion fruit; and
- (e) 350 grams in the case of any other fruit.

19. Where aqueous extract of fruit is used in the manufacture of the product, the quantities specified in paragraph 18 must be calculated after deduction of the weight of water used in preparing the aqueous extracts.

20. As well as the ingredients mentioned in paragraphs 16 and 17, the product may contain any of the following—

- (a) an authorised additional ingredient, which, where there are restrictions in Schedule 2 relating to its use, is used as specified in Schedule 2;
- (b) citrus fruit juice, in a product obtained from other kinds of fruit;
- (c) red beetroot juice, in a product manufactured from one or more of the following fruits—
 - (i) strawberries;
 - (ii) raspberries;
 - (iii) gooseberries;
 - (iv) redcurrants;
 - (v) plums;
- (d) citrus peel;
- (e) leaves of *Pelargonium odoratissimum*, in a product made from quince.

21. Any raw materials used to manufacture the product in accordance with this Part that are mentioned in Schedule 3 must not have been treated except using an authorised treatment.

22. The product must have a soluble dry matter content of 60% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

PART 5

Extra jelly

23. Extra jelly is an appropriately gelled mixture of—

- (a) sugar and fruit juice;
- (b) sugar and aqueous extract of fruit; or
- (c) sugar and both fruit juice and aqueous extract of fruit.

24. Notwithstanding sub-paragraphs (a), (b) and (c) of paragraph 23, a permitted sweetener may be used in the manufacture of extra jelly either wholly or partially as a replacement for sugar.

25. The following fruits must not be mixed with any other fruits in the manufacture of the product—

- (a) apples;
- (b) pears;
- (c) clingstone plums;

- (d) melons;
- (e) watermelons;
- (f) grapes;
- (g) pumpkins;
- (h) cucumbers;
- (i) tomatoes.

26. The quantity of fruit juice, or aqueous extract of fruit, or both, used for the manufacture of every 1,000 grams of the finished product must not be less than—

- (a) 350 grams in the case of any of the following—
 - (i) redcurrants;
 - (ii) rowanberries;
 - (iii) sea buckthorns;
 - (iv) blackcurrants;
 - (v) rosehips;
 - (vi) quinces;
- (b) 250 grams in the case of ginger;
- (c) 230 grams in the case of cashew apples;
- (d) 80 grams in the case of passion fruit; and
- (e) 450 grams in the case of any other fruit.

27. Where aqueous extract of fruit is used in the manufacture of the product, the quantities in subparagraphs (a) to (e) of paragraph 26 must be calculated after the deduction of the weight of water used in preparing the aqueous extract.

28. As well as the ingredients mentioned in paragraphs 23 and 24, the product may contain any of the following—

- (a) an authorised additional ingredient, which, where there are restrictions in Schedule 2 relating to its use, is used as specified in Schedule 2;
- (b) citrus fruit juice, in a product obtained from other kinds of fruit;
- (c) citrus peel;
- (d) leaves of *Pelargonium odoratissimum*, in a product made from quince.

29. Any raw materials used to manufacture the product in accordance with this Part that are mentioned in Schedule 3 must not have been treated except using an authorised treatment.

30. The product must have a soluble dry matter content of 60% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and

- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

PART 6

Marmalade

31. Marmalade is a mixture, brought to a suitable gelled consistency, of—

- (a) water;
- (b) sugar; and
- (c) fruit pulp, fruit purée, fruit juice, fruit peel or aqueous extract of fruit, or any combination thereof, in every case obtained from citrus fruit.

32. Notwithstanding paragraph 31(b), a permitted sweetener may be used in the manufacture of marmalade either wholly or partially as a replacement for sugar.

33. The quantity of citrus fruit used for the manufacture of every 1,000 grams of the finished product must not be less than 200 grams, of which not less than 75 grams must be obtained from the endocarp.

34. As well as the ingredients mentioned in paragraphs 31 and 32, the product may contain any of the following—

- (a) an authorised additional ingredient, which, where there are restrictions in Schedule 2 relating to its use, is used as specified in Schedule 2;
- (b) essential oils of citrus fruits.

35. Any raw materials used to manufacture the product in accordance with this Part that are mentioned in Schedule 3 must not have been treated except using an authorised treatment.

36. The product must have a soluble dry matter content of 60% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

PART 7

Jelly marmalade

37. Jelly marmalade complies with all of the requirements for marmalade in Part 6 but it contains no

insoluble matter except that it may contain small quantities of finely sliced peel.

PART 8

Sweetened chestnut purée

38. Sweetened chestnut purée is a mixture, brought to a suitable consistency, of water, sugar and puréed chestnuts.

39. Notwithstanding paragraph 38, a permitted sweetener may be used in the manufacture of sweetened chestnut purée either wholly or partially as a replacement for sugar.

40. Not less than 380 grams of puréed chestnuts must be used for the manufacture of every 1,000 grams of the finished product.

41. As well as the ingredients mentioned in paragraphs 38 and 39, the product may contain an authorised additional ingredient provided that, where there are restrictions in Schedule 2 relating to the use of that additional ingredient, it is used as specified in Schedule 2.

42. Any raw materials used to manufacture the product in accordance with this Part that are mentioned in Schedule 3 must not have been treated except using an authorised treatment.

43. The product must have a soluble dry matter content of 60% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

44. In this Part “chestnuts” (“*castan*”) means the fruit of the sweet chestnut tree (*Castanea sativa*).

PART 9

“X” curd

45. “X” curd is an emulsion of—

- (a) edible fat or oil (or both);
- (b) sugar;
- (c) whole egg or egg yolk (or both); and
- (d) fruit, fruit pulp, fruit purée, fruit juice, aqueous extract of fruit or essential oils of fruit or any combination of them.

46. Notwithstanding paragraph 45(b), a permitted sweetener may be used in “X” curd either wholly or partially as a replacement for sugar.

47. Apart from the ingredients specified in paragraph 45(d) no other flavouring material may be used in “X” curd to impart the taste or odour (or both the taste and odour) of a fruit.

48. As well as the ingredients mentioned in paragraphs 45 and 46, the product may, subject to paragraph 47, contain any other edible ingredients.

49. The quantity of fat or oil (or both) used for every 1,000 grams of the finished product must not be less than 40 grams.

50. Not less than 6.5 grams of egg yolk solids (whether derived from a whole egg ingredient, an egg yolk or both) must be used for every 1,000 grams of the finished product.

51. The quantity of fruit, fruit pulp, fruit purée, fruit juice, aqueous extract of fruit and essential oil of fruit used must be sufficient to characterise the finished product.

52. The product must have a soluble dry matter content of 65% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

53. This Part is to be read as if for “X” there were substituted—

- (a) the name of a particular kind or kinds of fruit in the case of a product in which the ingredients used in its preparation in accordance with paragraph 45(d) only come from that kind or kinds of fruit;
- (b) the words “mixed fruit” in the case of a product in which the ingredients used in its preparation in accordance with paragraph 45(d) come from more than one kind of fruit; or
- (c) the word “fruit” preceded by a number in the case of a product where the ingredients used in its preparation in accordance with paragraph 45(d) come from that number of kinds of fruit.

PART 10

Lemon cheese

54. Lemon cheese complies with all the requirements for “X” curd in Part 9 appropriate for lemon curd.

PART 11

“Y” flavour curd

55. “Y” flavour curd is an emulsion of—

- (a) edible fat or oil (or both);
- (b) sugar;
- (c) whole egg or egg yolk (or both); and
- (d) flavouring material added in order to impart the taste or odour (or both the taste and odour) of a fruit.

56. Notwithstanding paragraph 55(b), a permitted sweetener may be used in the manufacture of “Y” flavour curd either wholly or partially as a replacement for sugar.

57. As well as the ingredients mentioned in paragraphs 55 and 56, the product may contain any other edible ingredients.

58. The quantity of fat or oil (or both) used for every 1,000 grams of the finished product must not be less than 40 grams.

59. Not less than 6.5 grams of egg yolk solids (whether derived from a whole egg ingredient, an egg yolk or both) must be used for every 1,000 grams of the finished product.

60. The quantity of flavouring material used must be sufficient to characterise the finished product.

61. The product must have a soluble dry matter content of 65% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sugar has been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

62. This Part is to be read as if for “Y” there were substituted—

- (a) the name of a particular kind or kinds of fruit in the case of a product in which the flavouring material used in its preparation in accordance with paragraph 55(d) has been added to impart

the taste or odour (or both the taste and odour) of that kind or kinds of fruit; or

- (b) the words “mixed fruit” in the case of a product in which the flavouring material used in its preparation in accordance with paragraph 55(d) has been added to impart the taste or odour (or both the taste and odour) of more than one kind of fruit.

PART 12

Mincemeat

63. Mincemeat is a mixture of sweetening agents, vine fruits, citrus peel, suet or equivalent fat and vinegar or acetic acid, with or without other edible ingredients.

64. Notwithstanding paragraph 63, a permitted sweetener may be used in the manufacture of mincemeat either wholly or partially as a replacement for the sweetening agents.

65. Not less than 300 grams of vine fruits and citrus peel must be used for every 1,000 grams of the finished product, of which not less than 200 grams must be vine fruits.

66. Not less than 25 grams of suet or equivalent fat must be used for every 1,000 grams of the finished product.

67. The product must have a soluble dry matter content of 65% or more as determined by refractometer at 20°C except for—

- (a) a product in respect of which sweetening agents have been wholly or partially replaced by a permitted sweetener; and
- (b) a product in respect of which a reduced sugar claim is made in accordance with the conditions laid down in Regulation (EC) No 1924/2006.

68. In this Part—

“sweetening agents” (*“cyfryngau melysu”*) means—

- (a) any sugar product defined in the Annex to Directive 2001/111/EC;
- (b) brown sugar;
- (c) cane molasses;
- (d) honey;

“vine fruits” (*“ffrwythau gwinwydd”*) means currants, muscatels, raisins or sultanas or a mixture of any combination of those fruits.

PART 13

Interpretation of Schedule 1

69. In this Schedule “permitted sweetener” (“*melysydd a ganiateir*”) means any sweetener in so far as its use is permitted in a regulated product by Regulation (EC) No 1333/2008.

70. In the case of a regulated product that is listed in Part 1 of the table in Part 1 of this Schedule prepared from a mixture of different kinds of fruit, any reference in these Regulations to a minimum quantity of fruit is to be read as if the minimum quantity specified for the relevant kinds of fruit were reduced in proportion to the relative quantities of the kinds of fruit used to manufacture the product.

SCHEDULE 2 Regulation 2(1)

Authorised additional ingredients for regulated products that are listed in Part 1 of the table in Part 1 of Schedule 1

1. The following additional ingredients may be used in the manufacture of a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1—

- (a) liquid pectin;
- (b) spirits, wine and liqueur wine, nuts, aromatic herbs, spices, vanilla and vanilla extracts;
- (c) vanillin;
- (d) any substance permitted pursuant to Regulation (EC) No 1333/2008.

2. The following additional ingredients may be used in the manufacture of a regulated product that is listed in Part 1 of the table in Part 1 of Schedule 1 to the extent stated below—

- (a) honey, as a total or partial substitute for sugar;
- (b) edible oils and fats as anti-foaming agents.

SCHEDULE 3 Regulation 2(1)

Authorised treatments for regulated products that are listed in Part 1 of the table in Part 1 of Schedule 1

1. Fruit, fruit pulp, fruit purée and aqueous extracts of fruit may be—

- (a) heated, chilled or frozen;
- (b) freeze-dried; or
- (c) concentrated, to the extent that is technically possible.

2. Except when used for the manufacture of extra jam or extra jelly, fruit, fruit pulp, fruit purée and aqueous extracts of fruit may be treated using sulphur dioxide (E 220) or its salts (E 221, E 222, E 223, E 224, E 226 and E 227) as an aid to manufacture, provided that the maximum sulphur dioxide content laid down in Regulation (EC) No 1333/2008 is not exceeded.

3. Apart from being freeze-dried, apricots and plums used in the manufacture of jam may also be treated by any other drying process.

4. Citrus peel may be preserved in brine.

SCHEDULE 4 Regulation 2(3)

Ambulatory references

The EU instruments referred to in regulation 2(3) are—

- (a) Directive 2001/111/EC;
- (b) Directive 2001/113/EC;
- (c) Regulation (EC) No 1924/2006;
- (d) Regulation (EC) No 1333/2008;
- (e) Regulation (EU) No 1169/2011.

SCHEDULE 5 Regulation 10

Application and modifications of provisions of the Act

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Act</i>	<i>Modifications</i>
Section 3 (presumptions that food intended for human consumption)	In subsection (1), for “this Act” substitute “the Jam and Similar Products (Wales) Regulations 2018”.

Section 10(1) and (2) (improvement notices) For subsection (1) (improvement notices) substitute—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with any of regulations 4 to 8 of the Jam and Similar Products (Wales) Regulations 2018, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant regulation;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period (not being less than 14 days) as may be

	specified in the notice.”
Section 20 (offences due to fault of another person)	For “any of the preceding provisions of this Part” substitute “section 10(2), as applied by regulation 10 of the Jam and Similar Products (Wales) Regulations 2018”.
Section 21(1) and (5) (defence of due diligence)	In subsection (1), for “any of the preceding provisions of this Part” substitute “section 10(2), as applied by regulation 10 of the Jam and Similar Products (Wales) Regulations 2018”.
Section 30(8) (analysis etc. of samples)	For “this Act” substitute “the Jam and Similar Products (Wales) Regulations 2018”. In paragraph (a) omit “under subsection (6) above”.
Section 33 (obstruction etc. of officers)	In subsection (1), for “this Act” (in each place where it occurs) substitute “the Jam and Similar Products (Wales) Regulations 2018”.
Section 35(1)(1) and (2)(2) (punishment of offences)	In subsection (1), after “section 33(1) above”, insert “, as applied and modified by regulation 10 of, and Schedule 5 to, the Jam and Similar Products (Wales) Regulations 2018,”. After subsection (1), insert— “(1A) A person guilty of an offence under section 10(2), as applied by regulation 10 of the Jam and Similar Products (Wales)

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- (1) Section 35(1) is amended by paragraph 42 of Schedule 26 to the Criminal Justice Act 2003 (c. 44) from a date to be appointed and was amended by section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
- (2) Section 35(2) was amended by section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and S.I. 2015/664.

	Regulations 2018, is liable, on summary conviction, to a fine.”
	In subsection (2), for “any other offence under this Act”, substitute “an offence under section 33(2), as applied by regulation 10 of the Jam and Similar Products (Wales) Regulations 2018,”.
Section 36 (offences by bodies corporate)	In subsection (1), for “this Act” substitute “section 10(2), as applied by regulation 10 of the Jam and Similar Products (Wales) Regulations 2018,”.
Section 36A(1) (offences by Scottish partnerships)	For “this Act” substitute “section 10(2), as applied by regulation 10 of the Jam and Similar Products (Wales) Regulations 2018,”.
Section 37(1) and (6) (appeals to magistrates’ court)	For subsection (1) substitute— “(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 10 of the Jam and Similar Products (Wales) Regulations 2018, may appeal to a magistrates’ court.” In subsection (6)— (a) for “(3) or (4)” substitute “(1)”, and (b) in paragraph (a), omit “or to the sheriff”.
Section 39 (appeals against improvement notices)	For subsection (1) substitute— “(1) On an appeal

(1) Section 36A was inserted by paragraphs 7 and 16 of Schedule 5 to the 1999 Act.

	<p>against a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 10 of the Jam and Similar Products (Wales) Regulations 2018, the magistrates' court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.</p> <p>”</p> <p>In subsection (3), omit “for want of prosecution”.</p> <p>For “this Act” (in each place where it occurs) substitute “the Jam and Similar Products (Wales) Regulations 2018”.</p>
Section 44 (protection of officers acting in good faith)	

Explanatory Memorandum to the Jam and Similar Products (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the **Jam and Similar Products (Wales) Regulations 2018**

Vaughan Gething AM

Cabinet Secretary for Health and Social Services

5 March 2018

Explanatory Memorandum to the Jam and Similar Products (Wales) Regulations 2018

1. Description

The Regulations revoke and replace the Jam and Similar Products (Wales) Regulations 2004, principally in order to correct outdated references to other legislation. Currently, the 2004 Regulations refer to the labelling requirements of the Food Labelling Regulations 1996. However, the Food Labelling Regulations 1996 were revoked by the Food Information (Wales) Regulations 2014 so the references to the Food Labelling Regulations need to be removed. The Regulations also allow enforcement authorities to issue improvement notices for non-compliance with specified requirements instead of bringing criminal prosecutions and make provision about Welsh language labelling.

2. Matters of Special Interest to the Constitutional Affairs Committee

None.

3. Legislative Background

The Welsh Ministers have the required powers to make these amending Regulations under sections 6(4), 16(1), 17(1) and (2), 26(1) and (3), and 48(1) of the Food Safety Act 1990.

The powers given by these sections, which were vested in UK Government Ministers prior to devolution, were transferred to the National Assembly for Wales in 1999 by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and were subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations will be made by statutory instrument subject to the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

The Jam and Similar Products (Wales) Regulations 2004 (“the 2004 Regulations”) transpose the requirements of Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption. The Directive lays down compositional standards which products must meet in order to be labelled as “jam”, “jelly”, “marmalade” etc. (i.e. products must contain a minimum amount of characterising ingredients such as fruit and sugar).

Incorrect references to the Food Labelling Regulations 1996

Currently, the 2004 Regulations refer to the labelling requirements of the Food Labelling Regulations 1996. However, the Food Labelling Regulations 1996 were revoked by the Food Information (Wales) Regulations 2014. The references to the Food Labelling Regulations in the 2004 Regulations therefore need to be revoked.

Introduction of improvement notices

The 2004 Regulations provide that it is a criminal offence to fail to comply with the 2004 Regulations' requirements on the use of reserved descriptions and on labelling. Conviction is punishable by a fine to be determined by the magistrates (with no maximum fine level).

The Jam and Similar Products (Wales) Regulations 2018 will amend the current regulatory regime to allow enforcement officers to issue improvement notices for non-compliance, instead of proceeding to criminal prosecutions. A food business operator who fails to comply with the requirements of the improvement notice will be guilty of a criminal offence and may be prosecuted for not complying with the notice. This would follow the approach introduced in a number of food SIs for non-safety related offences.

Making provision for Welsh language labelling

The 2004 Regulations are silent as to whether manufacturers may display the Welsh language equivalent of the reserved descriptions alongside the mandatory English language text.

The 2018 Regulations will introduce provision to make clear that the reserved description may be displayed in Welsh (or any other language) alongside the English text, and will set out what those Welsh reserved descriptions are.

5. Consultation

The Food Standards Agency ran a shortened eight-week consultation from the 20 November 2017 to 15 January 2018. There were no responses to the consultation in Wales as a result there are no changes required to the Regulations.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared to accompany these Regulations as there are no changes to the current controls and therefore no identified costs to consumers, businesses or enforcement authorities associated with implementation of these Regulations.

SL(5)197 – The Jam and Similar Products (Wales) Regulations 2018

Background and Purpose

These Regulations, which apply in relation to Wales, provide for the continuing implementation of Council Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption (OJ No L 10, 12.1.2002, p. 67). They also retain existing national measures relating to curds, lemon cheese and mincemeat. The Regulations revoke and replace the Jam and Similar Products (Wales) Regulations 2004 (S.I. 2004/553 (W. 56)).

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

In Schedule 5, the entry for section 35 of the Food Safety Act 1990 inserts a new subsection (1A). Scottish legislation has already inserted a subsection (1A). That only applies to Scotland, though it does not say so explicitly. A duplication of the number of the provision risks causing confusion. An alternative number could have avoided that risk. This is an example of the complicated state of the statute book when different legislatures amend the same legislation in different ways and at different times.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of political or legal importance likely to be of interest to the Assembly.]

Implications arising from exiting the European Union

These Regulations update the way Council Directive 2001/113/EC is implemented in Wales. They contain cross-references to EU legislation, such as the reference in paragraph 7 of Schedule 1 to Regulation (EC) No 1924/2006 on nutrition and health claims made on foods. Seeking to facilitate trade in jams may mean that there is no urgent need to change these provisions following Brexit. However, it will be necessary for the Welsh Government to review provisions such as these to be satisfied as to which remain appropriate and which need to be revised or replaced to ensure the continuing quality of jams.

Government Response

The Welsh Government notes the point made in the 'merits scrutiny' element of the report.

Regulation 10 of, and Schedule 5 to, the Jam and Similar Products (Wales) Regulations 2018 do not textually amend section 35 of the Food Safety Act 1990 to insert new subsection (1A). Rather, they provide for the application and non-textual modification of section 35(1) and (2), including the insertion of subsection (1A) for the purposes of these Regulations only.



In our view, users of legislation in this field are likely to be well accustomed to this drafting method, requiring the user to read particular things into the text of the Act, which is regularly used in food standards/hygiene legislation; at least seven Wales-only SIs in this field have applied, and made similar modifications to, section 35(1) and (2) of the Food Safety Act 1990 since 2014.

Nevertheless, we will consider whether future subordinate legislation could be drafted in a way that makes clearer that this type of provision only makes non-textual modifications and does not textually amend any legislation.

Section 35(1A) of the Food Safety Act 1990, as inserted by the Scottish legislation, does not form part of the law of England and Wales. We note, however, that the effect of the Scottish amendment is not made clear on the free-to-use legal database and on at least once commercial database and that this in itself may cause confusion as to what provisions form part of the law of England and Wales in this respect.

Legal Advisers
Constitutional and Legislative Affairs Committee
March 2018



Agenda Item 3.4

Draft Order laid before the National Assembly for Wales under section 17(2)(c) of the Agricultural Sector (Wales) Act 2014, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2018 No. (W.)

AGRICULTURE, WALES

The Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2018

EXPLANATORY NOTE

(This note is not part of the Order)

The effect of section 14(1) of the Agricultural Sector (Wales) Act 2014 (“the Act”) is that the Act is to lapse on 30 July 2018, unless an order is made by the Welsh Ministers under section 14(2) providing that the Act is to continue in effect. This Order is such an order and provides that the Act is to continue in effect.

The Regulatory Impact Assessment applicable to this Order is obtainable from the Department of Energy, Planning and Rural Affairs, Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.gov.wales.

Draft Order laid before the National Assembly for Wales under section 17(2)(c) of the Agricultural Sector (Wales) Act 2014, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

AGRICULTURE, WALES

**The Agricultural Sector (Wales) Act
2014 (Continuation of Effect) Order
2018**

Made

*Coming into force in accordance with article
1(2)*

The Welsh Ministers, in exercise of the powers conferred by section 14(2) of the Agricultural Sector (Wales) Act 2014(1), make the following Order.

In accordance with section 17(2)(c) of the Agricultural Sector (Wales) Act 2014, a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales.

Title and commencement

1.—(1) The title of this Order is the Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2018.

(2) This Order comes into force on the day following the day on which it is made.

Continuation of effect of the Agricultural (Wales) Sector Act 2014

2. The Agricultural Sector (Wales) Act 2014 continues in effect despite section 14(1) of the Act.

(1) 2014 anaw 6.

Cabinet Secretary for Energy, Planning and Rural
Affairs, one of the Welsh Ministers
Date



Llywodraeth Cymru
Welsh Government

The Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2018

Explanatory Memorandum - incorporating the Regulatory
Impact Assessment

March 2018

Explanatory Memorandum to The Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2018

This Explanatory Memorandum has been prepared by the Department for the Energy Planning and Rural Affairs Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2018. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM

Cabinet Secretary for Energy Planning and Rural Affairs
5 March 2018

1. Description

The Agricultural Sector (Wales) Act 2014 (the Act) provides a statutory agricultural minimum wage regime in Wales. The Act supports the functioning of the agricultural sector by providing protection and minimum rates of pay for various categories of workers, including young workers, apprentices and trainees. It supports career progression as well as personal and professional development by setting different minimum rates for 6 grades of worker, depending on skills, qualifications, experience and level of responsibility.

The Act, at Section 14, includes a “Sunset clause” which provides that the Act lapses and ceases to have effect on 30 July 2018 unless an Order is made by the Welsh Ministers preserving its effect. The Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2014 (the Order) ensures the Act will continue in effect.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

The power to make the Order is set out in section 14 of the Act. Section 14 also contains the “Sunset” clause setting out that the Act will cease to have effect on 30 July 2018 unless an Order is made by the Welsh Ministers preserving it. A section 14 Order to preserve the Act may only be made once the review period set out in section 13 has expired (i.e. after 30 July 2017), but before 30 July 2018.

Section 17(2) of the Act provides that an order made pursuant to section 14 cannot be made until it has been laid before, and approved by a resolution of, the National Assembly for Wales (i.e. via the affirmative procedure).

4. Purpose & intended effect of the policy introduced by this legislation

The purpose of the Order is to continue the effect of the Agricultural Sector (Wales) Act 2014. This would retain the comprehensive protection for agricultural workers in Wales offered by the Act.

This is in line with wider Welsh Government objectives on reducing poverty and increasing prosperity for all. The policy aim in Wales is to facilitate the effective function of agriculture in Wales by safeguarding the working conditions for employees who are the key resource in the sector and to provide the foundation for a resilient, sustainable and well-trained agricultural sector in Wales. This is essential to meet the future challenges that face agriculture, such as the changes in the market for produce and trading conditions, climate change, skills shortages and food security issues.

5. Consultation

A 12 week public consultation on the review of the operation and effect of the Act during the review period (30 July 2014 to 30 July 2017) was conducted, as required by section 13(3) of the Act. The consultation document was made available on the Welsh Government's website and may be requested by contacting the mailbox SLMenquiries@gov.wales or sending a request in writing to Agricultural Wages, Welsh Government Office, Rhodfa Padarn, Llandbadarn Fawr, Aberystwyth, Ceredigion SY23 3UR.

Key stakeholders, including the farming unions, UNITE, agricultural colleges and industry bodies such as Hybu Cig Cymru and National Sheep Association were sent the consultation documents directly on the day the consultation opened.

Altogether 12 responses were received. 5 supported the continuance of the Act unequivocally, 4 gave qualified support, 1 was opposed and 2 made no comment. Respondents included NFU Cymru, FUW, UNITE, The Tenant Farmers Association Cymru (TFA Cymru) and the ALP – Association of Labour Providers.

6. Provisions of the Order

These are set out in the Explanatory Notes to the Order.

7. Costs

No costing associated with communicating the changes introduced by the Order to stakeholders have been undertaken. Costs of staff time will be met from existing provision.

No separate costing to Welsh Government associated with inspection/enforcement work should the Act be continued. It is difficult to predict accurately the number of cases that may come forward but these will be met from existing provision.

There would be an annual cost involved with the operation of the Panel should the Act be continued. This would include expenses incurred by the Panel individually, meeting room costs, legal and research costs. This is estimated to be an average annual cost of approximately £60,000.

The cost to the industry of complying with future agricultural wages orders will vary according to the agricultural minimum rates of pay and allowances set, the cost of training and the impact of inflation on workers. The National Minimum/Living Wage legislation has to be respected irrespective of the rates of AMW set by agricultural wages orders.

A Regulatory Impact Assessment has been prepared and is attached below.

Annex A – Regulatory Impact Assessment

This Regulatory Impact Assessment (RIA) provides a *rapid and preliminary assessment* of three different options (including Do Nothing) in relation to the continuance, or otherwise, of the provisions of the Agricultural Sector (Wales) Act 2014. The Act enables:

- The establishment of the Agricultural Advisory Panel for Wales to advise the Welsh Ministers on the agricultural sector in Wales;
- The making of agricultural Orders which set the terms and conditions for agricultural workers, and;
- The enforcement of the terms and conditions of those Orders.

As a part of this assessment, broad categories of costs and benefits have been identified for each option, and are set out in the following sections. Where practicable these costs and benefits have been estimated. There are important limitations in the available statistical data from which to reasonably assess likely impacts, including around the potential scale of transfers between farm businesses and employees in respect of wages and other terms and conditions. Given these limitations, and the more general uncertainties faced in relation to unknown future decisions about the contents of prospective Agricultural Wages Orders, an overall best estimate of costs and benefits cannot be presented. Wider evidence and qualitative assessment is used to inform around likely effects and trade-offs under the alternative options.

More broadly, the absence of a fully monetised assessment should be considered in the light of the purpose of the Order in seeking to preserve a long-standing and pre-existing regulatory regime for agricultural workers, rather than to introduce a novel arrangement.

OPTIONS

This RIA assesses the costs and benefits of three alternative options:

Option 1 – Do Nothing (the Order is not made)

In this option, the current legislation and provisions of the Agricultural Sector (Wales) Act would cease to have effect after the 30th July 2018. From this point onwards farm workers in Wales would no longer be subject to the continued additional statutory protection provided through an industry-specific structure of graded minimum wage rates and associated terms and conditions, including in relation to holiday entitlements, agricultural sick pay, training entitlements and relevant allowances. Apprentices and young workers in agriculture in Wales would also no longer be subject to specific statutory provisions. Farm workers in Wales would, however, remain subject to the UK National Minimum Wage (NMW) and National Living Wage (NLW) legislative framework.

Over time, as contractual arrangements for farm workers in Wales previously based on the system of agricultural minimum wages ceased to have effect, such as for new entrants to agricultural work, wage rates and terms and conditions above the NMW/NLW minima would become determined by individual negotiations in the context of prevailing labour market conditions.

As a variant of this option, it has been suggested that it might be possible to consider a non-statutory system of support whereby agricultural employers and workers could follow a non-statutory best practice guide in relation to farm worker wages and other terms of employment. However, in the absence of statutory underpinnings and enforcement measures, it is highly uncertain as to the likely adherence to such an approach, and hence on the consequential distribution of costs and benefits. At the extremes, the major effects would seem likely to be bounded by the impacts outlined in Options 1 and 2. No further assessment has been conducted around this option as a part of this assessment.

Option 2 – Introduce the Order without a statutory time limit

This option would maintain the current legislative protection offered by the Agricultural Sector (Wales) Act for an unspecified period - existing provisions would remain in place and would be amended in accordance with future Agricultural Wages Orders. Agricultural Wages Orders would continue to set out minimum wage rates for different grades of workers, as well as provisions for apprentices and young workers in agriculture, and also relevant broader terms and conditions. The statutory protection offered under this regime would be in addition to that of the NMW/NLM legislation.

The effects of this legislation would continue to be monitored and reviewed according to Welsh Government procedures and National Assembly for Wales's scrutiny. Repeal would remain an option, as it is for all legislation should the policy change.

Option 3 - Introduce the Order including a statutory time limit

A “sunset clause” was included within the Agricultural Sector (Wales) Act as part of the introduction of this legislation using emergency procedures. Introducing a time limited continuance would retain the provisions of the existing legislation for a defined time period, but preserving these effects after that time would then require an entirely new Act.

For the purpose of this analysis, it is considered that in the period of the time limited continuance this Option would effectively operate as in Option 2. In the absence of a subsequent Act, and after this duration had lapsed, this would then revert to a position consistent with Option 1.

Costs and Benefits

COSTS

Option 1 - Do Nothing (the Order is not made)

Agriculture is now the only industry in Wales where specific statutory wage setting intervention (beyond the NMW/NLW) is in place. The Do Nothing option represents the baseline – whereby, in the absence of the Order, the additional statutory provisions for minimum wages and terms and conditions for farm workers as provided for under the 2014 Act, would cease, and new Agricultural Wages Orders would not be subsequently made. This baseline is used to assess the (additional) costs and benefits, and distributional effects, of the other considered options.

The full impact of (reverting to) this position would not materialise immediately given the accrued rights of farm workers under contracts existing at the time of the expiry of the legislation. Adjustments would be expected to occur over a period of time whereby new workers enter the industry and where the contracts of incumbent workers lapse. The impacts of the removal of the provisions would depend, at least in part, on the behavioural responses of employers. Over time, agricultural wages and terms and conditions would increasingly reflect labour market conditions, with the individual contractual outcomes being agreed directly through negotiations between farmers and workers, but still being underpinned by NMW/NLW requirements. Costs to farm workers will only materialise to the extent that negotiated wages reflecting market conditions were below that which would have operated under the AWO.

Although this option is taken as the baseline, it should be noted that there could potentially be some small-scale immediate transition costs linked to this option, for example around communicating with and informing stakeholders (e.g. farm businesses, unions and workers) about the changes that would apply. No firm cost estimates for any such requirement have been produced as part of this assessment. In the absence of the industry-specific agricultural minimum wages framework and enforcement activities currently operated under the Agricultural Sector (Wales) Act regime, there could potentially be some additional costs associated with some part of enforcement activities being transferred to Other Government Departments (principally HMRC) handling NMW/NLW enforcement. These potential costs have not been estimated, and would represent a transfer within the public sector. Some legacy enforcement actions might also remain to be managed by the Welsh Government - these would be assumed to phase out over time.

Option 2 – Introduce the Order without a statutory time limit

The costs and benefits outlined in the following sections aim to reflect those additional to the baseline (Do Nothing) option.

Whilst there is reasonable information upon which to make estimates of some (fairly narrow) costs and benefits, it is important to recognise that current data and evidence limitations significantly inhibit the extent to which firm estimates of the more

significant transfers and wider impacts can be established; an evaluation to establish the economic impact of the Act to date, and associated AWOs, has yet to be undertaken, and therefore is not available as a source of evidence to inform this RIA.

Administrative Costs

The expected additional administrative costs, both transition and recurrent, and consideration of the groups affected by such costs, are considered in the following sections.

Transition Costs

Transition costs reflect one-off activities associated with the respective option(s). Given that this Option would continue with the statutory provisions already currently in operation in Wales, there are not expected to be any significant additional transition costs. Some limited communications costs may be incurred in communicating the continuation of these provisions (which would be expected to be very limited in scale). No one-off additional training activities are envisaged as required to support this option.

Recurrent (Annual) Costs

(i) Costs to Government

There are a number of additional on-going costs to the Welsh Government associated with the functioning of the Agricultural Advisory Panel for Wales, and required administrative support, as well as the associated broader enforcement activities. An estimate of the annual costs associated with each of these elements is outlined below:

- **Direct Costs of the Panel**

The Agricultural Advisory Panel for Wales (the 'Panel') is required to meet at least three times each year in order to be able to effectively fulfil their responsibilities. The initial estimates of the potential broad costs of operating various forms of the Panel were provided in the RIA to accompany its establishment, with such estimates varying depending on the scale of membership and activities¹.

Since the Panel is now functioning, recurring annual cost estimates can now be updated by recent actual cost information. The costs of the Panel include expenses for meeting attendance, research and external legal advice. The direct expenditure on the Panel since its establishment has been around £50,000 - 60,000 per annum. In order to continue to function in broadly its current form it is assumed that these costs, in real terms, would remain at around £60,000 per annum (changes to meeting frequency or the extent of Panel activities would impact on such costs).

¹ <http://www.assembly.wales/laid%20documents/sub-ld10544-em/sub-ld10544-em-e.pdf>

- Administrative support

The Welsh Government also provides administrative support to the Panel, and issues guidance to assist employers and employees understand the applicable statutory requirements. The guidance element is updated as required following new Agricultural Wages Orders, and is assumed to involve minimal additional costs to produce and disseminate.

Using Welsh Government staff resource for the purpose of supporting the functioning of the Panel carries with it an associated opportunity cost². This can be roughly estimated as the sum of utilised staff time multiplied by the relevant salaries and non-wage labour costs of staff involved; the present support function is principally provided by one full-time Management Band (Welsh Government Pay Band MB2) grade. Based on the current internal guidance on annual gross costs for Welsh Government staff, the opportunity costs of such staff resource is estimated to be around £46,500 per annum³.

- Inspection and Enforcement

Welsh Government officials have responsibility for dealing with enforcement issues associated with the agricultural minimum wages legislation as they arise, though handling may in some cases also involve commissioned specialist advice. Between the 1st April 2016 and 31st March 2017 there were 42 enquiries. Since the Act was implemented only three formal complaints have come forward to the Welsh Government.

It is not possible to reliably predict the number of future cases that may emerge (and hence whether there would need to be any changes to current resources to deal with such issues). Based on the estimates provided in the previous RIAs, relating to expected staff and associated costs, but also cross-checked against updated staff costs, enforcement costs are assumed to remain of the order of £3,000 to £4,000 per annum – to avoid double-counting it should be noted that currently given the limited enforcement requirements these are absorbed within the overall cost estimate for administrative support (the functions are undertaken by the same individual).

Over an assumed time horizon of a 10 year period, the present cost of these activities is estimated to be of the order of £950,000⁴.

(ii) Direct Costs to Farm Businesses

Compared to the baseline, under this option farm businesses in Wales with employees covered by the provisions of the agricultural minimum wages

² Opportunity costs (or economic cost) reflect the value of the most valuable of alternative uses, in this case of re-deployment to meet other Welsh Government priorities.

³ Rounded to the nearest £100. The figures include National Insurance and Pension Contributions but do not include accommodation, ICT or any other central overhead cost, and hence may offer some underestimate.

⁴ Based on a 3.5% discount rate, consistent with HM Treasury economic appraisal guidance: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

requirements would be subject to the additional administrative burden associated with ensuring sufficient familiarisation with the Act and AWOs as they come into effect, as well as those of adherence to the broader NMW/NLW requirements (only the latter applying in the case of Do Nothing).

As a broad estimate of these familiarisation costs - the Business Population Estimates⁵ produced by BEIS estimate that there were around 14,890 businesses in the agriculture, forestry and fishing industry in Wales in 2017 (see Table 9). Of these, an estimated 2,980 had employees (around 85% of these having either 1 or between 2-4 employees). Based on the provisional estimates for the 2017 ONS Annual Survey of Hours and Earnings (ASHE)⁶, the average gross hourly pay for Managers and proprietors in agriculture and horticulture in Wales, excluding overtime, was £11.73 (median = £10.69). Assuming an additional administrative requirement of 1 hour per employer to familiarise and update relevant information, and including 30% non-wage labour costs, this implies a basic annual direct cost associated with familiarisation to ensure compliance⁷ of around £41,400 to £45,400 (or taking a rough average, a present value of costs of around £375,000 over an assumed 10 year time horizon⁸).

These estimates are, of course, dependent on the assumed time required for annual familiarisation – in practice this could be higher or lower, and likely varies across farm businesses. It is also possible that such decision makers would also be more likely to be at the higher end of the respective pay distribution, which would serve to raise these cost estimates somewhat. Mechanically, changes to this estimate over time would also depend on the frequency of AWOs, the number of farm employers, changes to the estimates of their respective average wage rates, and also of the extent of familiarisation required (likely to be lower under less complicated requirements).

Policy and Compliance Costs

- Costs to Farm Businesses

Agricultural Wages Orders, made under the provisions of the Act, set out the statutory minimum requirements across a range of employment conditions – graded minimum wages rates, overtime rates, holiday, training and agricultural sick pay entitlements, allowances for accommodation, dogs and on-call, night work supplement, and rest breaks.

Specifying such employment conditions on a statutory basis provides additional certainty to farm workers, but some restrictions to farmers over their flexibility to negotiate new wages and terms and conditions. According to commonly applied

⁵ <https://www.gov.uk/government/statistics/business-population-estimates-2017>, Department for Business, Energy and Industrial Strategy, 30th November 2017. Number of businesses in the private sector and their associated employment and turnover, by number of employees and industry section in Wales, start 2017, Table 21.

⁶ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/dataset/regionbyoccupation4digitsoc2010ashtable15>

⁷ These cost estimates have been rounded to the nearest £100 given uncertainties around their exact values.

⁸ Based on a 3.5% discount rate consistent with HM Treasury appraisal guidance.

economic theory, by holding wage rates and terms and conditions above the market clearing level (to the extent that this occurs), this would in effect place additional costs on employers than would otherwise be the case, and would give rise to a transfer in the form of higher labour costs to farm businesses but benefits to recipient farm workers⁹. The estimate of the absolute value of these transfers would depend on the scale of the proposed changes to minimum wage rates and broader set of allowances and conditions for each worker type under new AWOs, the number of employees at each grade, compliance with changes to the minimum wage rates (assumed to be full compliance for a statutory requirement¹⁰) and if workers were already paid a negotiated wage rate above the relevant minimum, and as such whether wage rates were increased to the new statutory minimum or increased above this rate.

Previous RIAs published alongside each of the Agricultural Wages Orders in Wales have tried to provide a very broad, illustrative estimate of the potential scale of the additional wage costs for Grade 1-6 agricultural workers following updated minimum wage rates based on a simplified pay model. In this estimation approach, the additional costs of proposed minimum wage rate increases for basic pay and overtime for each worker type (full-time, part-time and casual) are estimated by multiplying the increase in wages per hour for the respective grade by an assumed number of hours worked per week, the number of weeks worked per year and number of assumed workers of each type (the additional costs of the Wales-specific legislative requirements taking account of increases due to the NLW).

However, such estimates have proved to be subject to important limitations: up-to-date and Wales-specific figures on the number of workers in each agricultural grade are not available¹¹. Instead these calculations have necessarily made use of now rather dated estimates provided from the (discontinued) Defra survey of Earnings and Hours of Agricultural and Horticultural Workers (for England and Wales)¹² (see Table 4). The employed calculations attempt to use the proportions of workers by Agricultural Wages Board (AWB) grade for the period up to 2010 for England and Wales and then translate these into approximate AWO grade employment in Wales using the current farm worker dis-aggregations available from the annual June

⁹ Though this model is often assumed to provide an adequate description, it is worth noting that alternative economic models may yield somewhat different predictions. Unlike a model of perfect competition, where the wage would equal the marginal product of labour, and hence increased wages would be expected to lead to decreased employment, in the case where a firm had some degree of market power the wage may instead be set below the marginal product of labour so that under a minimum wage rate condition firms may receive lower profits but some of the potential adverse effects on employment may be mitigated. Limited UK evidence has been identified in the time available from which to more fully consider this possibility in respect of domestic agriculture. However, such monopsony power may arise from characteristics such as information asymmetries, search frictions, and limited labour mobility, as well as more directly from firm concentration – of which some have a degree of *a priori* plausibility for farm workers predominantly based in rural areas.

¹⁰ Reliable statistics on overall compliance rates have not been identified.

¹¹ A research study conducted by ADAS investigated the collection of such information on a Wales basis, but due to low response rates the quality of data proved insufficient as a sound basis for such analysis.

¹² <http://webarchive.nationalarchives.gov.uk/20130125190634/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf>

Survey of Agriculture and Horticulture¹³ (headcount based estimates of work on agricultural holdings are provided in Table 2).

Given that the assumptions around graded worker distributions may be increasingly challenged in the light of on-going data constraints, and the lack of forward information on future minimum wage rates (since these are only set under future, unknown AWOs), best estimates of the potential scale of such future transfers are not produced here. However, in order purely to provide to some broader context, this approach has previously suggested that transfers to farm workers in Wales as a consequence of the uprating of minimum wage rates could have been of the order of £7.7m for the 2016 AWO (covering a multi-year period), and around £1.2m for the AWO 2017 (assuming the full differences between previous and revised minimum wages are reflected in the transfers). However, these estimates need not necessarily be reflective of what may be required under future Orders, and therefore provide only a limited guide.

To further provide some sense of proportion, compensation of employees and total income from farming (TIFF)¹⁴ were estimated (forecast) to be £125m and £157m, respectively, in 2016 – the latest figures available. Recent trends in farm business incomes (essentially, net profits) also provide some perspective on the relative scale of such transfers¹⁵.

There are also further important limitations in respect of data on farm worker allowances and other terms and conditions, such as leave entitlements, accommodation allowances¹⁶ and agricultural sick pay (payable at a higher rate than statutory sick pay¹⁷). Consequently, no specific estimates have been projected for the purpose of this RIA (or in those for the previous AWOs) of the additional non-wage labour costs to farmers arising from enhanced statutory protections under this Option. In practice, it is not known to what extent farmers would in any case offer less favourable terms in the absence of AWO protections – there are important issues around the retention and motivation of current workers, as well as the

¹³ <http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>

¹⁴ <http://gov.wales/docs/statistics/2017/170323-aggregate-agricultural-output-income-2016-en.pdf>

Total income from farming (TIFF) is a measure of income generated by production within the agriculture industry, including subsidies. It represents business profits plus remuneration for work done by owners and other unpaid workers.

¹⁵ <http://gov.wales/docs/statistics/2017/171213-farm-incomes-2016-17-en.pdf>

¹⁶ There appears to be limited data available on the extent of accommodation provision for farm workers. One study carried out around 2000 by CEAS “Review of the Minimum Wage Arrangements in Agriculture: England & Wales”, suggested that such provision was most limited in Wales with only 3% of holdings providing accommodation, whilst being around 31% of holdings in the East/South East of England.

<http://webarchive.nationalarchives.gov.uk/20110318181618/http://www.defra.gov.uk/evidence/economics/foodfarm/evaluation/minwage/fullrep.pdf>

Reliable statistics have not been identified more specifically on the proportion of farm workers who are required to live in their accommodation as part of their contract, and hence subject to the accommodation provisions of the AWO.

¹⁷ Since statutory sick pay is incorporated within ASP the costs for government are assumed to be largely unaffected.

recruitment of new workers - and this would be particularly the case in a labour market with suggested skills shortages¹⁸.

Whilst the scale of expected transfers between farmers and workers is subject to important estimation issues, an significant point to reflect is that the net impact of the sum of these transfers at an aggregate level is broadly zero (though as discussed in the Benefits sections there are sound economic arguments for perhaps giving higher weight to gains received by those with lower incomes (and wealth)¹⁹.

Wider Costs

Work by the Low Pay Commission (LPC) in respect of the National Living Wage suggests a number of potential general business effects that may arise in response to statutory increases to minimum wage rates - though profits, prices, productivity, investment, employment and pay differentials.

In respect of business profits, one approach that may be used to adjust to increases in the minimum wage could be simply for the farm business owner to accept lower profits (arising from the higher overall labour costs). Indicators of farm profitability (and insolvencies) are, in practice, influenced by a much wider range of factors, thus complicating direct assessment of such effects. However, some outline of the (recent) contribution of paid farm labour to total input costs, and hence through to farm incomes, is described in later sections.

Though it may be argued in theory that farm businesses could potentially pass-on any rises in labour costs through to the subsequent supply chain (and possibly ultimately onto consumers) in practice, given the extent of production in Wales which may be considered largely as undifferentiated farm outputs (particularly in the case of liquid milk, but also to some extent beef and sheep) a perhaps more realistic assumption may be that of farmers as price-takers, limiting the extent to which such cost pass-through could be feasibly achieved.

A focus on improving productivity may also be pursued as a potential strategy to compensate for input cost increases - though evidence on the extent of use of such an approach in the context of domestic agriculture appears fairly limited. Investment activities could conceivably be affected in either direction – increased labour costs could have the effect of reducing the scope for making efficiency-enhancing investments or could alternatively lead to an increased need to undertake or bring forward such investments to improve competitiveness. There are likely to be higher adverse effects if such profits would otherwise have been used for productivity

¹⁸ The UKCES Employer Skills Survey 2015 provides some data on vacancies, retention difficulties, skills gaps and training provision by employers in the agricultural industry in Wales compared to other industries. Of these issues, this source is suggestive of more pronounced weaknesses in training provision in agriculture – other measures seem relatively less of an issue for this industry in Wales, at least at the time of the survey.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526082/ESS_2015_Wales_Slide_Pack_May_.pdf

<https://www.gov.uk/government/publications/ukces-employer-skills-survey-2015-wales-toolkit>

¹⁹ Information on the net wealth (assets less liabilities) position of different farm types is provided in section E - Assets and Liabilities of the *Farm Incomes* statistical release:

<http://gov.wales/docs/statistics/2017/171213-farm-incomes-2016-17-en.pdf>

improving investment rather than in supporting the general consumption of farmers from business drawings.

Overall, there is insufficient evidence from which to assess the likely outcomes in terms of productivity improvements. The scope to make such farm-level productivity improvements will also depend on a range of factors, including the characteristics, motivation and capacity of farms businesses to adopt new technologies, and the scope for economies of scale.

In terms of the possible effects (at the farm-level) on employed labour arising from increasing minimum wages (the cost of unit labour inputs), this could take effect through reducing the numbers of paid employees (and perhaps substituting for unpaid family labour), reducing hours of paid employment for workers²⁰, delaying hiring, and/or moderating pay differentials through lower pay rises for relatively higher-paid employees – though the latter strategy may not be sustainable on a longer term basis. The AMW regime to some extent may directly addresses part of the final point, limiting the scope for on-going unplanned wage rate convergence – however, by restricting flexibility on this dimension it seems likely that adjustments would then operate through one of the alternative mechanisms.

Recent AWOs in Wales have been brought into effect in the context of employment rates around record high levels, but with recent productivity and wage growth in general being quite weak (LPC, 2017). The broader economic and labour market conditions prevailing at the time of any future AWOs will be important in influencing likely business-level as well as consequential wider effects, and hence careful economic assessment and monitoring of emerging impacts will be required as part of limiting adverse effects.

- Impact on employment and hours

The economic effects of minimum wages, and particularly the effects on aggregate or industry-level employment, have been subject to considerable contention, and a significant volume of research. However, such studies have generally been limited in coverage to the assessment of the impacts of single minimum wage floors, often with economy wider coverage, rather than multiple graded minima for a specific industry, as applies in respect of the statutory agricultural minimum wages regime in Wales. Fundamentally, trying to establish the net effects of minimum wages is a highly challenging empirical issue.

As outlined earlier and under commonly applied economic theory, raising wage rates above what would otherwise have been the market clearing rate (i.e. as largely relevant under Do Nothing) would be expected to give rise to adverse impacts on employment and/or hours of paid work. Any reductions in employment as a consequence of higher statutory minimum wage rates would represent a real economic cost rather than a transfer. In practice, there has been somewhat inconsistent evidence on the effects of minimum wage rates²¹, though in many

²⁰ Some evidence is tentatively suggestive that higher minimum wages may at the margins could lead to some modest reductions in hours of employment.

²¹ Previous analysis by Defra in relation to abolishing the former Agricultural Wages Board for England and Wales suggested that the AWB may have contributed to keeping wages above the

studies the estimated impacts on employment have tended to be relatively modest. Favourable labour market conditions might be expected to act to moderate the extent of such adverse effects.

As part of the RIA commissioned in support of the 2016 AWO, a review of the economic literature led the authors to make use of an assumed average minimum wage elasticity of -0.19, along with a median of -0.03. For the wage increases adopted under the respective AWOs, the estimated impacts on employment were employment reductions of some 110 workers and less than 20 workers, respectively, based on the higher mean elasticity estimates (in both cases the application of the median elasticity would indicate more modest employment effects).

These somewhat speculative estimates were produced using assumed elasticities drawn from a wider literature (rather than actual outcomes) trying to get some broad sense of the possible effects of the increases in minimum wages proposed as part of these specific AWOs. Importantly there may also be variations in elasticities across farm types and sizes, but insufficient evidence is available at this level of detail, and also not available in respect of each of the individual minimum wage grades. Evaluation evidence is not as yet available to establish estimates of the actual impacts on employment in Wales as a consequence of the provisions of previous AWOs.

Future impacts will depend both on the scale of proposed changes compared to prevailing market conditions²², and the ability/preferences of farm businesses to absorb such costs, potentially involving some substitution with own labour and capital. Improvements in agricultural productivity will also be influential in the affordability of such pay increases. In the absence of specific information about potential future minimum wage rate changes, no estimates are made regarding the potential impacts on agricultural employment.

The available evidence does however suggest that minimum wage increases need to be carefully considered in respect of broader labour market conditions, and there are reasonable grounds for anticipating an increased risk of such adverse outcomes if minimum wages are set inappropriately high in industries subject to lower profits, as is the case for at least some agricultural sectors. Such issues are likely to need particularly careful evidence-based consideration in the context of possible “shocks”, (including possibly arising from eventual Brexit decisions) in the absence of operating under a more general market clearing wage determination process (above the NMW/NLW)²³.

counterfactual, and also led to reduced wage inequality within the industry though increases at the low part of the pay distribution. Some modest, but not entirely consistent, effects on employment were also suggested in respect of the considered time periods used in the analysis.

²² The LPC's remit is to advise on the path of the NLW to reach the UK Government target of 60% of median earnings by 2020, and to recommend levels for the minimum wage rates that will assist as many low-paid workers as possible without any significant adverse impact on employment or the economy. For some industries in Wales at least, a UK NLW, operating under this objective may already represent something at the upper end of tolerance without adverse effects for relatively low wage industries such as agriculture.

²³ Some consideration to the effects on the domestic agricultural industry under selected scenarios of future alternative UK-EU trade arrangements are considered in the FAPRI modelling - <https://www.afbini.gov.uk/publications/afbi-report-post-brexite-trade-agreements-uk-agriculture>.

- Impacts on Competitiveness and Profitability

Like Wales, both Scotland and Northern Ireland have retained a form of agricultural wages board. However, these provisions were abolished in respect of England in 2013; as a consequence there now exists some increased flexibility for farmers to set wages and terms and conditions with their workers. Depending on how the wage rates and terms and conditions negotiated²⁴ in England evolve under these altered arrangements compared to those in Wales, it is possible that over time some degree of a wage differential might well emerge between farms in Wales and those in England, at least at some points of the wage distribution.

Relatively higher wage rates for workers in Wales with similar skills attributes and productivity, than in England, would potentially affect the cost base of farms in Wales, and consequently provide some (perhaps limited) risk of adverse effects on the competitive position of Welsh producers (in the absence of offsetting positive incentives also generated through such a regime – discussed in later sections).

Both regimes in England and Wales (as elsewhere in the UK) are underpinned by the same NMW/NLW legislation, and at least to this point the minimum wage rates of Grade 1 agricultural workers in Wales have been closely aligned with the NLW/NMW; but there could also be some effects emerging through any possible compression of the wage distribution for higher skilled workers in England. More generally, providing that labour costs do not diverge too significantly, such effects are likely to be relatively marginal in overall terms – but may have more importance for some farm activities. Again, materially different wage rates for similarly skilled agricultural workers could also impact on recruitment, but again evidence on this point to date is limited.

Since England has only operated without the effects of the Agricultural Wages Board (AWB) for a limited period of time, and for some part of this many workers would still have been either subject to previously established contracts (or new wage rates reflective of previous rates), research evidence appears to be largely absent. Meaningful analysis of “raw” earnings survey data is also further complicated by the influence of wider economic as well as farm sector-specific conditions – given differences in industry structure between England and Wales.

Given the ‘noise’ in the survey estimates of gross hourly pay and paid hours for agricultural workers in Wales and the UK (shown in Tables 5-8), it is not possible to identify a sense of whether postulated effects are indeed emerging (also inhibited by the use of accessible UK data, which will include effects in the Devolved Administrations rather than just England). This issue should be fully considered as part of future monitoring and evaluation requirements.

²⁴ Since, the broader evidence is suggestive of a proportion of farm workers being paid above agricultural minimum wage rates, it is likely that a significant number may already be reaching agreed wage rates through individual negotiations, and as such would therefore not be directly affected by the removal for additional statutory provisions. However, the AWO is broader than wages, and also sets conditions around progression, training and other allowances. It is unclear what impact removal of such provisions would have on these other dimensions.

In addition to these economic factors, operating somewhat different systems in Wales and England might also be expected to offer some additional farm management challenges, in particular for cross-border farms and also where using similar labour for performing tasks on farm where some are covered by the AMW and other parts by the NLW/NMW. No evidence has been identified regarding the extent to which this has been an issue.

Profitability and affordability - impacts by farm sector

There may be expected to be some variation in the potential impacts of this Option in terms of the effects on the profitability of different farm types due to differences in the extent of utilisation of paid and casual labour. These effects will depend both on future changes in agricultural minimum wage rates and terms and conditions (which are not known in advance) and also the individual position of farms. Consequently, it is not possible to meaningfully project effects on profitability and affordability – especially since it is likely that the predominant effects on the value of agricultural output, and from this farm incomes, will be due to prevailing agricultural commodity prices, with important variations in individual farm cost bases. More detailed assessment should be conducted as part of RIAs associated with any future AWOs.

Farm incomes (essentially a measure of net profits) exhibit significant variation both between and within farm types, and also across time periods. Aggregate data on farm accounts is available from the Farm Business Survey in Wales. Whilst the scale of employee utilisation for most farm businesses in Wales might lead to a categorisation of predominantly small businesses, the available evidence tends to suggest paid and casual farm labour costs rising slightly as a share of total inputs for larger farms - based on the most recent years only, this ranges up to about 9% for Lowland Dairy farms with over £350,000 of standard output²⁵ (see Tables 10-15). It is also possible that changes in minimum wage rates may also become reflected in costs associated with contractor rates.

While quantifying the scale of effects in advance is not feasible since future proposals are unknown, though subject to limitations it would be feasible to gain some intuition of likely static effects on farm businesses associated with new AWOs though modelling based on this data source.

Effects on Government

Any changes to the remuneration packages of farm workers as a consequence of the provisions of future Agricultural Wages Orders might be expected to have some very limited effect on both tax receipts and also employment costs paid to Government (e.g. National Insurance Contributions) (in so far as pay is higher than would otherwise be the case, but offset by any effects on employment), and possibly in the opposite direction on benefits payments. The impacts of these have not been assessed, but would seem likely to represent second-order transfers.

²⁵ Standard output reflects the average monetary value of agricultural output at farm-gate prices. Multiplying SO coefficients by the number of hectares of crops or head of livestock can provide a standardised estimate of farm size for use in classifying agricultural holdings. These figures provide a snapshot over a short period of time and reflect an un-weighted inter-year identical sample, covering predominantly those farm businesses with over €25,000 standard output.

Option 3 - Introduce the Order including a statutory time limit

Under this Option, the statutory provisions and effects of the Agricultural Sector (Wales) Act, and associated Agricultural Wages Orders, would remain in place for a statutory time limited period - during which the implications would appear to be largely consistent with that of Option 2, effectively delaying the move to an outcome then broadly consistent with Option 1.

Administrative Costs

Transition Costs

There may be some transition costs for Welsh Government under this Option, such as in conducting communications with stakeholders around the point of change. However, these are expected to be modest and consistent with the baseline Do Nothing option, i.e. not therefore reflecting additional costs.

Recurrent (Annual) Costs

- Costs to Government

Over the period of continuation, the Welsh Government would continue to be subject to the costs associated with the operation of the Panel, its required administrative support, and enforcement activities. These annual costs would be anticipated to be generally as set out in Option 2, i.e. under the assumption that the nature and scale of activity would not materially change over the time limited period compared to the case of no statutory time limit.

- Direct Costs to Farm Businesses

For the period of continuation, the direct, recurrent, costs to farm businesses in the form of additional administrative and compliance costs would remain given that farmers would continue to need to adhere to the additional legislative requirements of the industry-specific minimum wages regime in Wales, as well as that of the broader NMW/NLW. These costs are additional to the baseline, and on an annual basis would be expected to be as in Option 2, for the duration of the continuation period.

Policy and Compliance Costs

- Costs to Farm Businesses

Costs associated with previously discussed transfers from farm businesses to farm workers arising from an expected outcome of wages and terms and conditions above that which would have prevailed in the absence of such legislation, would be expected to be broadly consistent with those identified in Option 2 for the duration of the continuation period.

Once these statutory provisions ceased to have effect, existing workers remaining in employment are would be likely to still have some continuation of contractual rights in respect of the terms and conditions of AWO in force at the point of expiry. However, over time as new workers enter the industry and existing contracts were re-negotiated, wages and terms and conditions as under Do Nothing would be then determined by the general employment legislation applying to all workers in the UK and prevailing labour market conditions.

In terms of getting a sense of the likely speed of adjustments in the absence of the wages orders, some consideration is required as to the likely turnover of farm workers. The expectation, almost by definition, is that casual workers would leave employers fairly quickly (and at least assumed to be within a year), possibly before then returning. However, any new contractual arrangements would then not be subject to the previous AWO. No robust data on turnover associated with permanent workers in agriculture has been identified. In their assessment as part of the abolition of the former AWB, Defra assumed that a 5% turnover rate for permanent workers might be broadly reasonable, though also noting that it could in the future be higher due to the age composition of the farm workforce.

BENEFITS

Option 1 – Do Nothing (the Order is not made)

This option provides the baseline against which the benefits of the alternative options are assessed. As such only a few broader points are made in this section – these not reflecting additional benefits.

(Avoided) recurrent costs

The consequence of this option would be to move immediately from the position of agriculture-specific minimum wage rates and terms and conditions in Wales, to one primarily reflecting labour market conditions but underpinned by the UK NLW/NMW legislation. This would be expected to give rise to reduced direct regulatory and administrative burdens for farm businesses as a result of somewhat simplified employment (wages) legislative requirements. Costs previously incurred with the operation of the Agricultural Advisory Panel for Wales, including Welsh Government staff supporting this function and wider enforcement activities would be avoided.

Transfers and wider benefits

Under this option, wage rates and labour costs would be assumed to adjust to reflect market-clearing conditions, i.e. the previously outlined transfers would no longer arise. Farm businesses would be expected to be the primary beneficiaries from this adjustment. Whilst there may be some argument for potential positive supply-side effects as a consequence of the reduction of any legislative-based labour market distortions, there are considerable uncertainties over the likely scale of any such impacts.

Option 2 – Introduce the Order without a statutory time limit

According to the Low Pay Commission (LPC) around 17,000 workers aged 25 and over in the agricultural industry in the UK are covered by the NMW²⁶. The latest statistics provide an estimate of mean gross weekly pay for employee jobs in agriculture, forestry and fishing in Wales of £416.60, compared to £469.70 for all industries and services²⁷.

The industry-specific statutory wages requirements in Wales attempt to recognise characteristics considered specific to the agricultural industry, reflecting its structure, and tendency towards working relatively long hours, typically performing more physical and dangerous tasks than average workers in other sectors of the economy.

In terms of the structure, the available data is supportive of industry composition in Wales involving a significant proportion of small businesses (at least as defined by employee numbers), with farms predominantly making use of own labour (labour provided by farmers, partners, directors and spouses). There is also some justification around the hazards associated with employment in agriculture. Under general market conditions it would be expected that wage rates would tend to adjust to reflect a necessary “premium” for particular skills subject to excess demand or undertaking hazardous or unpleasant activities. The available evidence points to higher work-associated risks in the agricultural industry²⁸.

In making a preliminary assessment of the potential benefits, again, as in respect of the cost sections, it should be noted that since many of the effects are reflected in transfers between farmers and farm workers the direct benefits identified in the following sections are largely the opposite of the costs discussed in the corresponding sections above, broadly resulting in an overall neutral transfer (though importantly different weightings for those gaining and losing from these transfer effects may be justifiable).

Transition Benefits

No significant transition benefits have been identified.

Recurrent (Annual) Benefits

(i) Benefits to Farm Workers

Under this Option, as set out previously, there are grounds for considering that farm workers may receive additional benefits than would otherwise have been the case in the absence of the legislative provisions. As discussed in the corresponding costs

²⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/681750/Short_report_December_2017.pdf

²⁷ Source: Annual Survey of Hours and Earnings, ONS. The corresponding median values are £398.50 and £406.30.

²⁸ Health and Safety Executive statistics provide evidence of the higher risks in agricultural work, with high estimated rates of self-reported work-related illness and non-fatal injury, and providing around 20% of fatal injuries arising from accidents at work in Great Britain during 2016/17. <http://www.hse.gov.uk/statistics/index.htm>

section, the effects of statutory minimum wages set above the market clearing wage rates for workers of given skills and experience, would in effect provide a transfer, increasing costs for farmers compared to what would otherwise have been the case, and providing benefits to recipient farm workers. Such benefits to farm workers would include (i) any increase in wages to workers, (ii) the value of increased annual leave to workers, (iii) improved sick pay to workers, as well as other more favourable terms and conditions.

Whilst these transfers would broadly net-off to approximately zero, there are sound economic arguments, supported by HM Treasury Green Book guidance²⁹, for placing additional weight on the benefits received by farm workers, who in general would be expected to have lower incomes and wealth than farm business owners, as well as in meeting the broader policy aims of redistribution to ensure fair wages for farm workers.

Although many farm workers might be expected to gain directly from such higher minimum wage rates, in assessing the overall benefits to farm workers this also needs to be balanced against any consequential adverse effects on paid hours, and indeed any costs associated with lower employment of farm workers. The potential effects employment and hours effects have been considered earlier.

To the extent that statutory minimum wage rate increases are set in a considered manner, moderating the scale of any adverse effects, there may potentially be some modest gains to the overall household incomes of farm workers – though also needing to take account of the effects arising through the tax and benefits system.

A relevant point not generally reflected relates to agricultural job search and wage outcomes. There is limited direct evidence on the mobility of agricultural workers within Wales, and hence the extent to which this could differ to other sectors. However, features such as the geographical location of many farms, limited density of labour market opportunities in more remote areas, as well as possible (more limited) skills transferability issues for some farm workers may be relevant considerations. Some evidence also seems suggestive of relatively low transition rates of agricultural workers to other employment³⁰. Agricultural minimum wage rates may therefore enable some workers to gain from somewhat improved wage rates and terms and conditions, whilst avoiding costs of job search (which could plausibly be higher than for workers elsewhere, given these potential skills and location characteristics).

One further issue relates to the statutory graded minimum wages structure applicable to farm workers in Wales. As discussed in LPC³¹ evidence in the context of the NLW, raising minimum wage rates has the potential to give rise to “spill over” effects, increasing the wage rates of other workers as they seek to retain previous wage differentials. Recent evidence published by the LPC suggests that for most low-paying sectors pay differentials may have been reduced (i.e. the effects of higher NLW’s have not been fully passed-through) as employers have moderated pay rises

²⁹ See particularly Annex 5: Distributional Impacts.

³⁰ Though this of itself could reflect constraints to achieving higher pay and conditions or an acceptable wage/utility balance for farm work.

³¹ <https://www.gov.uk/government/organisations/low-pay-commission>

for higher paid workers to accommodate the costs of the NLW increases. For the most recent period this also seems to be the case for UK agriculture.

Whilst there is evidence of some pay compression over recent years, the extent to which any further compression would be feasible is not clear, or whether future adjustments may take effect through other dimensions affecting labour costs such as hours and employment. Anecdotally, such compression also seems to have led to some reported issues around staff motivation and reduced progression opportunities. Clearly, if retained, the multiple minimum wage rates regime for agricultural workers needs to be managed carefully to take account of such broader pay developments.

Though not examined in significant detail given the limitations around the available statistical data, the current AWO sets out to provide statutory protection in the form of provisions for apprentices and a basic statutory hourly wage rate and terms and conditions for younger workers of compulsory school age, i.e. between 13 and 16. In contrast, the NMW only covers workers aged 16 and above. Similarly, UK employment legislation does not make any provision for specific rates of pay linked to skills, specific rates of pay for overtime, rights to paid training, standby duty and night allowances, or a number of other allowances currently available under provisions of the relevant AWOs.

To the extent that workers covered by the statutory requirements in Wales achieve terms and conditions above that which would have arisen under market conditions, this would represent a private benefit to the recipient individuals (but offset by a cost in the form of a transfer from farmers). However, little evidence has been identified to date around potential farmer responses were the agricultural wages legislation in Wales to no longer have effect – it is not clear if these would be eroded over time or would be held up by the need to retain incentives to recruit and retain farm workers.

- Benefits to Farmers

The previous sections have outlined the basis for expecting the statutory regime for agricultural workers wages in Wales to impart some additional costs on farm businesses, both in terms of wages and of terms and conditions benefits to workers (a transfer), and also administrative costs to ensure familiarisation and compliance with the additional statutory requirements (above that of the NMW/NLW). These have already been briefly considered in the corresponding Costs section.

However, this does not preclude the possibility of such a regime also conceivably offering some benefits to farmers (at least to some farmers). One such possibility would be through respective agricultural minimum wage rates and terms and conditions offering a benchmark from which to commence pay negotiations. This could contribute towards reducing costs associated with individual wage negotiations (such as information search as the basis for negotiations and the time involved in such negotiations with workers) and reduce the occurrence of disputes associated with wages and conditions. However, further evidence is required on whether farmers and workers do indeed use these statutory rates for such a purpose.

The enforcement activities conducted by Welsh Government have to date been very modest in scale, which speculatively may provide some support on the matter of dispute avoidance.

- Benefits to Government

Potential benefits to Government reflect the aggregate impacts on pay and employment, in the form of higher taxation receipts and employment costs paid to government and others, and possibly reduced in-work benefits, to the extent that these are applicable. No quantification of these potential effects has been undertaken, since these effects would be anticipated to be largely second-order transfers.

Wider benefits

An important policy aspect of the benefits of the continuation of the statutory provisions for agricultural workers is based on the expectation of improved skill retention and progression for farm workers in Wales. Such positive effects, to the extent that they emerge, could act to (at least partially) mitigate against the effects from any higher labour costs.

- Incentives for training and progression

The graded agricultural wages structure is intended to offer an incentive to undertake relevant professional development activities (supported through training provisions) and support automatic career progression for incumbent workers (subject to skills acquisition). This structure could also potentially provide some incentives to enter into a career in agriculture. At present, the available evidence suggests a relatively low level of formal and on-the-job training within the agricultural sector in Wales³².

Encouraging worthwhile additional training and development would be expected to potentially benefit the farm business³³ by improving human capital and through this improving the capacity to contribute to raising productivity levels - improved skills (human capital) being associated more generally with potential productivity improvements. Such skills may be particularly associated with the effective adoption and utilisation for new technologies, and it is in this context that the available research evidence (as seen) has tended to focus more specifically on the role of the skills of farmers.

To the extent that such incentives are realised, and feed through to longer-term productivity improvements, this may provide a positive benefit in terms of the

³² See for example:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526082/ESS_2015_Wales_Slide_Pack_May_.pdf

<https://www.gov.uk/government/publications/ukces-employer-skills-survey-2015-wales-toolkit>

³³ For example, OECD (2011), *Fostering Productivity and Competitiveness in Agriculture*: http://www.oecd-ilibrary.org/agriculture-and-food/fostering-productivity-and-competitiveness-in-agriculture_9789264166820-en Some analysis (using data for England), again focussed more on the skills of farmers is also provided in previous Defra reports:

<https://www.gov.uk/government/collections/agricultural-productivity-and-competitiveness-analyses>

competitiveness of such farm businesses³⁴. However, to date there is relatively limited evidence on this point and on whether incentives are appropriately structured through the multi-graded agricultural minimum wages regime.

More generally, as context to this discussion point, although there are farms exhibiting relatively strong business performance, productivity for the domestic agriculture industry as a whole compares relatively unfavourably to most other industries. UK agricultural productivity growth also appears to have been relatively weak over recent periods compared to a number of other competitor countries³⁵.

Whilst some previous evidence has pointed to hard-to-fill vacancies in the agricultural industry, at present these seem to be less severe than in many other industries in Wales. How this evolves will depend on overall labour supply and the attractiveness of agricultural work, including in respect of wages and terms and conditions, compared to opportunities available in work elsewhere. There are good reasons to believe that relatively higher wage rates would have some role in both encouraging entry and retention within an industry.

- Effects on poverty and local expenditure

The broader policy ambition is that the agricultural minimum wages regime provides fair remuneration for agricultural workers and consequently provides some support to rural communities.

For farm workers to benefit, the increase in the received hourly wage rate and other allowances (above that which would otherwise have been received in market-clearing conditions) must exceed any losses through reduced hours. To the extent this is the case, this would arithmetically provide some support to the household incomes of farm workers. In the case of Grade 1 workers, the difference between the minimum agricultural wage rate and the NLW has tended to be small, so that the additional impacts for this group (if wages are set at the Grade 1 minimum) would be relatively modest³⁶

At the household-level, final effects would also reflect the operation of the tax and benefits system. Whilst the pay of part-time, seasonal or casual farm workers would be expected to be lower than for full-time agricultural workers, the measures of household poverty will also depend on the incomes received by other members of the household (many poor households are characterised by worklessness).

The effect on overall in-work poverty may potentially be positive, but effects at the level of rural communities would tend to be modest, reflecting also the scale and proportion of workers in agriculture.

³⁴ However, under price-taking arrangements for farm businesses in agricultural output markets, higher wages leading to reduced profits might also have the effect of some lessening of ability to support non-statutory training and development.

³⁵ https://ahdb.org.uk/documents/Horizon_Driving%20Productivity_Jan2018.pdf

³⁶ For illustration, a two-pence per hour differential might suggest an uplift to the annual gross pay of farm workers of at most around £50 per annum, depending on hours and weeks worked assumptions.

As would be expected, agriculture is more spatially concentrated in some parts of Wales. Table 1 of the Appendix, presents different figures for workplace employment, workers aged 16-74 and experimental estimates of gross value added (GVA) for the agricultural industry by local authority in Wales, supporting this view.

The effects of more favourable agricultural wage rates on aggregate local expenditure will depend on a number of factors³⁷, including the extent of real additional remuneration benefits received by farm workers, and on the composition of expenditure patterns of the farm workers receiving additional wages compared to the expenditure patterns of farms that would have otherwise taken place³⁸. To the extent that net expenditure would increase, this could be potentially partially offset any adverse demand-side effects from lower employment reducing expenditure in local rural economies. No estimation of the balance of these effects has been conducted as part of this RIA due to the uncertainties around such effects.

Option 3 - Introduce the Order including a statutory time limit

The Panel has only been operating for a relatively limited period of time. There has as yet been insufficient time to establish, and formally evaluate, the longer-run economic impacts of the AMW regime in Wales, against operating without such additional statutory protections for agricultural workers (as now in England). At this point, particularly in the light of data limitations, many of the likely more important economic effects are uncertain or have not been fully quantified. Such uncertainties need also to be seen in the context of the potential evolution of the NLW, and its impacts on low wage industries more generally, as well broader economic uncertainties.

The composition and balance of benefits are assumed to be as outlined in Option 2 for the period of the Order continuing in effect. Following this, the relative balance between costs and benefits are anticipated to more broadly reflect those set out in Option 1. Were the overall benefits of Option 1 to be superior to that of Option 2, which has not been established, there could be some additional economic costs associated with the delay in moving to this position.

Summary of the preferred option

Given the general uncertainties around the likely details of any future agricultural minimum wage rates and terms and conditions (under the option of continuing with this regime), as well as important limitations in relation to both the evidence on the impacts of multiple minimum wage structures and specific data limitations, a broader range of costs and benefits have not been quantified as part of this assessment, with such quantification largely restricted to narrower administration and enforcement

³⁷ Multipliers – which relate to the effects arising under a unit increase in final demand - are often suggested as a means to analyse such wider impacts, though their important limitations need to be recognised. Some multiplier estimates for agricultural in Wales are provided by the (now dated) 2007 input-output tables for Wales https://www.cardiff.ac.uk/_data/assets/pdf_file/0010/698869/input-output-tables-2007-final-30-6.pdf. Given the primary effect is re-distribution this would complicate the use of an approach based only on such multiplier values.

³⁸ Since the primary effect is a transfer between farmers and farm workers – i.e. no net additional income - the extent to which there is increased local expenditure will be influenced differences in the marginal propensities to consume.

costs. There is a need to establish more conclusive evidence around such effects (see Post Implementation Review section).

Consultation

A full 12 week public consultation on reviewing the Act was conducted from 12th June to 4th September 2017. Its aim was to provide an opportunity for all to contribute their comments and observations on the operation and effect of the Act. All responses were considered carefully and directly informed, and included in the report on the Review. The Review is to be laid before the Assembly Link.

Requests for more information on the consultation should be addressed to SLMenquiries@gov.wales which is regularly checked and monitored to by post to Agricultural Wages, Welsh Government, Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion SY23 3UR

Full 12 week consultation has also taken place on the introduction of the Act in 2014, and on the subordinate legislation needed – such as the Establishment of the Panel, and Agricultural wages orders. There was a public appointments exercise undertaken to appoint the independent members of the Panel.

A wide range of people and organisations have been consulted. When consultations were posted on the Welsh Government website a supplementary email was sent to organisations and individuals also. These included workers unions, the Association of Labour Providers, Young Farmers Clubs. This was to encourage response and to inform the spectrum of possible interests.

Post implementation review

A formal evaluation of the impacts, including the distributional consequences, of the Agricultural Sector (Wales) Act and associated Agricultural Wages Orders in Wales has yet to be take place. Monitoring, and other relevant data, necessary to more fully establish the baseline and evolution of effects under changing economic and labour market conditions, should be further considered, to inform future reviews at appropriate points.

COMPETITION ASSESSMENT

The competition filter test has been applied, with the outcomes of the completed assessment provided below. No detrimental effects on competition have been identified as part of this assessment.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Appendix: Agricultural Labour

According to the LPC around 6.4% of workers (1.5 million workers) aged 25 and over in the UK are paid at or below the NLW. Agriculture is identified as one of the low-paying sectors, with around 17,000 workers in the UK covered by the NLW. There is significant variation in NLW coverage across spatial areas, including within Wales³⁹.

A number of official surveys provide statistics about the labour market for agricultural workers. Different coverage and definitions (for example, headcount measures versus full-time equivalents, residence or workplace based) used for the purpose of these surveys needs to be taken into account in their interpretation.

Table 1: Estimates of workplace employment, workers aged 16-64, and GVA in agriculture by local authority in Wales, 2016

Local Authority	Workplace employment in agriculture, 2016^(a)		Workers aged 16-64, 2011^(b)		Gross Value Added, 2015^(c)	
	Workplace employment	% of total workplace employment	Workers	% share of workers	GVA (£millions)	% of total LA GVA
Isle of Anglesey	1,800	7.7%	932	3.1%	16	1.7%
Gwynedd	4,800	7.5%	1,868	3.5%	26	1.1%
Conwy	1,500	3.1%	1,041	2.1%	12	0.7%
Denbighshire	1,800	4.0%	962	2.3%	21	1.3%
Ceredigion	4,700	12.7%	2,316	7.1%	51	4.1%
Pembrokeshire	4,600	7.9%	2,535	4.7%	42	2.1%
Carmarthenshire	5,300	6.4%	3,338	4.1%	45	1.6%
Swansea	900	0.7%	401	0.4%	6	0.1%
Neath Port Talbot	400	0.8%	207	0.4%	5	0.2%
Bridgend	300	0.5%	250	0.4%	2	0.1%
Rhondda Cynon Taf	200	0.3%	223	0.2%	3	0.1%
Merthyr Tydfil	200	0.8%	38	0.2%	1	0.1%
Caerphilly	200	0.3%	199	0.3%	2	0.1%
Blaenau Gwent	100	0.5%	84	0.3%	-	-
Torfaen	-	-	115	0.3%	2	0.1%
Flintshire	1,500	2.7%	685	0.9%	12	0.3%
Wrexham	900	1.3%	829	1.3%	21	0.8%
Powys	8,600	14.1%	5,517	8.7%	76	3.4%
Vale of Glamorgan	600	1.4%	402	0.7%	5	0.2%
Cardiff	-	-	132	0.1%	3	-
Monmouthshire	2,100	4.4%	1,216	2.8%	16	0.8%
Newport	200	0.3%	207	0.3%	7	0.2%
Wales	40,700	2.9%	23,497	1.7%	374	0.7%

(a) Source: Annual Population Survey, Business Register and Employment Survey and Survey of Agriculture and Horticulture <https://statswales.gov.wales/Catalogue/Business-Economy-and-Labour->

³⁹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/681750/Short_report_December_2017.pdf

(b) Source: Census of Population 2011. Workers are all people aged 16-74 who are in employment or self-employment. Each worker is allocated to a main sector based on where they spend the largest part of their time.

(c) Source: ONS experimental GVA estimates.

Workplace employment in the agriculture, forestry and fishing industry in Wales in 2016 was around 40,700, representing around 3% of total workplace employment. This compares to around 1.2% in the UK as a whole. As would be expected, workplace employment in agriculture, forestry and fishing is somewhat spatially concentrated.

Estimates of the persons engaged in work (rather than full-time equivalents⁴⁰) on agricultural holdings by type of labour are available from the June Survey of Agriculture and Horticulture. This source estimates that 53,534 persons were engaged in work on agricultural holdings in Wales in 2016, of which 39,903 were farmers, partners, directors and spouses, and with 13,621 farm workers. This has since declined to a total labour force of 51,943, of which 11,962 are farm workers. Across the period 2009 to 2016, about three-quarters of persons engaged in work on agricultural holdings in Wales were farmers, partners, directors and spouses and around one-quarter were farm workers.

Table 2: Persons engaged in work on agricultural holdings in Wales^(a)

	2009	2010	2011	2012	2013	2014	2015	2016	2017
Total farmers, partners, directors and spouses:									
Full-time	19,492	16,413	19,945	19,869	17,873	19,507	19,307	18,564	18,324
Part-time (b)	24,317	27,586	25,001	25,179	22,078	23,142	22,312	21,339	21,657
Total	43,809	43,999	44,946	45,048	39,951	42,649	41,619	39,903	39,981
Farm workers:									
Regular full-time (c)	3,720	3,697	3,306	3,146	3,278	4,406	4,638	..	
Regular part-time (b) (c)	4,623	4,951	3,100	3,422	3,337	4,682	4,492	..	
Seasonal or casual workers	4,489	5,181	7,063	6,758	6,398	7,884	7,570	..	

⁴⁰ Given the headcount basis of this measure of labour inputs, it is not appropriate to use this measure to compare against other sectors, which are based on other survey measures and definitions.

Total farm workers	12,832	13,829	13,469	13,326	13,013	16,972	16,700	13,621	11,962
Total labour force	56,641	57,828	58,415	58,374	52,964	59,621	58,319	53,524	51,943

(a) Figures are for main and minor holdings.

(b) Part-time defined as less than 39 hours per week. Regular workers work on farm on a continuous basis and may be members of the farmer's family.

(c) Includes salaried managers.

Source: Welsh Agricultural Statistics; 2017 data from statistical release "Survey of Agriculture and Horticulture", November 2017.

There are differences in the composition of persons engaged in work on agricultural holdings across the UK, with the share of farms workers of the agricultural labour force in 2016 in Wales being notably lower than in England - where farm workers represented around 43% of the total agricultural labour force - but similar to Scotland and Northern Ireland. The higher share of farmers, partners, directors and spouses in Wales reflects the size and structure of farm businesses and type of agricultural activities.

Table 3: Composition of persons engaged in work on agricultural holdings 2016

	Wales		England		Scotland		Northern Ireland	
	000s	% of total labour force	000s	% of total labour force	000s	% of total labour force	000s	% of total labour force
Total farmers, partners, directors and spouses:								
Full-time	18.6	35%	88.8	29%	13.4	21%	18.0	38%
Part-time	21.3	40%	84.3	28%	27.2	43%	18.2	38%
Total	39.9	75%	173.1	57%	40.7	64%	36.2	76%
Farm workers:								
Regular full-time (a)	..	-	54.9	18%	10.4	16%	2.3	5%
Regular part-time (a)	..	-	29.6	10%	6.1	10%	1.5	3%
Seasonal or casual workers	..	-	43.9	15%	6.4	10%	7.7	16%
Total farm workers	13.6	25%	128.4	43%	17.1	27%	11.5	24%
Total labour force	53.5	100%	301.5	100%	63.5	100%	47.7	100%

(a) Includes salaried managers.

Source: Welsh Government, Department for Environment, Food and Rural Affairs, Scottish Government and Department for Agriculture, Environment and Rural Affairs Northern Ireland. Estimates are based on the June Survey of Agriculture and Horticulture in Wales and equivalent surveys in the rest of the UK.

Employment by Agricultural Grades

Defra previously conducted the Survey of Earnings and Hours of Agricultural Workers in order to provide information to support the annual negotiations of the former Agricultural Wages Board for England and Wales. The survey was discontinued a number of years ago and no up-to-date official statistics are currently collected on the number of workers within each agricultural workers grade in Wales.

Whilst now dated, and available on an England and Wales basis, in the absence of a more suitable data source this information has been used as the basis for modelling pay effects for previous Agricultural Wages Orders. The published average proportions for farm workers at each grade are shown below:

Table 4: Proportion of workers in E&H at each AWB grade (average for 2007-2010)

Grade	Full-time	Part-time	Casual	All
Grade 1	6%	14%	39%	19%
Grade 2	39%	63%	61%	51%
Grade 3	9%	7%		6%
Grade 4	30%	11%		16%
Grade 5	11%	3%		6%

Grade 6	5%	1%		2%
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Source: Farm Labour and Wage Statistics, 2012, Department for Environment, Food and Rural Affairs
<http://webarchive.nationalarchives.gov.uk/20130125190634/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf>

Although specific data on employment within each respective agricultural grade in Wales (and transitions between grades) is not available, using the Standard Occupational Classification (SOC) a number of agricultural sector codes can be identified which can be very broadly mapped to agricultural grades⁴¹.

Earnings and Hours

Data on median gross hourly pay and paid hours worked are shown in the tables below. Comparisons are between Wales and UK.

Table 5: Median Hourly pay – Gross (£) – For all employee jobs, Wales, 2017

Description	Code	2013	2014	2015	2016	2017
Managers and proprietors in agriculture related services:	121	10.73	10.81	11.62	9.12	11.26
- Managers and proprietors in agriculture and horticulture	1211	10.73	10.81	11.62	9.52	10.69
Skilled agricultural and related trades:	51	8.84	9.00	9.13	9.00	9.50
- Agricultural and related trades	511	8.84	9.00	9.13	9.00	9.50
Elementary agricultural occupations	911	7.06	7.50	8.37	8.06	8.34
- Farm workers	9111	7.25	7.21	9.03	7.45	8.04

Source: Annual Survey of Hours and Earnings, Office for National Statistics. 2017 figures are provisional. SOC – Standard Occupational Classification.

Table 6: Median Hourly pay – Gross (£) – For all employee jobs, UK, 2017

Description	Code	2013	2014	2015	2016	2017
Managers and proprietors in agriculture related services:	121	12.50	12.29	12.96	12.56	12.52
- Managers and proprietors in agriculture and horticulture	1211	12.82	12.59	13.17	12.63	12.53
Skilled agricultural and related trades:	51	8.89	8.91	9.24	9.50	9.50
- Agricultural and related trades	511	8.89	8.91	9.24	9.50	9.50
Elementary agricultural occupations	911	7.99	8.00	8.00	8.30	8.63
- Farm workers	9111	8.08	8.03	8.03	8.45	8.68

Source: Annual Survey of Hours and Earnings, Office for National Statistics. 2017 figures are provisional. SOC – Standard Occupational Classification.

⁴¹ Grades 1 and 2 as Farm Workers, Grades 3-5 as Skilled Agricultural Trades and Grade 6 as Farm Managers.

Table 7: Median Paid Hours Worked - Total – For all employee jobs, SOC, Wales, 2017

Description	Code	2013	2014	2015	2016	2017
Managers and proprietors in agriculture related services:	121	38.4	39.5	39.7	41.6	-
- Managers and proprietors in agriculture and horticulture	1211	38.4	39.5	39.7	39.7	37.6
Skilled agricultural and related trades:	51	37.0	37.1	37.0	37.0	37.0
- Agricultural and related trades	511	37.0	37.1	37.0	37.0	37.0
Elementary agricultural occupations	911	40.0	-	39.0	43.3	-
- Farm workers	9111	-	41.0	38.8	50.3	45.9

Source: Annual Survey of Hours and Earnings, Office for National Statistics. 2017 figures are provisional. SOC – Standard Occupational Classification.

Table 8: Median Paid Hours Worked - Total – For all employee jobs, UK, 2017

Description	Code	2013	2014	2015	2016	2017
Managers and proprietors in agriculture related services:	121	39.1	39.6	39.9	39.1	39.0
- Managers and proprietors in agriculture and horticulture	1211	39.3	39.4	40.0	40.0	39.8
Skilled agricultural and related trades:	51	38.9	39.0	38.9	39.0	38.8
- Agricultural and related trades	511	38.9	39.0	38.9	39.0	38.8
Elementary agricultural occupations	911	39.5	40.0	39.1	40.0	39.9
- Farm workers	9111	40.0	40.0	40.0	40.6	40.2

Source: Annual Survey of Hours and Earnings, Office for National Statistics. 2017 figures are provisional. SOC – Standard Occupational Classification.

Farm Businesses and Paid Workers

The latest figures from the June Survey of Agriculture and Horticulture for 2016 suggest there are around 24,536 non-dormant farm holdings in Wales, with just fewer than 14,000 classified as very small. There were 6,510 Cattle and Sheep (LFA) holdings, 1,628 Dairy holdings and 1,166 Cattle and Sheep (Lowland) holdings.

One further source which provides some estimate of the number of agricultural businesses in Wales is based on the Business Population Estimates. The latest estimates of the number of businesses grouped by the number of employees are presented below.

Table 9: Agriculture, forestry and fishing businesses in the private sector in Wales, start 2017

	Number		
	Businesses	Employment (thousand)	Turnover (£m)
All businesses	14,890	32	1,877
All employers	2,980	13	1,236
With no employees (unregistered) ¹	1,120	1	28
With no employees (registered) ¹	10,790	17	613
1	1,275	3	276
2-4	1,255	5	516
5-9	325	2	213
10-19	100	1	113
20-49	20	1	*
50-99	5	*	*

¹ Businesses with no employees can either be 'registered' for either VAT or PAYE or are 'unregistered'.

* Symbol replaces data that are deemed to be disclosive. Source: Business Population Estimates, BEIS.

Farm Labour Inputs and Farm Business Incomes

The extent of average utilisation of farm workers varies across farm types and sizes. The tables below provide figures on the estimated value of paid, unpaid and casual labour costs by different farm types collected through the Farm Business Survey (FBS)⁴². The proportion of costs represented by Paid and Casual labour as also provisionally calculated.

Farm business income (essentially net profits) varies significantly both across and within farm types, and exhibit volatility across years, reflecting in particular movements in agricultural commodity prices, as well as notable variations in the cost of production between farms. Some basic statistics on farm incomes and their composition is provided in the Farm Incomes Statistics Release: <http://gov.wales/statistics-and-research/farm-incomes/?lang=en>

The contribution of paid labour costs, how this changes under amendments to minimum wages requirements, and within the overall context of individual-farm level profitability, will be important considerations in assessing on-going affordability of AWO requirements.

⁴² These figures are not weighted to be reflected for the broader population of farm businesses in Wales, and are based on an inter-year identical sample. For these reasons there may be some differences from Welsh Government estimates.

Table 10: Hill and Upland Dairy Farms, Wales

	Under 300k SO		Over 300k SO		All Farms	
	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Total Outputs	164,479	153,982	450,701	453,243	295,036	290,486
Total Inputs	152,043	146,913	428,716	427,827	278,243	275,047
Labour						
- Paid	2,989	3,004	17,478	16,523	9,598	9,170
- Unpaid	7,518	8,341	14,068	14,004	10,505	10,924
- Casual	1,788	854	6,626	7,601	3,995	3,931
Farm Business Income	24,007	20,324	33,388	34,309	28,286	26,704
Paid and Casual as % of total inputs	3%	3%	6%	6%	5%	5%

Source: Farm Business Survey: Statistical Results, IBERS, Aberystwyth University.

Table 11: Lowland Dairy Farms, Wales

	Under 350k SO		Over 350k SO		All Farms	
	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Total Outputs	214,659	200,360	707,398	667,651	445,303	419,093
Total Inputs	194,655	192,855	641,848	613,169	403,980	389,596
Labour						
- Paid	4,244	3,820	54,216	48,714	27,635	24,834
- Unpaid	9,805	10,674	13,259	12,979	11,422	11,753
- Casual	1,122	1,579	3,864	6,380	2,406	3,826
Farm Business Income	37,006	25,697	85,008	74,352	59,475	48,475
Paid and Casual as % of total inputs	3%	3%	9%	9%	7%	7%

Source: Farm Business Survey: Statistical Results, IBERS, Aberystwyth University.

Table 12: Lowland Cattle and Sheep Farms, Wales

	Under 60k SO		Over 60k SO		All Farms	
	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Total Outputs	45,727	47,082	149,968	156,565	110,167	114,761
Total Inputs	47,244	47,355	137,428	134,364	102,994	101,142
Labour						
- Paid	0	0	7,158	6,482	4,425	4,007
- Unpaid	2,515	2,630	5,770	5,559	4,527	4,441
- Casual	31	20	1,596	1,808	999	1,125
Farm Business Income	4,364	5,484	24,296	32,809	16,685	22,375
Paid and Casual as % of total inputs	0%	0%	6%	6%	5%	5%

Source: Farm Business Survey: Statistical Results, IBERS, Aberystwyth University.

Table 13: Hill Sheep Farms, Wales

	Under 70k SO		70-155k SO		Over 115k SO		All Farms	
	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Total Outputs	54,589	57,608	99,000	104,289	234,943	229,399	133,570	134,121
Total Inputs	47,703	48,921	86,944	88,799	196,618	197,798	113,667	115,061
Labour								
- Paid	323	660	2,000	1,719	7,533	6,488	3,452	3,102
- Unpaid	1,418	1,455	4,095	3,754	11,909	12,686	6,040	6,237
- Casual	626	606	930	1,150	2,669	3,001	1,462	1,641
Farm Business Income	11,727	13,641	21,970	24,130	61,554	55,927	32,956	32,180
Paid and Casual as % of total inputs	2%	3%	3%	3%	5%	5%	4%	4%

Source: Farm Business Survey: Statistical Results, IBERS, Aberystwyth University.

Table 14: Hill Cattle and Sheep Farms, Wales

	Under 70k SO		70-155k SO		Over 115k SO		All Farms	
	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Total Outputs	64,788	69,412	105,629	105,307	205,726	209,046	127,431	129,858
Total Inputs	60,443	62,559	98,163	98,123	206,056	213,082	123,578	126,609
Labour								
- Paid	411	433	2,177	1,961	1,678	1,867	1,470	1,465
- Unpaid	3,495	3,501	4,615	4,381	17,835	17,401	8,793	8,563
- Casual	1,042	694	540	920	4,575	4,797	2,072	2,177
Farm Business Income	10,688	13,877	14,819	14,469	25,990	20,694	17,381	16,415
Paid and Casual as % of total inputs	2%	2%	3%	3%	3%	3%	3%	3%

Source: Farm Business Survey: Statistical Results, IBERS, Aberystwyth University.

Table 15: Upland Cattle and Sheep Farms, Wales

	Under 70k SO		70-155k SO		Over 115k SO		All Farms	
	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
Total Outputs	53,568	55,519	116,912	124,887	234,941	252,470	116,056	123,529
Total Inputs	53,781	54,789	105,197	109,132	212,441	216,607	107,395	109,970
Labour								

- Paid	372	899	1,503	1,682	7,281	7,498	2,415	2,772
- Unpaid	1,844	2,118	4,171	3,956	13,549	13,929	5,413	5,586
- Casual	710	439	3,168	2,984	3,724	4,779	2,118	2,205
Farm Business Income	6,184	7,292	23,633	27,393	39,537	53,699	19,199	24,306
Paid and Casual as % of total inputs	2%	2%	4%	4%	5%	6%	4%	5%

Source: Farm Business Survey: Statistical Results, IBERS, Aberystwyth University.

SL(5)196 – The Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2018

Background and Purpose

The effect of section 14(1) of the Agricultural Sector (Wales) Act 2014 ("the Act") is that the Act is to lapse on 30 July 2018, unless an order is made by the Welsh Ministers under section 14(2) providing that the Act is to continue in effect. This Order is such an order and provides that the Act is to continue in effect.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3(ii) in respect of this instrument, in that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

As noted in the Background and Purpose above, the effect of section 14(1) of the Agricultural Sector (Wales) Act 2014 ("the Act") is that the Act is to lapse on 30 July 2018, unless an order is made by the Welsh Ministers under section 14(2) providing that the Act is to continue in effect. This Order is such an order and provides that the Act is to continue in effect.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

8 March 2018



Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MAL/CG/0113/18

Mr M. Antoniwn AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales

Mick.Antoniwn@assembly.wales

7 March 2018

Dear Mick

I wrote to you in January about the use of subordinate legislation-making powers included in the UK Government's European Union (Withdrawal) Bill (*"the Bill"*). In that letter I said that I would provide an update in relation to the scope and scale of subordinate legislation that may be required.

Officials have been continuing to work on bringing forward subordinate legislation under the powers conferred on the Welsh Ministers by Schedule 2 to the Bill. There is now a clearer picture of the number of pieces of secondary legislation that will be required to allow Welsh Ministers to correct deficiencies in EU-derived domestic legislation within Welsh devolved competence. That work has proceeded without prejudice to the Welsh Government's position on the devolution provisions in the Bill, about which – as you know – there remains significant disagreement between the devolved administrations and the UK Government.

In my previous letter, I said that over 600 EU-derived legislative instruments that fall within Welsh devolved competence had been identified. Further analysis (which is ongoing) has reduced this to around 400 instruments that contain deficiencies which are likely to need to be addressed. It is currently estimated that close to 20 of these would each need to be dealt with by way of a specific 'standalone' correcting instrument, with around 380 capable of being addressed by way of provisions within amalgamated correcting instruments.

It is important to note, in addition, that some deficient instruments may well be dealt with by or under new primary legislation, either because they cannot sensibly be corrected or they form part of a new legislative framework (potentially at a GB or UK level). This could create new sets of subordinate legislation-making powers. You will be aware that discussions about these issues are ongoing between the devolved administrations and the UK Government.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

You will see from the figures above that the majority of the deficient EU-derived instruments can be dealt with as part of amalgamated correcting instruments. It is still to be determined how many such instruments will be required, though the figure will become clearer as the work progresses. The number required is likely to change based on the number of deficiencies identified within each legislative instrument, the nature of those deficiencies and the complexity of the solutions necessary in order to correct them.

Officials are continuing to interrogate the deficiencies and to establish how best to take forward the work on corrections. I will provide a further update once we have a clearer picture of the number of amalgamated SIs that are required.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AC/AM

Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

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Agenda Item 5.2

By virtue of paragraph(s) vi of Standing Order 17.42

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Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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