



Education Maintenance Allowance:

The Education Maintenance Allowance (Wales) Regulations 2007

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

Consultation

Date of issue: 2 April 2007

Action required: Responses by 22 June 2007

The Education Maintenance Allowance (Wales) Regulations 2007

- Audience** Local Authorities; Participative Learning Centres to include: secondary education sixth forms, sixth form colleges, independent school sixth forms and Further Education Institutions; other interested parties.
- Overview** This consultation seeks views on the draft Education Maintenance Allowance (Wales) Regulations 2007.
- Action required** Any comments which consultees might have on this document should be sent to the Welsh Assembly Government by **22 June 2007**. Comments can be made in writing to the address below. Comments can also be made by email to studentfinancedivision@wales.gsi.gov.uk
- Further information** Further information about this consultation can be obtained from Neil Hayes
e-mail: studentfinancedivision@wales.gsi.gov.uk
- Additional copies** This consultation document is available on the internet on **www.new.wales.gov.uk** and can be copied from there.
- Postal address** Student Finance Division
Welsh Assembly Government,
Cathays Park,
Cardiff, CF10 3NQ

Contents

Summary	2
Background	3
Education Maintenance Allowance Wales Changes for 2007/08	3
Annex A - Education Maintenance Allowance (Wales) Regulations 2007	4

The Education Maintenance Allowance
(Wales) Regulations 2007

2 April 2007

The Education Maintenance Allowance (Wales) Regulations 2007

Summary

The Assembly is required to enact the appropriate secondary legislation in the form of The Education Maintenance Allowance (Wales) Regulations 2007 for each academic year. The predecessor scheme was formalised in 2006/07.

A set of draft Regulations for 2007 is attached and is also available from the Assembly's Education and Skills, Consultations website at www.new.wales.gov.uk. The aim of these Regulations is to enable the Assembly to provide support for eligible young people aged 16 - 18 from low-income households to help them continue in education after the compulsory school leaving age for the academic year beginning 1 September 2007.

Consultation Period

The consultation period ends on **22 June 2007**. Responses to be sent to:

Policy Changes Team
Student Finance Division
Welsh Assembly Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Or by e-mail to: studentfinancedivision@wales.gsi.gov.uk

It should be noted that the responses to the consultation will be made public. Normally, the name and address (or part of the address) of the author are published along with the response. If you do not wish to be identified as the author of your response please state this expressly in your response.

The Education Maintenance Allowance
(Wales) Regulations 2007

2 April 2007

EDUCATION MAINTENANCE ALLOWANCE (WALES) REGULATIONS 2007

Background

1. The Assembly is required to enact the appropriate secondary legislation in the form of Education Maintenance Allowance (Wales) Regulations for each academic year.
2. The draft Education Maintenance Allowance (Wales) Regulations 2007 provide support for eligible young people aged 16 – 18 from low-income households to help them continue in education after the compulsory school leaving age in academic year 2007/08.
3. The draft Regulations set out the eligibility criteria for applying for and receiving Education Maintenance Allowance (Regulation 3), the structure and level of payments and assessment is set out in Regulation 4. The National Assembly for Wales delegates to the Scheme Provider authority to assess eligibility for EMA (including determining the level of weekly award to be made) and to make EMA payments (Regulation 5). The EMA Learning Agreement and weekly award is set out in Regulation 7. Regulation 8 sets out the conditions that govern the award of EMA intermittent bonus payments. The role of Recognised Educational Institutions which have EMA recipients is set out in Regulation 9. Rules governing back payment of EMA are set out in Regulation 10 and are subject to the rules about weekly awards in Regulation 7. Prohibition of dual funding is explained in Regulation 11. The recovery of overpayments of weekly awards and bonus payments of EMA to a young person is explained in Regulations 12, 13 and 14.

Student Support Changes for 2007/08

4. The Education Maintenance Scheme provides for targeted assistance to be given to eligible young people aged 16 - 18 from low-income households to help them continue in education after the compulsory school leaving age, provided they attend regularly and achieve agreed learning goals. It is designed to encourage young people to stay committed to their course and improve participation and retention.
5. These Regulations mirror the former scheme, formalised in 2006/07. Other changes being made are technical in nature. No major changes are proposed.

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2007 No. (W.)

EDUCATION, WALES

**Education Maintenance Allowances
(Wales) Regulations 2007**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for financial assistance to young people to enable them to undertake education after they have reached compulsory school leaving age. An education maintenance allowance of up to £30 per week is available to eligible persons who undertake eligible courses. In addition, bonus payments of £100 are made up to three times a year if an eligible person meets the objectives of his or her course and the conditions set out in these Regulations.

These Regulations come into force on 31 August 2007. The Welsh Assembly Government is currently preparing detailed guidance on the operation of the Regulations. Copies will be obtained from the Student Loans Company in due course.

STATUTORY INSTRUMENTS

2007 No.

EDUCATION, WALES

**Education Maintenance Allowances
(Wales) Regulations 2007**

<i>Made</i>	2007
<i>Laid before the Assembly</i>	2007
<i>Coming into force</i>	31 August 2007

The Welsh Ministers, in exercise of the powers conferred upon the National Assembly for Wales and now vested (1) in them by section 181 of the Education Act 2002(2), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Education Maintenance Allowances (Wales) Regulations 2007.

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

Interpretation

2.—(1) In these Regulations —

“the Act” (“*Deddf*”) means the Education Act 2002;

“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;

-
- (1) The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraphs 30 (1) and 30(2)(d) of Schedule 11 of the Government of Wales Act 2006 (c.32).
- (2) c.32.

“education maintenance allowance” (“*Lwfans Cynhaliaeth Addysg*”) (*LCA*) has the meaning given in regulations 5(1) to 5(4);

“eligible education course” (“*cwrs addysg gymwys*”) means a course described in regulation 4;

“household income” (“*incwm aelwyd*”) means income as defined and calculated for the purposes of child tax credit in The Tax Credits (Definition and Calculation of Income) Regulations 2002(1) as amended from time to time;

“Learning Agreement Part 1” (“*Cytundeb Dysgu Rhan 1*”) means a signed contract between an eligible person and his or her recognised educational institution setting out respective responsibilities governing his or her attendance and the payment of weekly awards as described in regulations 5(2) and 5(3);

“Learning Agreement Part 2” (“*Cytundeb Dysgu Rhan 2*”) means a signed contract between an eligible person and his or her recognised educational institution setting out the objectives an eligible person must achieve to qualify for an intermittent bonus as described in regulation 8;

“learning goals” (“*cyrchnodau dysgu*”) means objectives agreed between an eligible person and the recognised educational institution he or she is attending which relate to the eligible person’s educational progress;

“learning session” (“*sesiwn dysgu*”) means a period for which a recognised educational institution monitors and reports attendance;

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

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

“eligible person” has the meaning given in regulations 3(1) to 3(4).

Eligible Persons

3.—(1) An eligible person qualifies for an education maintenance allowance in connection with an eligible

education course subject to and in accordance with these Regulations.

- (2) A person is an eligible person who qualifies for an education maintenance allowance if —
- (a) subject to paragraph (4) the Welsh Ministers, in assessing the person's application for support, determine that he or she falls within one of the categories set out in Part 2 of the Schedule; and
 - (b) he or she undertaking an eligible education course referred to in regulation 4; and
 - (c) the household income of his or her parent, guardian or carer is £30,810 or less in the tax year ending in April immediately prior to the start of the academic year in which the education maintenance allowance is to be paid; and
 - (d) he or she satisfies the conditions in paragraph (3).

(3) The conditions are—

- (a) in the academic year 2005/06 he or she has his or her seventeenth birthday; or
- (b) in the academic year 2006/07 he or she has his or her seventeenth or eighteenth birthday; or
- (c) in the academic year 2007/08 he or she has his or her seventeenth, eighteenth or nineteenth birthday.

(4) An eligible person does not qualify for an education maintenance allowance if the only paragraph from 1 to 11 of Part 2 of the Schedule into which the person falls is paragraph 9.

(5) No payment of an education maintenance allowance will be made unless an eligible person satisfies the conditions in regulation 7 or regulation 8.

(6) An eligible person qualifies for an education maintenance allowance in respect of the qualifying period referred to in paragraph (7).

(7) Subject to paragraph (8) "the qualifying period" means the period of three consecutive academic years beginning in the academic year in which the eligible person ceases to be of compulsory school age.

(8) An eligible person may receive payment in the academic year in which he or she has his or her 20th birthday if he or she has received an education maintenance allowance in no more than two of the three preceding academic years and the recognised educational institution determines, in consultation with any other educational body or other organisation it sees fit, that the eligible person should receive an education maintenance allowance for the academic year in question.

- (9) An eligible person must apply for an education maintenance allowance in connection with each academic year of an eligible education course in respect of which he or she qualifies for support.

Eligible education course

4.-(1) A course is an eligible education course for the purpose of regulation 3 if —

- (a) it is a programme of full-time academic or vocational education;
- (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 taken across all courses would require him or her to be in a class, or other taught or guided study session, including practical work or unpaid work experience, for not less than twelve hours per week; and
- (e) it relates to qualifications up to and including National Qualifications Level 3.

Structure and level of payments, and assessment

5.—(1) Education maintenance allowance consists of :

- (a) an award, as described in paragraphs (2) and (3) and regulation 7 paid fortnightly to the eligible person;
- (b) an intermittent bonus payment as described in paragraph (4) and regulation 8.

(2) The weekly award which an eligible person receives in 2006/07 is to be determined according to the following table:

<i>Household Income</i>	<i>Weekly award</i>
Up to £20,270	£30
£20,271 but less than or equal to £24,850	£20
£24, 851 but less than or equal to £30,000	£10

(3) The weekly award which an eligible person receives in 2007/08 is to be determined according to the following table:

<i>Household Income</i>	<i>Weekly award</i>
Up to £20,817	£30
£20,818 but less than or equal to	£20

£25,521
£25,522 but less than or equal to £10
£30,810

(4) The amount of an intermittent bonus payment awarded in accordance with regulation 8 is £100.

(5) Subject to paragraphs (6) to (8), the assessment of an eligible person's financial eligibility for an education maintenance allowance made under this regulation will be valid for the whole of the academic year for which the assessment is made.

(6) Where income has been assessed as being greater than £20,270 in 2006/07 or £20,817 in 2007/08, an eligible person 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 determining financial eligibility has died; or
- (b) since the assessment of income was made, the eligible person no longer lives with his or her parents, guardians or other person whose income was taken into account in determining financial eligibility and is responsible for himself or herself; or
- (c) the eligible person has become a parent; or
- (d) since the assessment was made there has been a reduction in income of a non temporary nature.

(7) In the event that the Welsh Ministers are satisfied that one or more of the conditions in paragraph (6) applies and the eligible person has applied to be reassessed, they may determine that an eligible person is entitled to receive an education maintenance allowance or higher level of education maintenance allowance payable under regulation 7.

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

(9) Where the Welsh Ministers determine under paragraph (7) that an eligible person is entitled to receive an education maintenance allowance or a higher level of weekly award under regulation 7, they may—

- (a) back-date payment to the date on which it received the eligible person's application for reassessment; or
- (b) in the circumstances described in paragraph (6)(a) back-date payment to the date when the person whose income was taken into account died.
- (c) make payments of education maintenance allowance under regulations 7 and 8 in relation to an eligible person who qualifies for support under these Regulations.

6. In assessing eligibility for education maintenance allowance, including reassessment under regulation 5(6) to (8), the Welsh Ministers may take such steps and make such enquiries as they consider necessary to determine whether an applicant is an eligible person, whether the applicant qualifies for support and the amount of support payable, if any.

The Education Maintenance Allowance Learning Agreement and weekly award

7.-(1) An eligible person qualifies for an award of weekly education maintenance allowance assessed under regulation 5(2) or (3) if he or she has signed a Learning Agreement Part 1 and—

- (a) subject to paragraph (b) the eligible person has, in respect of a week to which the award relates, attended every learning session in connection with an eligible education course; or
- (b) if the eligible person has not attended every such learning session in respect of a week to which the award relates, the recognised educational institution has authorised each absence;

The Education Maintenance Allowance Learning Agreement and intermittent bonus payments

8.-(1) An eligible person qualifies for an intermittent January, July or September bonus payment of education maintenance allowance if he or she satisfies the conditions in paragraph (2).

(2) The conditions are—

- (a) in respect of a January bonus payment —
 - (i) an eligible person has received during the calendar year but before the start of the first week in February two payments of education maintenance allowance under regulation 7; and
 - (ii) the recognised educational institution determines that an eligible person has achieved his or her learning goals in relation to the period commencing at the start of the previous September to the end of the following January;
- (b) in respect of a July bonus payment the recognised educational institution determines that an eligible person has achieved his or her learning goals in relation to the period commencing at the start of the January to the end of the following July;
- (c) in respect of a September bonus payment—
 - (i) an eligible person has received not less than two weekly awards of education

- maintenance allowance under regulation 7
in September of the academic year; and
- (ii) an eligible person has a Learning Agreement
Part 1 in place before the preceding academic
year
- (3) For the purpose of paragraph (2)(c)(ii) any week commencing on a Monday that falls in the calendar month of September is to be regarded as a qualifying week for the purpose of payment of education maintenance allowance;
- (4) An eligible person must not receive a January bonus payment or a July bonus payment unless he or she has signed a Learning Agreement Part 2 for that academic year.

Role of recognised educational institutions

9.Recognised educational institutions which are providing eligible education courses to eligible persons under these Regulations must:

- (a) take steps to promote the availability of education maintenance allowance to their students and prospective students;
- (b) ensure that staff are properly trained in the administration of education maintenance allowance;
- (c) notify the Welsh Ministers of each eligible person enrolled with the recognised educational institution and confirm that they and the eligible person have signed the Learning Agreement Part 1;
- (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 eligible persons entitled to education maintenance allowance under these Regulations who are enrolled at the recognised educational institution;
- (f) 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 regulation 7 (a) or (b);
- (g) notify the Welsh Ministers when Learning Agreement Part 2 has been signed by both a representative of the Recognised Educational Institution and the eligible person;
- (h) notify the Welsh Ministers as to whether an intermittent bonus payment under regulation 8 should be paid to an eligible person or not, in accordance with regulation 8; and

- (i) establish and publish an appeals process in relation to decisions as to whether a person qualifies for an of award education maintenance allowance under regulations 7 or 8.

Back-payment of Education Maintenance Allowance

10.—(1) An application for education maintenance allowance must be submitted to the Welsh Ministers by 31 March.

(2) Paragraph (1) does not apply where—

(a) an eligible person applies for an education maintenance allowance after the start of the academic year; and

(b) the application is received by the Welsh Ministers on or before 31 October,

in which case payment may be backdated to the start of the academic year.

(3) Paragraph (1) does not apply where—

(a) an eligible person applies for an education maintenance allowance after the start of the academic year; and

(b) the application is received by the Welsh Ministers after 31 October,

in which case payment may be backdated to the date on which the Welsh Ministers received the application form, or the start date of the course, whichever is later.

(4) Any back-payment made under this regulation is subject to the rules about weekly awards of maintenance allowance in regulation 7.

Prohibition of dual funding

11.An eligible person is not to receive education maintenance allowance for any period of time during which he or she is in receipt of a paid work placement or training allowance.

Overpayment

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

(a) exceeds the amount of education maintenance allowance to which he or she is entitled under these Regulations; or

(b) the eligible person was not entitled to receive under these Regulations.

Signed by the Welsh Minister for Education Lifelong Learning and Skills

Date

Presiding Officer

SCHEDULE

Eligible Persons

PART 1

Interpretation

- 1.—(1)** For the purposes of this Schedule—
- “Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29th 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;
- “EC national” (“*Gwladolyn o’r GE*”) means a national of a Member State of the European Community;
- “EEA” (“*AEE*”) means the European Economic Area which is the area comprised by the European Community, the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;
- “EEA frontier self-employed person” (“*person hunangyflogedig ffin yr AEE*”) means an EEA national who —
- (a) is a self-employed person in the United Kingdom; and
 - (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;
- “EEA frontier worker” (“*gweithiwr ffin yr AEE*”) means an EEA national who—
- (c) is a worker in the United Kingdom; and
 - (d) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

⁽¹⁾ OJ L158, 30.04.2004, p77-123.

“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 o’r AEE*”) means a national of an EEA State other than 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;

“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;

“European Economic Area” (“*Ardal Economaidd Ewropeaidd*”) means the area comprised by the European Community, the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“family member” (“*aelod o’r teulu*”) means (unless otherwise indicated) —

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

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

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

- (a) has been informed by a person acting under the authority of the Secretary of the State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom;
- (b) has been granted leave to enter or to remain accordingly (and which grant has not been revoked); and
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period since he or she was granted leave to enter or remain;

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

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

- (b) 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
- (d) 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(1);

(1) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).

“Swiss Agreement” (“*Cytundeb y Swistir*”) means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999⁽¹⁾ and which came into force on 1st June 2002;

“Swiss employed person” (“*person Swisaidd cyflogedig*”) 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 Swisaidd cyflogedig y ffin*”) means a Swiss national who—

(c) is an employed person in the United Kingdom; and

(e) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his or her 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 Swisaidd hunangyflogedig y ffin*”) means a Swiss national who—

(d) is a self-employed person in the United Kingdom; and

(f) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

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

(2) For the purposes of this Schedule, “parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” (“*plentyn*”) is to be construed accordingly.

⁽¹⁾ Cm. 4904.

⁽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.

(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 EEA and Switzerland if he or she would have been so resident but for the fact that —

- (b) he or she;
- (c) his or her spouse or civil partner;
- (d) his or her parent; or
- (e) in the case of a dependent direct relative in the ascending line, his or her child or child's spouse or civil partner,

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

(4) For the purposes of sub-paragraph (4), temporary employment outside the United Kingdom and Islands or the territory comprising 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 EEA and Switzerland as members of such forces.

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

- (a) was previously not part of the European Community or the EEA; but
- (b) at any time before or after these Regulations come into force 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.

(10) 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) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
- (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 his or her residence as 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 as referred to in paragraph (c).

Refugees and persons with leave to enter or remain

4.—(1) A person who—

- (a) is a refugee;
- (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she 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 his or her application for asylum;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was 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 his or her 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 his or her application for asylum;
- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was 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.

Persons with leave to enter or remain and their family members

5.—(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 his or her application for asylum;
- (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 his or her application for asylum, was the child of that person or the child of a person who was the

- spouse or civil partner of the person with leave to enter or remain on that date;
- (c) who was under 18 on the date on which the person with leave to enter or remain made his or her application for asylum;
- (d) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (e) 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.

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

6.—(1) A person who—

- (a) is —
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in 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 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 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).

7.A person who—

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the 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 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽¹⁾, as extended by the EEA Agreement⁽²⁾.

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

8.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the 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 his or her 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 he or she is a United Kingdom national, 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 a person who has a right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if he or she goes to the state within the territory comprising the EEA and Switzerland of which he or she is a national or of which the person in relation to whom he or she is a family member is a national.

⁽¹⁾ OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (II) p475).

⁽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.

EC nationals

9.—(1) A person who —

- (a) is either –
 - an EC national on the first day of the first academic year of the course; or
 - a family member of a such a person;
- (b) is attending an eligible education course; or
- (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) subject to sub-paragraph (2), 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.

(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 EEA and Switzerland in accordance with paragraph 1(4).

(3) Where a state accedes to the European Community 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 EC national on the first day of the first academic year of the course is treated as being satisfied.

10.—(1) A person who—

- (a) is an EC national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where his or her 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).

(2) Where a state accedes to the European Community 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 EC national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11.A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the 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 his or her 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 prior to the period of ordinary residence referred to in paragraph (c).