

NATIONAL ASSEMBLY FOR WALES

**SUBORDINATE
LEGISLATION**

2006 No.

EDUCATION, WALES

**Education Maintenance Allowance
Scheme 2006**

EXPLANATORY NOTE

(This note is not part of the Scheme)

Under Section 14 of the Education Act 2002 the National Assembly for Wales may make arrangements for financial assistance to be given to young people to enable them to undertake education after they have reached compulsory school leaving age. The National Assembly for Wales (the Assembly) has made arrangements in this regard for the payment of an Education Maintenance Allowance (EMA) to young people. This document sets out the manner in which the EMA Wales scheme is to operate. The Scheme comes into force on 21 September 2006.

Under Section 17 of the Education Act 2002 the Assembly has made arrangements for the Student Loans Company (the Scheme Provider) to administer the EMA Wales scheme and issue guidance to recognised educational institutions or any other organisations.

2006 No.

EDUCATION, WALES

**Education Maintenance Allowance
Scheme 2006**

Made 2006

Coming into force 21 September 2006

The National Assembly for Wales, in exercise of the powers conferred upon it by regulations 14,15, 16 and 17 of the Education Act 2002(1), makes the following Scheme:

Title, commencement and application

1.—(1) The title of this Scheme is the Education Maintenance Allowance Scheme 2006.

(2) This Scheme comes into force on 21 September 2006 and applies in relation to Wales.

Interpretation

2.—(1) Except where the context otherwise requires, for the purpose of 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 to begin after July 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

“Education Maintenance Allowance” (EMA) (*“Lwfans Cynhaliath Addysg”*) (LCA) or “EMA payment” (*“taliad LCA”*) has the meaning referred to in paragraphs 4(1) – 4(4) of this document.

“Full-Time Education” (*“addysg lawnamser”*) means, a programme of full-time academic or vocational education of at least ten weeks duration provided by or in a Recognised Educational

(1) c.32.

Institution, such that the Young 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 at least twelve hours per week;

"Guidance" ("*canllawiau*") means such guidance issued by the National Assembly for Wales or the Scheme Provider to schools and colleges from time to time.

"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 as amended from time to time;

"Learning Agreement Part 1" ("*Cytundeb Dysgu Rhan 1*") means a signed contract between a Young Person and his/her Recognised Educational Institution setting out respective responsibilities governing his/her attendance and the payment of weekly awards as described in paragraphs 4(2) and 4(3) of this Scheme.

"Learning Agreement Part 2" ("*Cytundeb Dysgu Rhan 2*") means a signed contract between a Young Person and his/her Recognised Educational Institution setting out the objectives a Young Person must achieve to qualify for an intermittent bonus as described in paragraph 8.

"Learning Goals" ("*cyrchnodau dysgu*") means objectives agreed between a Young Person and the Recognised Educational Institution he or she is attending which relate to the Young 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 maintained by a local education authority, (b) an independent school registered under Part 10 of the Education Act 2002, (c) an institution within the further education sector or (d) any other educational institution which the National Assembly for Wales considers appropriate;

"the Scheme Provider" ("*darparwr y Cynllun*") is the Student Loans Company;

"Young Person" ("*person ifanc*") means a person of an age eligible to receive an EMA as specified in paragraphs 3(1) and 3(5).

(2) In this Scheme a reference to a paragraph is a reference to a paragraph of this Scheme and a reference in a paragraph to a sub-paragraph is a reference to a sub-paragraph of that paragraph..

EDUCATION MAINTENANCE ALLOWANCE SCHEME

Young Person's entitlement

3.—(1) Subject to the provisions of this Scheme, a Young Person qualifies to receive EMA subject to the following conditions:

- (a) he or she is participating in a programme of Full-Time education up to and including National Qualifications Level 3 at, or provided by, a Recognised Educational Institution in Wales;
- (b) the National Assembly for Wales has determined in connection with the Scheme that the person mentioned in Part 2 of the Annex to this Scheme, except that a person is not eligible if the only paragraph of the Annex into which he or she falls is paragraph 9;
- (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 EMA is to be paid; and
- (d) he or she satisfies one of the further requirements listed in paragraph 3(2)(a), (b) or (c).

(2) Those further requirements are —

- (a) in the academic year 2004/05 he or she has his or her seventeenth birthday during the academic year; or
- (b) in the academic year 2005/06 he or she has his or her seventeenth or eighteenth birthday during the academic year; or
- (c) in the academic year 2006/07 he or she has his or her seventeenth, eighteenth or nineteenth birthday during the academic year.

(3) No EMA payment will be made, however, unless a Young Person fulfils the EMA contractual conditions relevant to each payment as outlined in paragraphs 7 and 8 of this Scheme.

(4) A Young Person who is eligible to receive EMA payments under paragraphs 3, 7 and 8 of this Scheme is entitled receive EMA payments for up to three Academic Years. Except in the circumstances described in paragraph 3(5), this must be the three Academic Years immediately following the Academic Year in which the Young Person reaches compulsory school leaving age.

(5) A Young Person may receive EMA payments in the Academic Year in which he or she has his or her 20th birthday if he or she has received an EMA 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 Young Person should receive EMA support for the Academic Year in question. Where such a determination is made the Recognised Educational Institution is to notify the Scheme Provider in accordance with the arrangements set out in Guidance.

Structure and level of payments, and assessment

4.—(1) EMA consists of two forms of payment:

- (a) an award, as described in paragraphs 4(2),4(3) and 7 paid fortnightly to the Young Person
- (b) Intermittent bonus payments as described in paragraphs 4(4) and 8.

(2) The weekly award which a Young Person receives in 2005/06 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 a Young Person receives in 2006/07 is to be determined according to the following table:

<i>Household Income</i>	<i>Weekly award</i>
Up to £20,817	£30
£20,818 but less than or equal to £25,521	£20
£25,522 but less than or equal to £30,810	£10

(4) Each intermittent bonus payment paid pursuant to paragraph 8 will be £100.

(5) Subject to paragraphs 4(6) – 4(8) of the Scheme, the assessment of each Young Person’s financial eligibility for an EMA will be valid for the whole of the Academic Year for which the assessment is made. A Young Person must reapply for EMA for any subsequent Academic Years.

(6) Where income has been assessed as being greater than £20,270 in 2005/06 or £20,817 in 2006/07, a Young Person may apply to be reassessed if one or more of the following conditions is fulfilled:

- (a) someone whose income was taken into account in determining financial eligibility has died; or
- (b) since the assessment of income was made, the Young Person no longer lives with his or her parents, guardians or someone else whose income was taken into account in determining financial eligibility and is responsible for himself or herself; or
- (c) the Young Person has become a parent; or
- (d) since the assessment was made there has been a drop in income of a non temporary nature

(7) If the Scheme Provider determines that one or more of the circumstances in sub-paragraph (a) is satisfied and that under these new circumstances the Young Person will become entitled to receive EMA or will be entitled to receive a higher level of weekly award, it will notify the Young Person to that effect.

(8) Subject to the requirements about weekly attendance in paragraph 7 of the Scheme, where a Young Person is reassessed as being eligible to receive EMA or a higher level of weekly award, payments may be backdated to the date on which the Scheme Provider received the Young Person's application for reassessment, except for the case where someone whose income was taken into account has died, when payments may be backdated to the date when that person died.

5. 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.

6. In carrying out its function of assessing a Young Person's eligibility for EMA, including reassessment under paragraphs 4(6) - 4(8), the Scheme Provider :

- (a) will specify the documentary evidence that must be provided in support of the application, including evidence about financial circumstances, personal identity and residence; and
- (b) may require additional evidence if it considers that the evidence provided is incomplete or inaccurate, or if such a request is consistent with a strategy agreed between the Scheme Provider and the National Assembly for Wales to reduce the risk of incorrect payments being made for reasons of fraud or inadvertent provision of incorrect information.

The EMA Learning Agreement and weekly award

7. The following conditions govern the award of weekly EMA :

- (a) a Young Person will only be eligible to receive an award in respect of a week in which he or she has attended every Learning Session for his or her programme of study, or if this is not the case, each absence has been authorised by the Recognised Educational Institution;
- (b) a Young Person will not be eligible to receive an award unless he or she has signed a Learning Agreement Part 1, which signifies his or her acceptance of the terms governing the award, including this condition and condition (a) of this paragraph.

The EMA Learning Agreement and intermittent bonus payments

8. The following conditions govern the award of EMA intermittent bonus payments:

- (a) no Young Person will receive a January intermittent bonus payment unless he or she has received at least two weekly EMA awards during that calendar year but before the first full week in February and is judged by the Recognised Educational Institution to have achieved the Learning Goals set for this purpose by the Recognised Educational Institution in respect of the period between the previous September to January;
- (b) no Young Person will receive a July intermittent bonus payment unless he or she is judged by the Recognised Educational Institution to have achieved his or her Learning Goals for the period from January to July;
- (c) no young person will receive a September intermittent bonus payment unless he or she has had a Learning Agreement Part 1 in place before the end of the preceding Academic Year and has also qualified for at least two weekly awards in September of the new Academic Year. For this purpose any week commencing on a Monday that falls in the calendar month of September shall be regarded as a qualifying week ;
- (d) no Young Person shall receive an intermittent January or July EMA bonus payment unless he or she has signed a Learning Agreement Part 2 for that Academic Year, which signifies his or her acceptance of the conditions in this paragraph;

Role of Recognised Educational Institutions

9. Recognised Educational Institutions which have EMA recipients enrolled are expected to :

- (a) promote the availability of EMA to their students and prospective students;
- (b) ensure that staff are properly trained in the administration of EMA;
- (c) notify the Scheme Provider of each Young Person eligible for EMA that they have enrolled (“EMA-eligible Young Person”) and confirm that they and the Young Person have signed the Learning Agreement Part 1 in accordance with the provisions set out in Guidance;
- (d) ensure that Young Persons are made aware of how EMA is administered at their Recognised Educational Institution;
- (e) ensure that attendance records are maintained for all EMA-eligible Young Persons in line with the requirements specified in Guidance;
- (f) submit weekly reports to the Scheme Provider as to which EMA-eligible Young Persons should or should not receive EMA in respect of the previous week, consistent with paragraph 7 and in accordance with the time-scales specified in Guidance;
- (g) notify the Scheme Provider when Learning Agreement Part 2 has been signed by both a representative of the Recognised Educational Institution and the Young Person in accordance with the provisions specified in Guidance;
- (h) notify the Scheme Provider as to whether each bonus should be paid to a Young Person or not, consistent with paragraph 8; and
- (i) establish and publicise an appeals process for EMA-eligible Young Persons to contest a decision that either a weekly award or bonus payment should not be made in accordance with the provisions specified in Guidance.

Backpayment of EMA

10. A Young Person will be encouraged to submit his or her application by 31 March, and where a Young Person applies for an EMA after the start of the Academic Year and the application is received by the Scheme Provider on or before 31 October, payments may be backdated to the start of the Academic Year. Where an application is received after 31 October, payments may be backdated to the date on which the Scheme Provider received the application form, or the start date of the course, whichever is later. Any back payment is subject to the rules about weekly awards in paragraph 7.

Prohibition of dual funding

11. In accordance with the provisions set out in Guidance, no Young Person may receive EMA payments for any period of time during which he or she is in receipt of a paid work placement or training allowance.

Overpayment

12. Where a Recognised Educational Institution has authorised weekly awards which should not have been authorised, resulting in an overpayment of EMA to a Young Person, it should ensure this is recovered by the Scheme Provider by stopping future weekly awards in accordance with the procedures set out in Guidance. If more than two consecutive weekly payments have been authorised which should not have been, or there are insufficient payments remaining to allow recovery, then the Recognised Educational Institution should inform the Scheme Provider, who will seek to recover any residual overpayment according to arrangements agreed with the National Assembly for Wales.

13. Where a Recognised Educational Institution has authorised bonus payments which should not have been authorised, resulting in an overpayment of EMA, then it should inform the Scheme Provider, who will seek to recover the money according to the arrangements agreed with the National Assembly for Wales.

14. Where the Scheme Provider has mistakenly authorised payments, either through incorrect assessment of financial information, or mishandling of weekly or bonus reporting information from Recognised Educational Institutions, resulting in an overpayment of EMA, it will seek to recover the money according to arrangements agreed with the National Assembly for Wales.

Revocation

15. The two previous arrangements made by the National Assembly under section 14 of the Education Act 2002 governing the payment of education maintenance allowance, one for the academic year 2004/5 and the other for the academic year 2005/6, are revoked:

Signed on behalf of the National Assembly for Wales

Date

Presiding Officer

Annex

PART 1

Interpretation

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

“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 Agreement” (“*Cytundeb yr AEE*”) means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(2) as adjusted by the Protocol signed at Brussels on 17th March 1993(3);

“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—

- (a) is a worker 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;

(1) OJ L158, 30.04.2004, p77-123.

(2) Cm. 2073.

(3) Cm. 2183.

“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 —
 - (i) his or her spouse or civil partner;
 - (ii) his or her child or the child of his or her spouse or civil partner; or
 - (iii) 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
- (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—

- (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;

“self-sufficient” (“*hunangynhaliol*”) means self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38;

“settled” (“*wedi setlo*”) has the meaning given by section 33(2A) of the Immigration Act 1971(1);

“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(2) 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—

- (a) is an employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to 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—

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to 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, 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) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).

(2) Cm. 4904.

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

- (a) he or she;
- (b) his or her spouse or civil partner;
- (c) his or her parent; or
- (d) 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 European Economic Area and Switzerland.

(4) For the purposes of sub-paragraph (4), temporary employment outside the United Kingdom and Islands or the territory comprising the European Economic Area 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 European Economic Area 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 European Economic Area; 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 European Economic Area;

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) 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) 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 European Economic Area 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. A person who

- (a) is either—
 - (i) a refugee ordinarily resident in the United Kingdom and Islands who has not ceased to be so resident since he or she was recognised as a refugee; or
 - (ii) the spouse, civil partner, child or step-child of a person mentioned in paragraph (i); and
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

5. A person who—

- (a) is either—
 - (i) a person with leave to enter or remain; or
 - (ii) the spouse, civil partner, child or step-child of a person with leave to enter or remain;

- (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 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 Wales on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area 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 European Economic Area 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.

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

8.—(1) A person who—

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

(2) For the purposes of this paragraph, a person 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 European Economic Area 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 .

EC nationals

9.—(1) A person who —

- (a) is either —
 - (i) an EC national on the first day of the first academic year of the course; or
 - (ii) a family member of a such a person;

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

- (b) is undertaking full-time education in Wales;
- (c) has been ordinarily resident in the territory comprising the European Economic Area 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 European Economic Area 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 European Economic Area 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 ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area 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 European Economic Area 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 European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).