

The Education Maintenance Allowances (No.2) (Wales) Scheme 2020/2021

(2021 No.WG21-48)

This Scheme operates under sections 14, 15 and 16 of the Education Act 2002 and applies in relation to the academic year 2020/2021.

This Scheme is amended with effect from 1 January 2021. The amendments ensure the Scheme continues to operate effectively following the United Kingdom's withdrawal from the European Union

Interpretation

1. In this Scheme—

“academic year” (*“blwyddyn academaidd”*) means the period from 1 September in one year to 31 August in the next year, except that where the first term of a recognised educational institution begins before 1 September, the academic year is the period beginning at the start of that term and ending immediately before the start of the first such term in the following year;

“applicant” (*“ceisydd”*) means the person applying for education maintenance allowance under this Scheme;

“dependent person” (*“person dibynnol”*) means either an applicant who is not an independent person or a person who—

- (a) normally resides with the applicant;
- (b) entitles the person's parent, guardian, carer or other persons on whom he or she is financially dependent to child benefit in accordance with Part 9 of the Social Security Contributions and Benefits Act 1992⁽¹⁾ or any amount that is included in the calculation of the award under regulation 24 of the Universal Credit Regulations⁽²⁾ (the child element); and
- (c) is dependent on the same household income as the applicant calculated in accordance with paragraph 3;

(1) 1992 c.4.

(2) SI 2013/376 as amended.

“education maintenance allowance” (*“lwfans cynhaliath addysg”*) has the meaning given in paragraphs 6(1) to (4);

“electronic signature” (*“llofnod electronig”*) is so much of anything in electronic form as—

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible education course” (*“cwrs addysg cymwys”*) means a course described in paragraph 5 of the Scheme;

“eligible person” (*“person cymwys”*) has the meaning given in paragraph 4(2) and (3);

“eligible returning person” (*“person cymwys sy’n dychwelyd”*) means a person who—

- (a) was in receipt of at least one weekly award of education maintenance allowance in connection with that person’s attendance at an eligible education course in the academic year 2019/2020 but who has not been in receipt of education maintenance allowance for more than three academic years; and
- (b) is an eligible person;

“exempt person” (*“person esempt”*) means a person who is—

- (a) in local authority care, with foster parents or is a care leaver;
- (b) responsible for a child of their own;
- (c) in receipt of Income Support or Income based Employment and Support Allowance;
- (d) entitled to an award of universal credit under the Universal Credit Regulations 2013(1); or
- (e) in custody or detention within the youth justice system including a Young Offenders Institution, Secure Training Centre or Secure Children’s Home;

“governing body” (*“corff llywodraethu”*) includes a body having the functions of a governing body and includes a person acting with the authority of that body;

“household income” (*“incwm yr aelwyd”*) has the meaning given in paragraph 3;

(1) SI 2013/376 as amended.

“Income Tax Acts” (“*“*”) means all enactments relating to income tax, including any provisions of any enactments relating to the taxation of the income and chargeable gains of companies and of company distributions which relate to income tax;

“independent person” (“*person annibynnol*”) means a person who—

- (a) has not communicated with either parents or guardians for the period of one year immediately before the first day of the first term of the academic year in respect of which an application for education maintenance allowance is made; or
- (b) in the opinion of the Welsh Ministers can demonstrate on other grounds that they are irreconcilably estranged from his or her parents or guardians;

and is not an exempt person;

“Learning Agreement” (“*Cytundeb Dysgu*”) means a signed contract between an applicant and their recognised educational institution setting out the respective responsibilities relating to attendance, learning goals and the payment of weekly awards as described in paragraph 6(3);

“learning goals” (“*nodau dysgu*”) means objectives agreed between an applicant and their recognised educational institution which relate to the applicant’s educational progress;

“learning session” (“*sesiwn ddysgu*”) means a class, or other taught or guided study session, (including practical work or unpaid work experience) for which a recognised educational institution monitors and reports attendance;

“partner” (“*partner*”) means in relation to an applicant any of the following—

- (a) the applicant’s spouse;
- (b) the applicant’s civil partner;
- (c) a person ordinarily living with the applicant as the applicant’s civil partner; or
- (d) a person ordinarily living with the applicant as the applicant’s spouse;

“recognised awarding body” (“*corff dyfarnu cydnabyddedig*”) means the Scottish Qualifications Authority⁽¹⁾, an awarding body approved and regulated by the Scottish Qualifications Authority in accordance with the Education (Scotland) Act 1996⁽²⁾, the Northern Ireland Council for the

(1) The Scottish Qualifications Authority was established by the Scottish Qualifications Authority (Establishment) (Scotland) Order 1996/2248.

(2) 1996 c. 43.

Curriculum, Examinations and Assessment(1), bodies recognised under section 132 of the Apprenticeships, Skills, Children and Learning Act 2009(2) and bodies or persons recognised under section 30(1)(e) of the Education Act 1997(3) or Part 3 of the Qualifications Wales Act 2015(4);

“recognised educational institution” (*“sefydliad addysgol cydnabyddedig”*) means—

- (a) a school in Wales maintained by a local authority or an equivalent institution in England, Scotland or Northern Ireland;
- (b) an independent school in Wales registered under Part 10 of the Education Act 2002(5) or an equivalent institution in England, Scotland or Northern Ireland;
- (c) an institution in Wales within the further education sector or an equivalent institution in England, Scotland or Northern Ireland; or
- (d) any other educational institution which the Welsh Ministers consider appropriate;

“residual income” (*“incwm gweddilliol”*) is to be calculated in accordance with paragraph 3(5);

“signed” (*“llofnodi”*) may include signed by way of electronic signature in such form as the Welsh Ministers may require;

“tax year” (*“blwyddyn dreth”*) means a year beginning on 6 April and ending on the following 5 April;

“universal credit” (*“credyd cynhwysol”*) means universal credit under Part 1 of the Welfare Reform Act 2012(6);

“weekly award” (*“dyfardal wythnosol”*) is the amount calculated in accordance with paragraph 6.

2. In this Scheme a care leaver is a person who—

- (a) 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(7); and
- (b) between the person’s fourteenth birthday and the first day of the first academic year of the course, the student was—
 - (i) looked after, fostered or accommodated (within the meaning of sections 74 and

(1) The Northern Ireland Council for the Curriculum, Examinations and Assessment was established by Article 73 of the Education (Northern Ireland) Order 1998/1759.

(2) 2009 c. 22.

(3) 1997 c. 44. Now repealed, subject to savings and transitional provisions.

(4) 2015 anaw 5.

(5) 2002 c.32.

(6) 2012 c. 5.

(7) 2014 anaw 4

104 of the Social Services and Well-being (Wales) Act 2014) for an aggregate period of 13 weeks or more, or

- (ii) 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.

Household Income

3.—(1) Household income is the total residual income, applied in accordance with sub-paragraphs (2) to (4), and calculated in accordance with sub-paragraphs (5) and (6).

(2) If the applicant is not an independent person, household income is the total residual income of the applicant's parents, guardians, carers or other persons on whom the applicant is financially dependent.

(3) If the applicant is an independent person who has a partner, the household income is the total residual income of the applicant and the applicant's partner.

(4) If the applicant is an independent person who has no partner, the household income is the total residual income of the applicant.

(5) The residual income is that income of the relevant tax year on which a person is charged income tax in accordance with Step 1 of the calculation in section 23 of the Income Tax Act 2007⁽²⁾, minus any amounts deducted in accordance with sub-paragraph (6) (unless already deducted in calculating the taxable income).

(6) For the purpose of determining residual income, the following amounts may be deducted from the taxable income (unless already deducted when calculating the taxable income)—

- (a) the gross amount of allowable expenses, for which tax relief was claimed during the relevant tax year;
- (b) the gross amount of wages paid during the relevant tax year in connection with domestic help due to the incapacity of—
 - (i) the eligible student;
 - (ii) the partner of an independent person; or

(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) 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(3), paragraph 19.

- (iii) the parent, or parent’s partner, of an eligible student who is not an independent person.
- (c) any redundancy payment received during the relevant tax year, up to a maximum of £30,000; and
- (d) the gross amount of—
 - (i) any payment made during the relevant tax year in relation to a pension (not being a premium payable under a policy of life insurance) in respect of which relief is given under section 188 of the Finance Act 2004⁽¹⁾, or
 - (ii) where the individual’s income is computed for the purposes of the income tax legislation of a Member State, the gross amount of any such premium or sum in respect of which relief would be given during the relevant tax year if that legislation made provision equivalent to the Income Tax Acts.

(7) In this paragraph, “relevant tax year” means the tax year ending in April 2019.

Eligible Persons

4.—(1) An applicant who is an eligible person qualifies for an education maintenance allowance in connection with an eligible education course subject to and in accordance with this Scheme.

(2) An applicant is an eligible person who qualifies for an education maintenance allowance under this Scheme if—

- (a) subject to sub-paragraph (3) the Welsh Ministers, in assessing the application, determine that the applicant falls within one of the categories set out in Part 2 of the Schedule; and
- (b) the applicant undertakes an eligible education course and is ordinarily resident in Wales on the first day of the academic year of that course; and
- (c) the applicant is an exempt person or the household income was less than or equal to the amounts set out in the table in paragraph 6(3) in the tax year ending in April 2019; and
- (d) in the academic year 2020/2021 the applicant has their seventeenth, eighteenth,

(1) 2004 c.12.

nineteenth or, subject to sub-paragraph (5), twentieth birthday; and

(e) an application is made in accordance with paragraph 9.

(3) An eligible person does not qualify for an education maintenance allowance if the only paragraph from 2 to 11 of Part 2 of the Schedule into which the person falls is paragraph 10.

(4) No payment of an education maintenance allowance will be made unless an eligible person satisfies the conditions in paragraph 8 of this Scheme.

(5) An eligible person may receive payment in the academic year in which that eligible person has their twentieth birthday if that eligible person has received an education maintenance allowance in one or two of the three preceding academic years and the recognised educational institution, in consultation with any other educational body or other organisation it sees fit, advises the Welsh Ministers that the eligible person should receive an education maintenance allowance for the academic year 2020/2021.

Eligible education course

5. A course is an eligible education course for the purposes of this Scheme if—

- (a) it is a programme of full-time academic or vocational education or a full time programme in preparation for life and work;
- (b) the duration of the programme of full-time academic or vocational education is at least ten weeks;
- (c) it is provided by or in a recognised educational institution;
- (d) the eligible person's timetable in relation to that course would require the eligible person to be in a learning session, for not less than twelve hours per week; and
- (e) it leads either to qualifications up to and including National Qualifications Level 3 issued by a recognised awarding body, or to the achievement of a personalised learning programme funded by the Welsh Government under the Preparation for Life and Work programme area.

Structure, level of payments and assessment

6.—(1) Education maintenance allowance is payable in relation to the period of three academic years, including an academic year in which an eligible person has already received payment, beginning in the academic year in which the eligible person ceases to be of compulsory school age or, subject to paragraph

4(5), the period of four academic years beginning in the academic year in which the eligible person ceases to be of compulsory school age.

(2) Education maintenance allowance consists of a weekly award, as described in sub-paragraph (3) and paragraph 8, paid fortnightly to the eligible person.

(3) The weekly award for the academic year 2020/2021 in respect of—

- (a) an eligible person who is an exempt person is £30;
- (b) an eligible person who is not an exempt person is to be determined in accordance with the following table:

<i>Household Income</i>	<i>Weekly award</i>
Up to and equal to £20,817 with one dependent person living in the household	£30
Equal to or more than £20,818 with one dependent person living in the household	£0
Up to and equal to £23,077 with two or more dependent persons living in the household	£30
Equal to or more than £23,078 with two or more dependent persons living in the household	£0

(4) Subject to sub-paragraphs (5) to (7), the assessment of an eligible person’s financial eligibility for an education maintenance allowance made under this paragraph will be valid for the whole of the academic year 2020/2021.

(5) In cases where household income has been assessed under paragraph 3 and the result of that assessment is that an applicant is not entitled to a payment of education maintenance allowance, an applicant may apply to be reassessed if one or more of the following conditions is fulfilled—

- (a) a person whose income was taken into account in assessing household income has died;
- (b) since the assessment of household income was made, the eligible person no longer lives with either parents, guardians or other persons whose income was taken into account in assessing household income and is responsible financially for themselves;
- (c) since the assessment of household income the eligible person has become an exempt person;
- (d) since the assessment there has been a reduction in household income of a non temporary nature; or

- (e) since the assessment one or more dependent persons have become reliant on the household income.

(6) Following an application under sub-paragraph (5) the Welsh Ministers may determine that an eligible person is entitled to receive a weekly award in accordance with sub-paragraph (3).

(7) If the Welsh Ministers make a determination under sub-paragraph (6) they must notify the eligible person of the determination.

(8) Where the Welsh Ministers determine under sub-paragraph (6) they may—

- (a) back-date payment to the date on which a condition specified in sub-paragraph (5) is fulfilled; and
- (b) make payments of education maintenance allowance under paragraph 8 to an eligible person who qualifies for support under this Scheme.

Assessment Enquiries

7. In assessing eligibility for education maintenance allowance, including reassessment under paragraph 6(5), the Welsh Ministers may, at any time, take such steps and make such enquiries as they consider necessary to determine whether the applicant qualifies for support and the amount of support payable.

Weekly award

8.—(1) A weekly award is payable only in respect of a week of the eligible education course where the eligible person's timetable requires the eligible person to attend learning sessions.

(2) An eligible person qualifies for a weekly award assessed in accordance with paragraphs 6(2) and 6(3) if they have signed a Learning Agreement and—

- (a) subject to paragraph (b) have, in respect of a week to which the weekly award relates, attended every learning session in connection with an eligible education course; or
- (b) if they have not attended every such learning session in respect of a week to which the weekly award relates, the recognised educational institution has authorised each absence; and
- (c) the recognised educational institution determines that they are making satisfactory progress towards their learning goals as set out in the Learning Agreement.

Applications and back-payment

9.—(1) In order to receive an education maintenance allowance an eligible person must, in each academic year of an eligible education course, submit an application in accordance with sub-paragraphs (2), (3) and (4).

(2) An application for education maintenance allowance must be submitted to the Welsh Ministers by no later than 31 August 2021 subject to sub-paragraph (5).

(3) An application by an eligible person (but not an eligible returning person) is a signed application form as required and published by the Welsh Ministers from time to time.

(4) An application by an eligible returning person is a signed copy of the Learning Agreement.

(5) Where an application is made after the start of the academic year payment of an education maintenance allowance may be backdated—

- (a) if it is received by the Welsh Ministers no later than thirteen weeks after the eligible person has started their course, to the date the eligible person started their course; or
- (b) if it is received by the Welsh Ministers after the end of the first thirteen weeks after the eligible person has started their course, to the date on which the Welsh Ministers received the application.

(6) Any back-payment made under this paragraph is subject to the rules about weekly awards of education maintenance allowance in paragraph 8.

Obligations of a recognised educational institution

10. The governing body of a recognised educational institution which is providing eligible education courses to applicants under this Scheme must—

- (a) take steps to promote the awareness of the availability of education maintenance allowance to their pupils or students and prospective pupils or students;
- (b) ensure that staff are properly trained in the administration of education maintenance allowance;
- (c) notify the Welsh Ministers of each eligible person registered with the recognised educational institution and confirm that they and the eligible person have signed the Learning Agreement;
- (d) ensure that eligible persons are made aware of how education maintenance allowance is

administered at the recognised educational institution;

- (e) ensure that attendance records are maintained in respect of all applicants entitled to education maintenance allowance under this Scheme who are enrolled at the recognised educational institution;
- (f) ensure that original signed copies of Learning Agreements are retained in respect of all applicants entitled to education maintenance allowance under this Scheme who are enrolled at the recognised educational institution;
- (g) submit weekly reports to the Welsh Ministers detailing the eligible persons who should or should not receive education maintenance allowance in respect of the previous week, in accordance with paragraph 8(2); and
- (h) establish and publish an appeals process in relation to complaints made by applicants arising out of the obligations imposed on a recognised educational institution under subparagraphs (c), (e) and (f).

Prohibition of dual funding

11. An eligible person is not to receive an education maintenance allowance in relation to a course or work placement for which he or she is being paid or is receiving a training allowance or is in receipt of such other financial support from public funds as may be determined by the Welsh Ministers.

Overpayment

12. An eligible person must, if so required by the Welsh Ministers, repay any amount paid to them under this Scheme which for whatever reason—

- (a) exceeds the amount of education maintenance allowance to which the eligible person is entitled to under this Scheme; or
- (b) the eligible person was not entitled to receive under this Scheme.

Kirsty Williams

Minister for Education,
one of the Welsh Ministers
Date 26 March 2021

SCHEDULE

Eligible Persons

PART 1

Interpretation

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

“Directive 2004/38” (*“Cyfarwydddeb 2004/38”*) means Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004⁽¹⁾ on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EEA” (*“AEE”*) means the European Economic Area which is the area comprised by the European Union, the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“EEA EFTA separation agreement” (*“cytundeb gwahanu EFTA yr AEE”*) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁽²⁾;

“EEA frontier self-employed person” (*“person hunangyflogedig trawsffiniol AEE”*) means an EEA national who—

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State and returns to their residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” (*“gweithiwr trawsffiniol AEE”*) means an EEA national who—

- (b) is a worker in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State and returns to their residence in Switzerland or that EEA State, as the case may be, daily or 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 national” (*“gwladolyn AEE”*) means a national of an EEA State;

“EEA self-employed person” (*“person hunangyflogedig AEE”*) means an EEA national

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

(2) c. 1.

who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“EEA State” (“*Gwladwriaeth AEE*”) means a Member State of the European Economic Area;

“employed person” (“*person cyflogedig*”) means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“EU national” (“*gwladolyn UE*”) means a national of a Member State of the European Union;

“family member” (“*aelod o deulu*”) unless otherwise indicated, means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) that person’s spouse or civil partner;
 - (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of that person or of that person’s spouse or civil partner; or
 - (iii) dependent direct relatives in that person’s ascending line or the ascending line of that person’s spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) that person’s spouse or civil partner; or
 - (ii) that person’s child or the child of that person’s spouse or civil partner;
- (c) in relation to an EU national who is not self sufficient—
 - (i) that person’s spouse or civil partner; or
 - (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of that person or of that person’s spouse or civil partner;
- (d) in relation to an EU national who is self sufficient—
 - (i) that person’s spouse or civil partner;

- (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of that person or of that person’s spouse or civil partner; or
 - (iii) dependent direct relatives in that person’s ascending line or the ascending line of that person’s spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
- (i) that person’s spouse or civil partner; or
 - (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of that person or of that person’s spouse or civil partner;

“Islands” (*“Ynysoedd”*) means the Channel Islands and the Isle of Man;

“immigration rules” (*“rheolau mewnfudo”*) means the rules laid before Parliament by the Secretary of State under section 3(2) of the Immigration Act 1971⁽¹⁾;

“person granted stateless leave” (*“person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth”*) means a person who—

- (a) has extant leave to remain as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971); and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;

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

- (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 that person is considered not to qualify for recognition as a refugee

(1) 1971 c. 77.

it is thought right to allow that person to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave⁽¹⁾ and who has been granted leave to enter or remain accordingly;

- (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 that person to enter or remain in the United Kingdom on the grounds of discretionary leave, and who has been granted leave to enter or remain accordingly;
 - (iii) been granted leave to remain on the grounds of private or family life under the immigration rules; or
 - (iv) been informed in writing by a person acting under the authority of the Secretary of State for the Home Department, that although that person is not considered to qualify for leave to remain on the grounds of private or family life under the immigration rules, that person has been granted leave to remain outside the rules⁽²⁾ on grounds of Article 8 of the European Convention on Human Rights;
- (b) 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⁽³⁾); and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since they were granted leave to enter or remain;

“person with section 67 leave to remain” (“*person sydd â chaniatâd i aros o dan adran 67*”) means a person who—

(1) Discretionary leave may be granted by the Secretary of State under section 3(1)(b) of the Immigration Act 1971.

(2) Paragraph 276BE(2) of the immigration rules refers.

(3) 2002 c. 41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (c. 19), Schedules 2 and 4; by the Immigration, Asylum and Nationality Act 2006 (c. 13), by the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), Schedule 1, and by the Immigration Act 2014 (c. 22).

- (a) has leave to remain in the United Kingdom under section 67 of the Immigration Act 2016⁽¹⁾ and in accordance with the immigration rules; and
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the period since the person was granted such leave;

“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 as extended by the Protocol thereto which entered into force on 4 October 1967;

“residence scheme immigration rules” (*“rheolau mewnfudo’r cynllun preswyllo”*) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;

“right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means, in relation to a person (“A”), a right to reside in the United Kingdom permanently without restriction which arises under residence scheme immigration rules, but only where, had the facts pertaining to the determination of A’s right to reside fallen to be considered immediately before implementation period completion day, A would have acquired such right under Directive 2004/38 as it had effect immediately before implementation period completion day;

“self-employed person” (*“person hunangyflogedig”*) means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” (*“wedi setlo”*) has the meaning given by section 33(2A) of the Immigration Act 1971⁽²⁾;

“Swiss Agreement” (*“Cytundeb y Swistir”*) means the Agreement between the European Union 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⁽³⁾ and which came into force on 1 June 2002;

(1) 2016 c.19.

(2) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

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

“Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaidd*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;

“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 the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State and returns to their residence in Switzerland or that EEA State, as the case may be, daily or 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 the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State and returns to their residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” (“*person hunangyflogedig Swisaidd*”) means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“temporary protection” (“*diogelwch dros dro*”) means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules⁽¹⁾;

“Turkish worker” (“*gweithiwr Twrcaidd*”) means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom; and
- (b) is, or has been, lawfully employed in the United Kingdom;

“United Kingdom national” (“*gwladolyn o’r Deyrnas Unedig*”) means a person who falls to be treated as a national of the United Kingdom for the purposes of the Union Treaties;

“worker” (“*gweithiwr*”) means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement⁽²⁾, as the case may be.

(1) HC 395.

(2) EEA Agreement means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 - Cm 2073, as adjusted by the Protocol signed at Brussels on 17 March 1993, Cm 2183.

(2) For the purposes of this Schedule, “parent” 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.

(3) For the purposes of this Schedule, a person is to be treated as ordinarily resident in the United Kingdom and Islands or in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland if the person would have been so resident but for the fact that—

- (a) the person;
- (b) the person’s spouse or civil partner;
- (c) the person’s parent; or
- (d) in the case of a dependent direct relative in the ascending line, the person’s child or child’s spouse or civil partner,

is or was temporarily employed outside the United Kingdom and Islands or, as the case may be, outside the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland.

(4) For the purposes of sub-paragraph (3), temporary employment outside the United Kingdom and Islands or the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
- (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 United Kingdom, Gibraltar, the EEA and Switzerland as members of such forces.

(5) For the purposes of this Schedule an area other than the United Kingdom or Gibraltar which—

- (a) was previously not part of the European Union or the EEA; but
- (b) at any time before or after 1 September 2008 has become part of one or other or both of these areas,

is to be considered to have always been a part of the EEA.

PART 2

Categories

Persons who are settled in the United Kingdom

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

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(4).

3. A person who—

- (a) either—
 - (i) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
 - (ii) falls within Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement or Article 16(2) or (3) of the Swiss citizens' rights agreement, but only where that person would have acquired the right to reside permanently in the United Kingdom without restriction under Directive 2004/38 as it had effect immediately before IP completion day had the facts pertaining to that person's right to reside fallen to be considered immediately before IP completion day;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the ordinary residence as 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 United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence as referred to in sub-paragraph (c).

Refugees

- 4.—(1) A person who—
- (a) is a refugee; and
 - (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since that person was recognised as a refugee.
- (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 their application for asylum; and
 - (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.
- (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 their 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 on the date on which the refugee made their application for asylum; and
 - (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since they were given leave to remain in the United Kingdom.

Persons with leave to enter or remain and their family members

- 5.—(1) A person—
- (a) with leave to enter or remain; and
 - (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted leave to enter or remain.
- (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 leave application date; and
 - (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted leave to enter or remain in the United Kingdom.

- (3) A person who—
- (a) 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) on the leave application date, was under 18 years old and was the child of the person with leave to enter or remain or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date; and
 - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since that person was given leave to enter or remain in the United Kingdom.

(4) In this paragraph, “leave application date” means the date on which the person with leave to enter or remain made the application that led to that person being granted leave to enter or remain in the United Kingdom.

Persons granted stateless leave and their family members

6.—(1) A person granted stateless leave who is ordinarily resident in Wales on the first day of the first academic year of the course and has not ceased to be so resident since being granted stateless leave.

- (2) A person—
- (a) who—
 - (i) is the spouse or civil partner of a person granted stateless leave; and
 - (ii) on the leave application date, was the spouse or civil partner of a person granted stateless leave; and
 - (b) who is ordinarily resident in Wales on the first day of the first academic year of the course and has not ceased to be so resident since that person was granted stateless leave
- (3) A person—
- (a) who—
 - (i) is the child of a person granted stateless leave or the child of the spouse or civil partner of a person granted stateless leave; and
 - (ii) on the leave application date, was the child of a person granted stateless leave or the child of a person who, on the leave application date, was the spouse or civil partner of a person granted stateless leave;
 - (b) who was under 18 on the leave application date; and
 - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course

and has not ceased to be so resident since that person was granted stateless leave.

(4) In this paragraph, “leave application date” means the date on which a person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971).

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

7.—(1) A person who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii);
 - (iv) an EEA frontier worker or an EEA frontier self-employed person;
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
 - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

8.—(1) A person who—

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, 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 Council Regulation (EU) No. 492/2011 on the freedom of movement of workers⁽¹⁾.
- (2) Any description of person who would have been eligible under this paragraph immediately before IP completion day is to be eligible on and after IP completion day.

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

9.—(1) A person who—

- (a) is settled in the United Kingdom;
 - (b) was ordinarily resident in the United Kingdom and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence before IP completion day;
 - (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
 - (d) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, 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 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 United Kingdom, Gibraltar, 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 they fall within sub-paragraph (a) or (b).

(a) A person who is—

- (i) a United Kingdom national, or a person with a right of permanent residence in the United Kingdom; or
- (ii) a family member of such a person for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement);

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;

(1) OJ No L141, 27.05.2011, p. 1.

- (b) A person who is—
 - (i) settled in the United Kingdom and had the right of permanent residence; or
 - (ii) a family member of such a person for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement);

who has gone to the state within the territory comprising the EEA and Switzerland of which they are a national or of which the person in relation to whom that person is a family member is a national.

(3) For the purposes of this paragraph, a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.

EU nationals

10.—(1) A person who—

- (a) on the first day of the first academic year of the course is—
 - (i) an EU national;
 - (ii) a United Kingdom national who has exercised a right of residence; or
 - (ii) a family member of a person in sub-paragraph (i) or (ii);
- (b) is attending an eligible education course;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, 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.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland in accordance with paragraph 1(4).

(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 or the family member of a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to

be an EU national on the first day of the first academic year of the course is treated as being satisfied.

(4) Any description of person who would have been eligible under this paragraph immediately before IP completion day is to be eligible on and after IP completion day.

11.—(1) A person who—

- (a) is an EU national on the first day of the first academic year of the course;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where the ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

12.—(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 the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, 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 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 United Kingdom, Gibraltar, the EEA and Switzerland

immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

- (2) Any description of person who would have been eligible under this paragraph immediately before IP completion day is to be eligible on and after IP completion day.

Children of Turkish workers

13. A person who—

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

Temporary protection

14. A person who at the date the Welsh Ministers received their application for an education maintenance allowance had been granted temporary protection and has been ordinarily resident in the United Kingdom at all times since that person was first granted temporary protection.

Persons with section 67 leave to remain

15.—(1) A person who—

- (a) has section 67 leave to remain;
- (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 United Kingdom and Islands since being granted section 67 leave.

(2) A person who—

- (a) is the child of a person with section 67 leave to remain;
- (b) was the dependent child, aged under 18, of the person with section 67 leave on the leave application date;

- (c) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (d) has been ordinarily resident in the United Kingdom and Islands since the person's parent was granted section 67 leave.

(3) In this paragraph "leave application date" means the date on which the person with section 67 leave to remain made the application that led to that person being granted leave to remain in the United Kingdom.