
STATUTORY INSTRUMENTS

2007 No. 779

EDUCATION, ENGLAND

The Education (Fees and Awards) (England) Regulations 2007

Made - - - - *8th March 2007*
Laid before Parliament *19th March 2007*
Coming into force - - *1st September 2007*

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by sections 1 and 2 of the Education (Fees and Awards) Act 1983(1).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Fees and Awards) (England) Regulations 2007 and come into force on 1st September 2007.

(2) These Regulations apply in relation to England(2).

Interpretation

2.—(1) In these Regulations—

“the 2005 Act” means the Education Act 2005(3);

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1st January and before 1st April, on or after 1st April and before 1st July, on or after 1st July and before 1st August or on or after 1st August and on or before 31st December, respectively;

“award” means a fees award or a maintenance award or both;

“education” includes post-graduate research otherwise than in the course of employment;

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- (1) 1983 c.40. Section 1 was amended by the Education Reform Act 1988 (c.40), Schedule 12, paragraph 91; the Further and Higher Education Act 1992 (c.13), Schedule 8, paragraph 19; the Education Act 1994 (c. 30), Schedule 2, paragraph 7; the Education Act 1996 (c.56), Schedule 37, paragraph 57; the Teaching and Higher Education Act 1998 (c. 30), Schedule 3, paragraph 5; the Learning and Skills Act 2000 (c.21) Schedule 9, paragraphs 1 and 11; the Education Act 2002 (c.32) Schedule 21, paragraph 5 and the Education Act 2005 (c.18) Schedule 14, paragraph 9. Section 2 was amended by the Teaching and Higher Education Act 1998, section 44 and Schedule 4.
- (2) The functions of the Secretary of State under section 1 of the Education (Fees and Awards) Act 1983, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 2006/1458 with effect from 8th June 2006. The remaining functions under the Education (Fees and Awards) Act 1983, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 with effect from 1st July 1999.
- (3) 2005 c.18.

- “employment” means full-time or part-time employment;
- “European Community” means the territory comprised by the Member States of the European Community as constituted from time to time;
- “European Economic Area” means the area comprised by the EEA States;
- “fees award” means an award in respect only of any fees payable other than any element of those fees which is a charge for maintenance;
- “HEFCE” means the Higher Education Funding Council for England(4);
- “the Islands” means the Channel Islands and the Isle of Man;
- “LSC” means the Learning and Skills Council for England(5);
- “maintenance award” means any award other than a fees award;
- “overseas territories” means Anguilla; Aruba; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Montserrat; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten); Pitcairn, Henderson, Ducie & Oeno Islands; South Georgia and the South Sandwich Islands; St Helena and Dependencies (Ascension Island and Tristan de Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;
- “post-compulsory education award” means a scholarship, exhibition, bursary or other allowance granted by a local education authority under the Local Education Authority (Post-Compulsory Education Awards) Regulations 1999(6);
- “training provider” means a person who provides training for members of the school workforce under Part 3 of the 2005 Act;

(2) Despite section 11 of the Interpretation Act 1978(7) section 3(2) of the Education (Fees and Awards) Act 1983 (references to the United Kingdom to include references to the Islands) shall not apply for the purposes of interpreting these Regulations.

(3) For the purposes of these Regulations, “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly.

(4) For the purposes of these Regulations, a person is to be treated as ordinarily resident in England, England and Wales, Great Britain, the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland and Turkey if he would have been so resident but for the fact that—

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

is or was temporarily employed outside the area in question.

(5) For the purposes of paragraph (4), temporary employment includes—

(4) established under section 62 of the Further and Higher Education Act 1992.
(5) established under section 1 of the Learning and Skills Act 2000.
(6) S.I. 1999/229, amended by S.I. 2000/2057, and revoked in relation to Wales by S.I. 2002/1856.
(7) 1978 c.30.

- (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;
- (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; and
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(6) For the purposes of Regulations 6, 7, 8 and 9 a person is to be treated as ordinarily resident in England, England and Wales, Great Britain, the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland and Turkey if he would have been so resident but for the fact that—

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

was temporarily receiving full-time education outside the area in question.

- (7) For the purposes of these Regulations 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 the other or both of these areas,

is to be considered to have always been a part of the European Economic Area.

Lawful acts

3.—(1) If discrimination arises from the remission in whole or in part of any fee (on grounds of financial hardship or otherwise), nothing in these Regulations shall be construed as rendering that discrimination unlawful, if it would have been lawful had these Regulations not been made.

(2) If discrimination arises from any rule of eligibility for an award, nothing in these Regulations shall be construed as rendering that discrimination unlawful, if it would have been lawful had these Regulations not been made.

Fee charging

4.—(1) It shall be lawful for the institutions mentioned in paragraph (3) to charge higher fees in the case of a person who does not fall within Schedule 1 than in the case of a person who does fall within Schedule 1.

(2) For the purposes of this regulation a person falls within Schedule 1 if they fall within it on the first day of an academic year of the course.

- (3) The institutions mentioned in this paragraph are institutions—
- (a) within the higher education sector, including a constituent college, school or hall of such an institution;
 - (b) within the further education sector;

- (c) which are training providers and are receiving financial support under section 78 of the 2005 Act;
 - (d) which provide further education and are maintained by a local education authority;
- (4) This regulation does not make lawful the charging of a fee which is unlawful by reason of a condition imposed under section 24 of the Higher Education Act 2004⁽⁸⁾.

Awards by local education authorities

5.—(1) It shall be lawful for a local education authority to adopt rules of eligibility for awards under sections 1(6) or 2 of the Education Act 1962⁽⁹⁾ or for post-compulsory education awards which—

- (a) do not take account of regulation 2(4);
- (b) confine eligibility in the case of fees awards to those persons who fall within Schedule 1, excluding those who fall within paragraph 5, or
- (c) confine eligibility in the case of maintenance awards to those persons who fall within Schedule 1, excluding those who fall within paragraphs 5 and 9.

Awards by research councils and others

6.—(1) It shall be lawful for a research council or institution mentioned in Schedule 2 to adopt rules of eligibility which—

- (a) do not take account of regulation 2(4);
- (b) confine eligibility in the case of fees awards in connection with courses of education or training or the undertaking of research to those persons who fall within Schedule 1, excluding those who fall within paragraph 5; or
- (c) confine eligibility in the case of maintenance awards in connection with courses of education or training or the undertaking of research to those persons who fall within Schedule 1, excluding those who fall within paragraphs 5 and 9.

(2) As regards paragraphs 2 and 3 of Schedule 1, the research council or institution may, in adopting rules of eligibility under paragraph (1)—

- (a) confine eligibility to those persons who have been ordinarily resident in Great Britain for three years preceding the date of application for the award, or
- (b) exclude from eligibility those persons who are not ordinarily resident in Great Britain, in England and Wales or in England (as the maker of the award may determine) on the date of application for the award.

(3) Where rules of eligibility confine awards to persons who are or will be ordinarily resident in part only of the United Kingdom and Islands, a person who is ordinarily resident in some other part of the United Kingdom and Islands shall not for the purposes of this regulation be considered to fall within paragraph 9 of Schedule 1.

(4) The makers of awards may adopt different eligibility rules for different classes or descriptions of awards.

⁽⁸⁾ 2004 c.8.

⁽⁹⁾ 1962 c.12. The Education Act 1962 was repealed by the Teaching and Higher Education Act 1998, subject to transitional and saving provisions to enable payments to be made pursuant to awards made under the Act before its repeal, and to enable awards to be made in respect of courses beginning before 1st September 1999 and certain courses beginning after that date.

Payments by the Training and Development Agency for Schools

7.—(1) It shall be lawful for the Training and Development Agency for Schools(**10**) to adopt rules of eligibility for awards by any training provider to which it makes grants, loans or other payments under section 78 of the 2005 Act which confine eligibility to those persons who fall within Schedule 1.

(2) It shall be lawful for a training provider who is receiving financial support under section 78 of the 2005 Act to adopt rules of eligibility for awards which confine eligibility to those persons who fall within Schedule 1.

Payments by HEFCE

8.—(1) It shall be lawful for HEFCE to adopt rules of eligibility for awards to be made to students who are being trained (otherwise than by a course leading to a first degree) to teach persons over compulsory school age by an institution to which it makes grants, loans or other payments under section 65 of the Further and Higher Education Act 1992 which confine eligibility to those persons who fall within Schedule 1.

(2) It shall be lawful for an institution to which HEFCE pays grants, loans or other payments for the purpose described in paragraph 1 to adopt rules of eligibility for awards which confine eligibility to those persons who fall within Schedule 1.

Payments by the LSC

9.—(1) It shall be lawful for the LSC to adopt rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 5 of the Learning and Skills Act 2000 which confine eligibility to those persons who fall within Schedule 1.

(2) It shall be lawful for an institution to which the LSC pays grants, loans or other payments to adopt rules of eligibility for awards (however described) which confine eligibility to those persons who fall within Schedule 1.

Revocation

10.—(1) The following Regulations are revoked in relation to England—

- (a) The Education (Fees and Awards) Regulations 1997(**11**);
- (b) The Education (Fees and Awards) (Amendment) (England) Regulations 2000(**12**);
- (c) The Education (Fees and Awards) (Amendment No 2) (England) Regulations 2000(**13**);
- (d) The Education (Student Fees and Support) (Switzerland) Regulations 2003(**14**);
- (e) The Education (Fees and Awards) (Amendment) Regulations 2006(**15**);
- (f) Regulation 5 of the Local Education Authority (Post-Compulsory Education Awards) Regulations 1999.

(10) The Teacher Training Agency was established under section 1 of the Education Act 1994 and under section 74 of the Education Act 2005, its name was changed to the Training and Development Agency for Schools. Under section 78 of the Education Act 2005 the Training and Development Agency for Schools may provide financial support to any person it thinks fit in furtherance of its objectives.

(11) S.I. 1997/1972, amended by S.I. 1999/229, S.I. 2000/2192, S.I. 2000/2945, S.I. 2003/3280, S.I. 2005/2114 and S.I. 2006/483.

(12) S.I. 2000/2192.

(13) S.I. 2000/2945.

(14) S.I. 2003/3280.

(15) S.I. 2006/483.

Status: This is the original version (as it was originally made). UK
Statutory Instruments are not carried in their revised form on this site.

8th March 2007

Bill Rammell
Minister of State
Department for Education and Skills

SCHEDULE 1

1. For the purposes of this Schedule—

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council of 29th April 2004([16](#)) 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” means a national of a Member State of the European Community;

“EEA frontier self-employed person” 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 residence in Switzerland or that EEA State daily or at least once a week;

“EEA frontier worker” 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 residence in Switzerland or that EEA State daily or at least once a week;

“EEA migrant worker” means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” means a national of an EEA State other than the United Kingdom;

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

“employed person” means an employed person with the meaning of Annex 1 to the Swiss Agreement;

“family member” means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) his spouse or civil partner;
 - (ii) his child or the child of his spouse or civil partner; or
 - (iii) dependent direct relatives in his ascending line or that of his 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 spouse or civil partner; or
 - (ii) his child or the child of his spouse or civil partner;
- (c) in relation to an EC national who falls within article 7(1)(c) of Directive 2004/38—
 - (i) his spouse or civil partner; or
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (a) under the age of 21; or
 - (b) dependants of his or his spouse or civil partner;
- (d) in relation to an EC national who falls within article 7(1)(b) of Directive 2004/38—
 - (i) his spouse or civil partner;
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (a) under the age of 21; or

(16) OJ L158, 30.4.2004, p77-123

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

“person with leave to enter or remain” means a person—

- (a) who has been informed by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom;
- (b) who has been granted leave to enter or to remain accordingly; and
- (c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002)(17); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain;

“refugee” means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951(18) as extended by the Protocol thereto which entered into force on 4th October 1967(19);

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” means—

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

“settled” has the meaning given by section 33(2A) of the Immigration Act 1971(20);

“Swiss Agreement” 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(21) and which came into force on 1st June 2002;

“Swiss employed person” means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” means a Swiss national who—

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

(17) 2002 c.41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19), section 26 and Schedules 2 and 4, and the Immigration, Asylum and Nationality Act 2006 (c.13), section 9.

(18) Cmnd. 9171.

(19) Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Support Division, Department for Education and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

(20) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).

(21) Cm. 4904.

(b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State daily or at least once a week;

“Swiss frontier self-employed person” 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 residence in Switzerland or that EEA State daily or at least once a week;

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

“Turkish worker” means a Turkish national who—

(a) is ordinarily resident in the United Kingdom; and

(b) is, or has been lawfully employed in the United Kingdom.

“worker” means a worker within the meaning of article 7 of Directive 2004/38 or the EEA Agreement as the case may be.

Persons who are settled in the United Kingdom

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

(a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;

(b) is ordinarily resident in the United Kingdom;

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

(d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

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

3. A person who—

(a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence on the first day of an 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 preceding the first day of the first academic year of the course; and

(d) in a case where his 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 residence referred to in paragraph (c).

Refugees and their family members

4.—(1) A person—

(a) who is a refugee;

(b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was recognised as a refugee; and

- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (2) A person—
 - (a) who is the spouse or civil partner of a refugee;
 - (b) who was the spouse or civil partner of the refugee on the date on which the refugee made his application for asylum;
 - (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to remain in the United Kingdom; and
 - (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (3) A person—
 - (a) who is the child of a refugee or the child of the spouse or civil partner of a refugee;
 - (b) who, on the date on which the refugee made his 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) who was under 18 on the date on which the refugee made his application for asylum;
 - (d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to remain in the United Kingdom; and
 - (e) who is ordinarily resident in the United Kingdom 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; and
 - (b) who is ordinarily resident in the United Kingdom on 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 application for asylum; and
 - (c) who is ordinarily resident in the United Kingdom on 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 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 application for asylum; and
 - (d) who is ordinarily resident in the United Kingdom on 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 (3), 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 European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person who—

- (a) is an EC national falling within paragraph (a)(i) or (a)(iv) of sub-paragraph (1);
- (b) subject to sub-paragraph (3), 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 European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.

(3) Paragraph (b) of sub-paragraphs (1) and (2) do not apply where the person 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⁽²²⁾, 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;

⁽²²⁾ OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (II) p475).

- (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 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 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 goes to the state within the territory comprising the European Economic Area and Switzerland of which he is a national or of which the person in relation to whom he 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 an academic year of the course; or
 - (ii) a family member of a such a person;
- (b) is undertaking the course in the United Kingdom;
- (c) in the case of a person falling within sub-paragraph (1)(a)(i), has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course;
- (d) in the case of a person falling within sub-paragraph (1)(a)(ii), 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) subject to sub-paragraph (2), whose ordinary residence in the relevant territory has not during any part of the period referred to in paragraphs (c) or (d) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the relevant territory in accordance with regulation 2(4).

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 prior to 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 subparagraph (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 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).

Children of Turkish workers

12. A person who—

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

SCHEDULE 2

Regulation 6

PART 1

Research Councils

1. The Arts and Humanities Research Council.
2. The Biotechnology and Biological Sciences Research Council.
3. The Council for the Central Laboratory of the Research Councils.
4. The Economic and Social Research Council.
5. The Engineering and Physical Sciences Research Council.
6. The Medical Research Council.
7. The Natural Environment Research Council.

8. The Particle Physics and Astronomy Research Council.
Regulation 6

PART 2

Institutions

9. The British Academy.
10. The British Museum (Natural History).
11. The Council for the Central Laboratory of the Research Councils.
12. The Royal Academy of Engineering.
13. The Royal Society.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st September 2007, replace the Regulations listed in regulation 10.

The Regulations provide that, in the circumstances described in the Regulations, it shall be lawful to discriminate between some or all of those persons mentioned in Schedule 1, and any other person. Such discrimination might otherwise be unlawful under the Race Relations Act 1976. Nothing in the Regulations is to be construed as rendering unlawful anything done which would have been lawful had the Regulations not been made (*regulation 3*).

Regulation 4 provides that it shall be lawful for the institutions in paragraph (3) to charge higher fees to those people not mentioned in Schedule 1, than those fees charged to people mentioned in that Schedule. Regulation 4(4) refers to section 24 of the Higher Education Act 2004. This section sets out the funding conditions imposed on higher education institutions in relation to fees. Fees for qualifying courses must not exceed certain limits. Regulation 4(4) provides that if an institution breaches the funding condition under section 24, these Regulations will not provide a defence.

Regulation 5 concerns rules of eligibility for discretionary awards made by local education authorities under sections 1(6) or 2 of the Education Act 1962. In the case of awards for fees, eligibility may be confined to everyone in Schedule 1 save for persons with leave to enter or remain. In the case of maintenance awards, rules of eligibility may exclude persons with leave to enter or remain and EC nationals. Local education authorities may confine eligibility further, by excluding anyone who has not been ordinarily resident in a relevant geographical area temporarily because of work.

Regulation 6 concerns for awards by research councils. Again, rules of eligibility for these awards maybe confined by reference to certain categories of person mentioned in Schedule 1, and those rules may be further refined.

Regulations 7, 8 and 9 concern teacher training and certain bodies which fund the provision of education and training. They provide that it shall be lawful for each of the Training and Development

Agency for Schools, the Higher Education Funding Council for England and the Learning and Skills Council for England, and institutions funded by them, to adopt rules of eligibility for awards which limit eligibility to those mentioned in Schedule 1.

Regulation 10 revokes, in relation to England, the existing Regulations governing fees and awards and amending Regulations.

The persons mentioned in Schedule 1 include those who are settled in the United Kingdom, refugees, persons with leave to enter or remain in the United Kingdom, migrant workers from the European Economic Area or Switzerland, nationals of Member States of the European Community and children of Swiss nationals and Turkish workers. To be settled in the United Kingdom, you must be ordinarily resident there without being subject under immigration law to any restriction on the period for which you may remain.