
WELSH STATUTORY INSTRUMENTS

2018 No. 814

**The Education (Student Finance) (Miscellaneous
Amendments) (Wales) Regulations 2018**

Part 4

Amendments relating to the immigration status of students

Amendments to the Education (Fees and Awards) (Wales) Regulations 2007

39. The Education (Fees and Awards) (Wales) Regulations 2007(1) are amended in accordance with regulations 40 and 41.

40. In regulation 5 (awards by local authorities), in paragraph (1)—

- (a) in sub-paragraph (b), for “within paragraph 5” substitute “within paragraphs 4A and 5”;
- (b) in sub-paragraph (c), for “within paragraphs 5 and 9” substitute “within paragraphs 4A, 5 and 9.”

41. In the Schedule—

(a) in paragraph 1—

(i) in the appropriate places insert—

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

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

- (a) has extant leave to remain as a stateless person under the immigration rules; and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;”;

(ii) for the definition of “person with leave to enter or remain” substitute—

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

(a) who has—

- (i) applied for refugee status but has, as a result of that application, been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is not considered to qualify for recognition as a refugee, it is thought right to allow P to enter or remain in the United Kingdom on the

(1) *S.I. 2007/2310 (W. 181)* as amended by *S.I. 2010/1142 (W. 101)* and *S.I. 2011/1978 (W. 218)*; there are other amending instruments but none is relevant.

- grounds of humanitarian protection or discretionary leave, 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 P 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 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 P is not considered to qualify for leave to remain on the grounds of private life under the immigration rules, P has been granted leave to remain outside the rules⁽²⁾ on the 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 P was granted leave to enter or remain;”;
- (b) after paragraph 4 (refugees and their family members) insert—

“Persons granted stateless leave and their family members

- 4A.—**(1) A person granted stateless leave who—
- (a) is ordinarily resident in Wales on the first day of the first academic year of the course; and
 - (b) 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—
 - (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;
 - (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.
- (3) A person—

⁽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, Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c. 13), section 19, S.I. 2010/21 and the Immigration Act 2014 (c. 22), Schedule 9.

- (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;
- (c) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.

(4) In this paragraph, “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.”;

- (c) in paragraph 5 (persons with leave to enter or remain and their family members)—
 - (i) for sub-paragraph (2)(b) substitute—
 - “(b) who was the spouse or civil partner of the person with leave to enter or remain on the leave application date; and”;
 - (ii) for sub-paragraph (3)(b) substitute—
 - “(b) who, on the leave application date, 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;”;
 - (iii) for sub-paragraph (3)(c) substitute—
 - “(c) who was under 18 on the leave application date; and”;
 - (iv) after sub-paragraph (3) insert—
 - “(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.”

Amendments to the Education (European University Institute) (Wales) Regulations 2014

42. The Education (European University Institute) (Wales) Regulations 2014(4) are amended in accordance with regulations 43 to 45.

43. In regulation 3—

- (a) in the appropriate places insert—
 - ““immigration rules” (“*rheolau mewnfudo*”) means the rules laid before Parliament by the Secretary of State under section 3(2) of the Immigration Act 1971;”;
 - ““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; and
 - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;”;

(b) for paragraphs (a) and (b) of the definition of “person with leave to enter or remain”, substitute—

“(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 A is considered not to qualify for recognition as a refugee, it is thought right to allow A to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave, 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 A 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 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 A is not considered to qualify for leave to remain on the grounds of private life under the immigration rules, A has been granted leave to remain outside the rules⁽⁵⁾ on the grounds of Article 8 of the European Convention on Human Rights;”.

44. In regulation 6 (eligible students), after paragraph (9) insert—

“(9A) Where—

- (a) the Welsh Ministers determined that, by virtue of being a person granted stateless leave, or the spouse, civil partner, child or step-child of such a person, a person (“A” in this paragraph) was an eligible student in connection with an application for support for an earlier year of the current course or in connection with an application for support for a designated course at the Institute from which A’s status as an eligible student has been transferred to the current course; and
- (b) the period for which a person granted stateless leave is allowed to stay in the United Kingdom is due to expire before the first day of the academic year in respect of which A is applying for support and, as at the day before that academic year begins, no further leave to remain has been granted and no application for administrative review in accordance with the immigration rules⁽⁶⁾ is pending,

A’s status as an eligible student terminates on the day before the first day of the academic year in respect of which A is applying for support.”

45. In Schedule 1—

(a) after paragraph 4 (refugees) insert—

“Persons granted stateless leave and their family members

4A.—(1) A person granted stateless leave who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the course; and

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

(6) See Appendix AR: administrative review.

(b) 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—

(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;

(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.

(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;

(c) who is ordinarily resident in Wales on the first day of the first academic year of the course; and

(d) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.

(4) In this paragraph, “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.”;

(b) in paragraph 5—

(i) for sub-paragraph (2)(b) substitute—

“(b) who was the spouse or civil partner of the person with leave to enter or remain on the leave application date;”;

(ii) for sub-paragraph (3)(b) substitute—

“(b) who, on the leave application date, 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;”;

(iii) for sub-paragraph (3)(c) substitute—

“(c) who was under 18 on the leave application date;” and

(iv) after sub-paragraph (3) insert—

“(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.”

Amendments to the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015

46. The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015(7) are amended in accordance with regulations 47 to 49.

47. In regulation 2 (interpretation), in paragraph (1)—

(a) in the appropriate places insert—

““the 2017 Regulations” (“*Rheoliadau 2017*”) means the Education (Student Support) (Wales) Regulations 2017(8);”;

““the 2018 Regulations” (“*Rheoliadau 2018*”) means the Education (Student Support) (Wales) Regulations 2018(9);”;

(b) in the definition of “end-on course”, after “2015 Regulations” insert “ or regulation 2(1) of the 2017 Regulations”;

(c) in the definition of “preceding course”, after “2015 Regulations” insert “, a course mentioned in paragraph 2 or 3 of Schedule 2 to the 2017 Regulations”; and

(d) for the definition of “single course” substitute—

““single course” (“*cwrs sengl*”) means a course to which—

(a) regulation 5(6) of the 2015 Regulations applies and which falls within the description of a course in that regulation;

(b) regulation 5(6) of the 2017 Regulations applies and which falls within the description of a course in that regulation; or

(c) regulation 6(4) of the 2018 Regulations applies and which falls within the description of a course in regulation 6(3) of the 2018 Regulations.”

48. In regulation 4 (prescribed description of a qualifying person), for paragraph (1) substitute—

“(1) A qualifying person who is prescribed for the purposes of section 5(5) of the 2015 Act is a person who falls within the Schedule on the first day of an academic year, other than—

(a) a person who is not eligible for support under the 2015 Regulations by reason of regulation 4(3)(c), (d), (e) or (f) of those Regulations;

(b) a person who is not eligible for support under the 2017 Regulations by reason of regulation 4(3)(c), (d), (e) or (f) of those Regulations;

(c) a person who is not eligible for support under the 2018 Regulations because they are a person to whom Exception 3, paragraph (a), Exception 4, Exception 5 or Exception 6 listed in regulation 10(1) of those Regulations applies; or

(d) a person mentioned in paragraphs (2), (3), or (8).”

49. In the Schedule—

(a) in paragraph 1(1)—

(i) in the appropriate places insert—

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

(7) S.I. 2015/1484 (W. 163), as amended by S.I. 2016/276 (W. 100).

(8) S.I. 2017/47 (W. 21).

(9) S.I. 2018/191 (W. 42).

““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; and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;”;

(ii) for paragraphs (a) and (b) of the definition of “person with leave to enter or remain” substitute—

“(a) who has—

- (i) applied for refugee status but has, as a result of that application, been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is considered not to qualify for recognition as a refugee, it is thought right to allow P to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave, 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 P 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 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 P is not considered to qualify for leave to remain on the grounds of private life under the immigration rules, P has been granted leave to remain outside the rules(10) on the grounds of Article 8 of the European Convention on Human Rights;”;

(b) after paragraph 4 (refugees and their family members) insert—

“Persons granted stateless leave and their family members

4A.—(1) A person granted stateless leave who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (b) 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—
 - (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;

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

- (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.
- (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;
 - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
 - (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.
- (4) In this paragraph, “leave application date” means the date on which the person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules.”;
- (c) in paragraph 5 (persons with leave to enter or remain and their family members)—
- (i) for sub-paragraph (2)(b) substitute—
 - “(b) was the spouse or civil partner of the person with leave to enter or remain on the leave application date; and”;
 - (ii) for sub-paragraph (3)(b) substitute—
 - “(b) who, on the leave application date, 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;”;
 - (iii) for sub-paragraph (3)(c) substitute—
 - “(c) who was under 18 on the leave application date; and”;
 - (iv) after sub-paragraph (3) insert—
 - “(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.”

Amendments to the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017

50. The Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017(11) are amended in accordance with regulations 51 to 53.

51. In regulation 2 (interpretation), in paragraph (1)—

- (a) in the appropriate places insert—

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

““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; and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;”;

(b) for paragraphs (a) and (b) of the definition of “person with leave to enter or remain”, substitute—

“(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 A is considered not to qualify for recognition as a refugee, it is thought right to allow A to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave, 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 A 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 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 A is not considered to qualify for leave to remain on the grounds of private life under the immigration rules, A has been granted leave to remain outside the rules(12) on the grounds of Article 8 of the European Convention on Human Rights;”.

52. In regulation 8 (events), in paragraph (b), after “is recognised as a refugee or” insert “a person granted stateless leave or”.

53. In Schedule 1—

(a) after paragraph 4 (refugees and their family members) insert—

“Persons granted stateless leave and their family members

4A.—(1) A person granted stateless leave who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (b) 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—

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

- (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;
 - (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 year of the first academic year of the course.
- (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;
 - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
 - (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course.
- (4) In this paragraph, “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.”;
- (b) in paragraph 5 (persons with leave to enter or remain and their family members)—
- (i) for sub-paragraph (2)(b) substitute—
 - “(b) who was the spouse or civil partner of the person with leave to enter or remain on the leave application date;”;
 - (ii) for sub-paragraph (3)(b) substitute—
 - “(b) who, on the leave application date, 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;”;
 - (iii) for sub-paragraph (3)(c) substitute—
 - “(c) who was under 18 on the leave application date;” and
 - (iv) after sub-paragraph (3) insert—
 - “(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.”

Amendments to the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018

54. The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018(13) are amended in accordance with regulations 55 and 56.

55. In regulation 2 (interpretation), in paragraph (1), for paragraphs (a) and (b) of the definition of “person with leave to enter or remain”, substitute—

- “(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 A is considered not to qualify for recognition as a refugee, it is thought right to allow A to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave, 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 A 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 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 A is not considered to qualify for leave to remain on the grounds of private life under the immigration rules, A has been granted leave to remain outside the rules(14) on the grounds of Article 8 of the European Convention on Human Rights;”.

56. In Schedule 1, paragraph 6 (persons with leave to enter or remain and their family members)

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- (a) for sub-paragraph (2)(b) substitute—
 - “(b) who was the spouse or civil partner of the person with leave to enter or remain on the leave application date;”;
 - (b) for sub-paragraph (3)(b) substitute—
 - “(b) who, on the leave application date, 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;”;
 - (c) for sub-paragraph (3)(c) substitute—
 - “(c) who was under 18 on the leave application date;”;
 - (d) after sub-paragraph (3) insert—
 - “(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.”.

(14) Paragraph 376BE(2) of the immigration rules refers.