
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 28

**EXITING THE EUROPEAN UNION
EDUCATION**

The Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021

Made - - - - *19th January 2021*
Laid before the Scottish
Parliament - - - - *21st January 2021*
Coming into force - - *1st August 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(1), section 1 of the Education (Fees and Awards) Act 1983(2), paragraph 1(1) and (3) of schedule 2 of the European Union Withdrawal Act 2018(3) and section 14(1), (2) and (3) of the European Union (Withdrawal Agreement) Act 2020(4), and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021 and come into force on 1 August 2021.

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- (1) 1980 c.44. Section 73(f) was amended by the Teaching and Higher Education Act 1998 (c.30) (“the 1998 Act”), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) (“the 2001 Act”), section 3(2). Section 73B was inserted by the 1998 Act, section 29(2) and was amended by the 2001 Act, section 3(3), by the Income Tax (Earnings and Pensions) Act 2003 (c.1), schedule 6, Part 2, paragraph 149, by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 34(1), and by the Bankruptcy (Scotland) Act 2016 (asp 21), schedule 8, paragraph 8. Section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 82(1) and schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (2) 1983 c.40. Section 1 was amended by the Education Reform Act 1988 (c.40), section 237(1) and schedule 12, paragraph 91, by the Further and Higher Education Act 1992 (c.13), section 93(1) and schedule 8, paragraph 19, and by the Further and Higher Education (Scotland) Act 1992 (c.37), section 62(2) and schedule 9, paragraph 8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- (3) 2018 c.16.
- (4) 2020 c.1.

Amendment of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006

2. The Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006⁽⁵⁾ are amended in accordance with regulations 3 and 4.

Amendment of regulation 2 (interpretation)

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the Act”, insert—

““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020⁽⁶⁾,”

(ii) in the definition of “Directive 2004/38”, insert at the end—

“, and reference to a provision of this Directive—

(a) is reference to the Directive as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(iii) after the definition of “EEA Agreement”, insert—

““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”

(iv) in the definition of “EEA frontier self-employed person”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”,

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(v) in the definition of “EEA frontier worker”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”,

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(vi) in the definition of “EEA migrant worker”, omit “within the meaning of article 7 of Directive 2004/38”,

(vii) in the definition of “EEA national”, omit “other than the United Kingdom”,

⁽⁵⁾ S.S.I. 2006/333, relevant amending instruments are S.S.I. 2007/503, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2017/180, S.S.I. 2018/171, S.S.I. 2019/70 and S.S.I. 2020/213.

⁽⁶⁾ S.I. 2020/1209.

- (viii) after the definition of “EEA national”, insert—
 - ““EEA Regulations 2016” means the Immigration (European Economic Area) Regulations 2016(7),”
- (ix) in the definition of “EEA self-employed person, omit “within the meaning of article 7 of Directive 2004/38”,
- (x) omit the definition of “EEA State”,
- (xi) after the definition of “end-on course student”, insert—
 - ““EU national” means a person who is a national for the purposes of the EU Treaties of any member State of the European Union,”
- (xii) omit the definition of “non UK European Union national”,
- (xiii) after the definition of “period of work experience”, insert—
 - ““person with protected rights” means—
 - (a) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is a relevant person within the meaning of regulation 3 (grace period) of the Citizens’ Rights Regulations where the grace period (within the meaning of that regulation) has not ended,
 - (iii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended, or
 - (iv) is an Irish national (“P”) who—
 - (aa) has not made a valid application under residence scheme immigration rules, and
 - (bb) would be granted leave to remain or enter in the United Kingdom if P made such an application, or
 - (b) a family member (“P”) of a relevant person of Northern Ireland (“R”) where—
 - (i) P has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, and
 - (ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement,”
- (xiv) after the definition of “relevant date”, insert—
 - ““relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,”
- (xv) after the definition of “Repayment Regulations”, insert—

“residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020(8),

“right of permanent residence” means a person who—

- (a) meets one of the following conditions—
- (i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
 - (ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the grace period,
 - (iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the relevant period,
 - (iv) the person is an Irish national (“P”) settled in the United Kingdom who—
 - (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of “person with protected rights”,
 - (bb) has not made a valid application under residence scheme immigration rules, and
 - (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
 - (v) the person is a person (“P”) referred to in sub-paragraph (b) of the definition of “person with protected rights”, where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,

“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 Switzerland Agreement,”

(xvi) after the definition of “student loan account number”, insert—

““Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,”

(8) 2020 c.1. The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

- (xvii) in the definition of “Swiss frontier employed person”, for sub-paragraph (b), substitute—
 - “(b) resides in Switzerland, Gibraltar or the territory of an EEA State and returns to their residence in Switzerland, Gibraltar or that EEA State, as the case may be, daily or at least once a week,”
- (xviii) in the definition of “Swiss frontier self-employed person”, for sub-paragraph (b), substitute—
 - “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (xix) in the definition of “Switzerland Agreement”, insert at the end—
 - “, and reference to a provision of the Agreement—
 - (a) is reference to the Agreement as it had effect immediately before IP completion day,
 - (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”
- (xx) after the definition of “Turkish worker”, insert—
 - ““worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement as the case may be,”
- (b) in paragraph (4), for “9(b) and 10(c)”, substitute—
 - “9(e), 10(c), 10A(1)(d), 10B(c) and 12(d)”
- (c) in paragraph (5), for “paragraph 1(a)”, substitute “paragraphs 1(a) and 12(d)”,
- (d) in paragraph (7), at sub-paragraph (b), after “resident in”, insert—
 - “the United Kingdom, Islands and Gibraltar or”
- (e) after paragraph (9), insert—
 - “(10) Where—
 - (a) a student (“A”) is an eligible student within the meaning of schedule 1 for the purposes of an application for support for—
 - (i) the first year of A’s current course, or
 - (ii) an earlier year of A’s current course, and
 - (b) as at the day before the relevant date for the academic year in respect of which A is applying for support—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
 - (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
 - (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an eligible student under schedule 1,
 - (iv) A ceases to be an eligible student immediately before the first day of the academic year in respect of which the student is applying for support.”

Amendment of schedule 1 (eligible students)

4. In schedule 1 (eligible students)—

(a) for paragraph 2, substitute—

“2.—(1) A person with protected rights or a qualifying frontier worker who—

(a) is—

- (i) an EEA migrant worker or an EEA self-employed person,
- (ii) a Swiss employed person or a Swiss self-employed person,
- (iii) a family member of a person mentioned in sub-head (i) or (ii),
- (iv) an EEA frontier worker or an EEA frontier self-employed person,
- (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
- (vi) a family member of a person mentioned in sub-head (iv) or (v),

(b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course, and

(c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the first day of the first academic year of the course.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020⁽⁹⁾ who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.”

(b) in paragraph 3—

- (i) in sub-paragraph (1), after “A person”, insert “with protected rights”,
- (ii) omit sub-paragraph (1)(a)(i),
- (iii) in sub-paragraph (1)(b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,
- (iv) in sub-paragraph (1)(c), omit “subject to sub-paragraph (2)”,
- (v) omit sub-paragraph (2),

(c) in paragraph 4—

(i) for sub-paragraph (1), substitute—

“(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course,

⁽⁹⁾ S.I. 2020/1213.

- (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
- (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom or Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland, and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the first day of the first academic year of the course,
- (d) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins,
- (e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
- (f) in a case where the person’s ordinary residence referred to in head (e) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (e), and
- (g) is undertaking a course for which the first day of the first academic year of the course is prior to 31 July 2028,”
 - (ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,
 - (iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”,
 - (iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,
 - (v) in sub-paragraph (3), insert at the end—

“and is accompanying or joining that United Kingdom national in the United Kingdom.”,
- (d) in paragraph 8—
 - (i) for sub-paragraph (1)(a), substitute—

“(a) is a person—
 - (i) with a right of permanent residence, or
 - (ii) with protected rightswho is either an EU national or the family member of an EU national,”,
 - (ii) in sub-paragraph (1)(d), after “resident in”, insert “Gibraltar or”,
 - (iii) for sub-paragraph (2), substitute—

“(2) For the purposes of this paragraph—

- (a) a person referred to in sub-paragraph 1(a) does not include an EU national who is also a United Kingdom national who has not utilised a right of residence,
 - (b) a United Kingdom national has utilised a right of residence if that person has—
 - (i) exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom, or
 - (ii) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom, and
 - (bb) of which that person is a national,

in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement,
 - (c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2.”,
- (e) for paragraph 9, substitute—
- “9. A person who—
- (a) is the child of a Swiss national,
 - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
 - (c) is—
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,
 - (d) is ordinarily resident in Scotland on the first day of the first academic year of the course,
 - (e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course, and
 - (f) in a case where the person’s ordinary residence referred to in head (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in head (e).”,
- (f) in paragraph 10—
- (i) in sub-paragraph (a), after “worker” insert, “(“T””, where T was ordinarily resident in the United Kingdom immediately before IP completion day”,
 - (ii) after sub-paragraph (a), insert—
 - “(aa) was ordinarily resident in the United Kingdom immediately before IP completion day”,
 - (iii) in sub-paragraph (c), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,

- (g) in paragraph 11, for “A person”, substitute, “Subject to regulation 2(10), a person”,
- (h) for paragraph 12, substitute—

“12. A person who—

- (a) is an Irish national,
- (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course,
- (c) is ordinarily resident in Scotland on the first day of the first academic year of the course,
- (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the first day of the first academic year of the course.”.

Amendment of the Education Authority Bursaries (Scotland) Regulations 2007

5. The Education Authority Bursaries (Scotland) Regulations 2007⁽¹⁰⁾ are amended in accordance with regulations 6 to 9.

Amendment of regulation 2 (interpretation)

6. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “bursary”, insert—

““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020⁽¹¹⁾,”

(ii) in the definition of “Directive 2004/38”, insert at the end—

“, and reference to a provision of this Directive—

- (a) is reference to the Directive as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(iii) after the definition of “EC national”, insert—

““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”

(iv) in the definition of “EEA frontier self-employed person”—

- (aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”,
- (bb) for sub-paragraph (b), substitute—

⁽¹⁰⁾ S.S.I. 2007/149, relevantly amended by S.S.I. 2019/70 and S.S.I. 2020/213.

⁽¹¹⁾ S.I. 2020/1209.

- (ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens' Rights Agreement,”
- (xii) after the definition of “relevant date”, insert—
- ““relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,
- “right of permanent residence” means a person who—
- (a) meets one of the following conditions—
 - (i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
 - (ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens' Rights Regulations in relation to that person during the grace period,
 - (iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens' Rights Regulations in relation to that person during the relevant period,
 - (iv) the person is an Irish national (“P”) settled in the United Kingdom who—
 - (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of “person with protected rights”,
 - (bb) has not made a valid application under residence scheme immigration rules, and
 - (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
 - (v) the person is a person (“P”) referred to in sub-paragraph (b) of the definition of “person with protected rights”, where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,
- “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 Switzerland Agreement,
- “Swiss Citizens' Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation

- on Citizens' Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,”
- (xiii) in the definition of “Swiss frontier employed person”, for sub-paragraph (b), substitute—
- “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (xiv) in the definition of “Swiss frontier self employed person”, for sub-paragraph (b), substitute—
- “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (xv) in the definition of “Switzerland Agreement”, insert at the end—
- “, and reference to a provision of the Agreement—
- (a) is reference to the Agreement as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”
- (xvi) after the definition of “Turkish worker”, insert—
- ““worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement as the case may be,”
- (b) after paragraph (2), insert—
- “(3) Where—
- (a) a student (“A”) is a person eligible for a bursary within the meaning of schedule 1 for the purposes of an application for support for—
- (i) the first year of A’s current course, or
- (ii) an earlier year of A’s current course, and
- (b) as at the day before the relevant date for the academic year in respect of which A is applying for support—
- (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
- (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
- (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an eligible student under schedule 1,
- A ceases to be a person eligible for a bursary immediately before the first day of the academic year in respect of which the student is applying for support.”

Amendment of regulation 4 (amount of bursaries)

7. In regulation 4 (amount of bursaries), in paragraph (2), for “9”, substitute “9(1)(a)(iii)”.

Amendment of schedule 1 (persons eligible for bursaries)

8. In schedule 1 (persons eligible for bursaries)—

(a) for paragraph 2, substitute—

“2.—(1) A person with protected rights or a qualifying frontier worker who—

(a) is—

- (i) an EEA migrant worker or an EEA self-employed person,
- (ii) a Swiss employed person or a Swiss self-employed person,
- (iii) a family member of a person mentioned in sub-head (i) or (ii),
- (iv) an EEA frontier worker or an EEA frontier self-employed person,
- (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
- (vi) a family member of a person mentioned in sub-head (iv) or (v),

(b) has been ordinarily resident in the United Kingdom, British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and

(c) is—

- (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which that person seeks a bursary, or
- (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an education establishment in the area of the education authority.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020(13) who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.”

(b) in paragraph 3—

- (i) after “A person”, insert “with protected rights”,
- (ii) omit sub-paragraph (a)(i),
- (iii) in sub-paragraph (b), after “resident in”, insert “the British Islands, Gibraltar or”,

(c) in paragraph 4—

(i) for sub-paragraph (1), substitute—

“(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
- (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United

Kingdom and who has utilised a right of residence before IP completion day,

- (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,
 and has remained ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the relevant date,
- (d) is—
 - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which that person seeks a bursary, or
 - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority,
- (e) has been ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,
- (f) in a case where the person’s ordinary residence referred to in head (e) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (e), and
- (g) is undertaking a course for which the relevant date is prior to 31 July 2028,”

(ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,

(iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”,

(iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,

(v) in sub-paragraph (3), insert at the end—

“and is accompanying or joining that United Kingdom national in the United Kingdom”.

(d) omit paragraph 8,

(e) in paragraph 9—

(i) for sub-paragraph (1), substitute—

“(1) A person who—

(a) is either an EC national or the family member of an EC national and is—

(i) a person with a right of permanent residence who has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the qualifying day,

- (ii) a person with protected rights who has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the qualifying day, or
 - (iii) a person with protected rights who has been ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying day,
 - (b) seeks a bursary in respect of a course of study at an establishment in the area of the education authority,
 - (c) where that person is a person referred to in head (a)(i) or (ii), is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which that person seeks a bursary,
 - (d) where that person is a person referred to in head (a)(iii), is ordinarily resident in the British Islands on the qualifying day,
 - (e) in the case where their ordinary residence referred to in head (a)(i) or (ii) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising Gibraltar, the European Economic Area and Switzerland immediately prior to the period of residence referred to in head (a)(i) or (ii).”,
- (ii) omit sub-paragraph (2),
 - (iii) in sub-paragraph (3)—
 - (aa) in head (a), for “an EC national does not include”, substitute, “a person referred to in sub-paragraph 1(a) does not include an EC national who is also”,
 - (bb) insert at the end—
 - “(c) in sub-paragraph (1)(a), the reference to a “family member of an EC national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EC national” in regulation 2.”,
 - (iv) omit sub-paragraph (4),
- (f) for paragraph 10, substitute—
 - “**10.** A person who—
 - (a) is the child of a Swiss national,
 - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
 - (c) is—
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,
 - (d) is ordinarily resident in Scotland on the first day of the first academic year of the course,
 - (e) has been ordinarily resident in the British Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course, and

- (f) in a case where the person’s ordinary residence referred to in head (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the British Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in head (e).”,
- (g) in paragraph 11, for “A person to whom”, substitute, “Subject to regulation 2(3), a person to whom”
- (h) in paragraph 12—
 - (i) in sub-paragraph (a), after “worker” insert, “(“T”, where T was ordinarily resident in the United Kingdom immediately before IP completion day”,
 - (ii) after sub-paragraph (a), insert—
 - “(aa) was ordinarily resident in the United Kingdom immediately before IP completion day,”
 - (iii) in sub-paragraph (c), after “resident in”, insert “the British Islands, Gibraltar or”,
- (i) for paragraph 13, substitute—
 - “**13.** A person who—
 - (a) is an Irish national,
 - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
 - (c) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which that person seeks a bursary,
 - (d) has been ordinarily resident in the British Islands and the Republic of Ireland throughout the period of three years immediately preceding the relevant date.”.

Amendment of schedule 2 (ordinary residence)

- 9.** In schedule 2 (ordinary residence)—
 - (a) in paragraph 1(1) for “8(1)(b)”, substitute “9(1)(c)”,
 - (b) in paragraph 2(1)—
 - (i) for “2(b)”, substitute “2(1)(b)”,
 - (ii) for “4(1)(d)”, substitute “4(1)(e)”,
 - (iii) for “8(1)(c), 9(1)(b), 10(b) and 12(c)”, substitute “9(1)(a), 9(1)(d), 10(e), 12(c) and 13(d)”,
 - (iv) after “British Islands,”, insert “Gibraltar, the Republic of Ireland,”
 - (c) in paragraph 2(2), in head (b), after “resident in”, insert “the British Islands, Gibraltar or in”,
 - (d) omit paragraph 2(3).

Amendment of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007

10. The Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(14) are amended in accordance with regulations 11 to 14.

Amendment of regulation 2 (interpretation)

11. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “allowance”, insert—

““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(15),”

(ii) in the definition of “Directive 2004/38”, insert at the end—

“, and reference to a provision of this Directive—

(a) is reference to the Directive as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(iii) after the definition of “EC national”, insert—

““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”

(iv) in the definition of “EEA frontier self-employed person”—

(aa) in sub-paragraph (a), omit “(within the meaning of Article 7 of Directive 2004/38)”

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(v) in the definition of “EEA frontier worker”—

(aa) in sub-paragraph (a), omit “(within the meaning of Article 7 of Directive 2004/38)”

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(vi) in the definition of “EEA migrant worker”, omit “within the meaning of Article 7 of Directive 2004/38”

(vii) in the definition of “EEA national”, omit “other than the United Kingdom”

(viii) after the definition of “EEA national”, insert—

““EEA Regulations 2016” means the Immigration (European Economic Area) Regulations 2016(16),”

(ix) in the definition of “EEA self-employed person”, omit “within the meaning of Article 7 of Directive 2004/38”

(15) S.I. 2020/1209.

(16) S.I. 2016/1052.

- (x) omit the definition of “non UK EC national”,
- (xi) after the definition of “partner”, insert—
- ““person with protected rights” means—
- (a) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement who—
- (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
- (ii) is a relevant person within the meaning of regulation 3 (grace period) of the Citizens’ Rights Regulations where the grace period (within the meaning of that regulation) has not ended,
- (iii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended, or
- (iv) is an Irish national (“P”) who—
- (aa) has not made a valid application under residence scheme immigration rules, and
- (bb) would be granted leave to remain or enter in the United Kingdom if P made such an application, or
- (b) a family member (“P”) of a relevant person of Northern Ireland (“R”) where—
- (i) P has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, and
- (ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement,”
- (xii) after the definition of “relevant date”, insert—
- ““relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,
- “residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020(17),
- “right of permanent residence” means a person who—
- (a) meets one of the following conditions—
- (i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
- (ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as

(17) 2020 c.1. The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens' Rights Regulations in relation to that person during the grace period,

- (iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of "person with protected rights" who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens' Rights Regulations in relation to that person during the relevant period,
- (iv) the person is an Irish national ("P") settled in the United Kingdom who—
 - (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of "person with protected rights",
 - (bb) has not made a valid application under residence scheme immigration rules, and
 - (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
- (v) the person is a person ("P") referred to in sub-paragraph (b) of the definition of "person with protected rights", where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,

"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 Switzerland Agreement,

"Swiss Citizens' Rights Agreement" means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens' Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,"

- (xiii) in the definition of "Swiss frontier employed person", for sub-paragraph (b), substitute—

"(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,"

- (xiv) in the definition of "Swiss frontier self-employed person", for sub-paragraph (b), substitute—

"(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,"

- (xv) in the definition of "Switzerland Agreement", insert at the end—

“, and reference to a provision of the Agreement—

- (a) is reference to the Agreement as it had effect immediately before IP completion day,

- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”
- (xvi) after the definition of “Turkish worker”, insert—
 - ““worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement as the case may be,”
- (b) after paragraph (2), insert—
 - “(3) Where—
 - (a) a student (“A”) is a person eligible for an allowance within the meaning of schedule 1 for the purposes of an application for support for—
 - (i) the first year of A’s current course, or
 - (ii) an earlier year of A’s current course, and
 - (b) as at the day before the relevant date for the academic year in respect of which A is applying for support—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
 - (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
 - (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an eligible student under schedule 1,

A ceases to be a student eligible for an allowance immediately before the first day of the academic year in respect of which the student is applying for support.”.

Amendment of regulation 4 (amount of allowances)

12. In regulation 4 (amount of allowances), in paragraph (2), for “9”, substitute “9(1)(a)(iii)”.

Amendment of schedule 1 (persons eligible for allowances)

13. In schedule 1 (persons eligible for allowances)—

- (a) for paragraph 2, substitute—
 - “2.—(1) A person with protected rights or a qualifying frontier worker who—
 - (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person,
 - (ii) a Swiss employed person or a Swiss self-employed person,
 - (iii) a family member of a person mentioned in sub-head (i) or (ii),
 - (iv) an EEA frontier worker or an EEA frontier self-employed person,
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
 - (vi) a family member of a person mentioned in sub-head (iv) or (v),

- (b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020(18) who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.”

(b) in paragraph 3—

- (i) in sub-paragraph (1), after “A person”, insert “with protected rights”,
- (ii) omit sub-paragraph (1)(a)(i),
- (iii) in sub-paragraph (1)(b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,
- (iv) in sub-paragraph (1)(c), omit “subject to sub-paragraph (2)”,
- (v) omit sub-paragraph (2),

(c) in paragraph 4—

(i) for sub-paragraph (1), substitute—

“(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course,
- (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
- (c) was ordinarily resident on IP completion day—

- (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
- (ii) in the United Kingdom or Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,

and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the first day of the first academic year of the course,

- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
- (e) in a case where the person's ordinary residence referred to in head (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (d), and
- (f) is undertaking a course for which the first day of the first academic year of the course is prior to 31 July 2028,”
- (ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,
- (iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”,
- (iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,
- (v) in sub-paragraph (3), insert at the end—
 - “and is accompanying or joining that United Kingdom national in the United Kingdom”,
- (d) omit paragraph 8,
- (e) in paragraph 9—
 - (i) for sub-paragraph (1), substitute—
 - “(1) A person who—
 - (a) is either an EC national or the family member of an EC national who is—
 - (i) a person with a right of permanent residence who has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date,
 - (ii) a person with protected rights who has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date, or
 - (iii) a person with protected rights who has been ordinarily resident in the United Kingdom and Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,
 - (b) seeks an allowance in respect of a course of education at an establishment in Scotland,
 - (c) where that person is a person referred to in head (a)(i) or (ii), is ordinarily resident in Scotland on the relevant date,
 - (d) where that person is a person referred to in head (a)(iii), is ordinarily resident in the United Kingdom and Islands on the relevant date,
 - (e) in the case where their ordinary residence referred to in head (a)(i) or (ii) 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 residence referred to in head (a)(i) or (ii).”
 - (ii) omit sub-paragraph (2),

- (iii) in sub-paragraph (3)—
 - (aa) in head (a), for “an EC national does not include”, substitute, “a person referred to in sub-paragraph 1(a) does not include an EC national who is also”,
 - (bb) insert at the end—

“(c) in sub-paragraph (1)(a), the reference to a “family member of an EC national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EC national” in regulation 2.”,
- (iv) omit sub-paragraph (4),
- (f) for paragraph 10, substitute—

“**10.** A person who—

 - (a) is the child of a Swiss national,
 - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
 - (c) is—
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,
 - (d) is ordinarily resident in Scotland on the first day of the first academic year of the course,
 - (e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course, and
 - (f) in a case where the person’s ordinary residence referred to in sub-paragraph (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (e).”,
- (g) in paragraph 11—
 - (i) in sub-paragraph (a), after “worker” insert, “(“T””, where T was ordinarily resident in the United Kingdom immediately before IP completion day”,
 - (ii) after sub-paragraph (a), insert—

“(aa) was ordinarily resident in the United Kingdom immediately before IP completion day,”
 - (iii) after “resident” in sub-paragraph (c), insert “in the United Kingdom, Islands, Gibraltar or”,
- (h) in paragraph 12(1), after “Subject to”, insert “regulation 2(3) and”,
- (i) for paragraph 13, substitute—

“**13.** A person who—

 - (a) is an Irish national,
 - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
 - (c) is ordinarily resident in Scotland on the relevant date,

- (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the relevant date.”.

Amendment of schedule 2 (ordinary residence)

14. In schedule 2 (ordinary residence)—

- (a) in paragraph 1(1), for “8(1)(b)”, substitute “9(1)(c)”,
- (b) in paragraph 2(1)—
 - (i) for “8(1)(c), 9(1)(b), 10(b) and 11(c)”, substitute “9(1)(a), 9(1)(d), 10(e), 11(c) and 13(d)”,
 - (ii) after “United Kingdom,”, insert “ the Islands, Gibraltar, the Republic of Ireland”,
- (c) in paragraph 2(2), in head (b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or in”,
- (d) omit paragraph 2(3).

Amendment of the Students’ Allowances (Scotland) Regulations 2007

15. The Students’ Allowances (Scotland) Regulations 2007(19) are amended in accordance with regulations 16 to 19.

Amendment of regulation 2 (interpretation)

16. In regulation 2 (interpretation)—

- (a) in paragraph (1)—
 - (i) after the definition of “child of an asylum seeker”, insert—

““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(20),”,
 - (ii) in the definition of “Directive 2004/38”, insert at the end—

“, and reference to a provision of this Directive—

 - (a) is reference to the Directive as it had effect immediately before IP completion day,
 - (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”,
 - (iii) after the definition of “EC national”, insert—

““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”,
 - (iv) in the definition of “EEA frontier self-employed person”—
 - (aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”, and

(19) S.S.I. 2007/153, relevantly amended by S.S.I. 2013/80, S.S.I. 2019/70 and S.S.I. 2020/213.

(20) S.I. 2020/1209.

- (bb) for sub-paragraph (b), substitute—
 - “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (v) in the definition of “EEA frontier worker”—
 - (aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”, and
 - (bb) for sub-paragraph (b), substitute—
 - “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (vi) in the definition of “EEA migrant worker”, omit “within the meaning of article 7 of Directive 2004/38”,
- (vii) in the definition of “EEA national”, omit “other than the United Kingdom”,
- (viii) after the definition of “EEA national”, insert—
 - ““EEA Regulations 2016” means the Immigration (European Economic Area) Regulations 2016(21),”
- (ix) in the definition of “EEA self employed person, omit “within the meaning of article 7 of Directive 2004/38”,
- (x) omit the definition of “non UK EC national”,
- (xi) after the definition of “partner”, insert—
 - ““person with protected rights” means—
 - (a) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is a relevant person within the meaning of regulation 3 (grace period) of the Citizens’ Rights Regulations where the grace period (within the meaning of that regulation) has not ended,
 - (iii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended, or
 - (iv) is an Irish national (“P”) who—
 - (aa) has not made a valid application under residence scheme immigration rules, and
 - (bb) would be granted leave to remain or enter in the United Kingdom if P made such an application, or
 - (b) a family member (“P”) of a relevant person of Northern Ireland (“R”) where—

- (i) P has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, and
 - (ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens' Rights Agreement,”
- (xii) after the definition of “relevant date”, insert—
- ““relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,
- “residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020(22),
- “right of permanent residence” means a person who—
- (a) meets one of the following conditions—
 - (i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
 - (ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens' Rights Regulations in relation to that person during the grace period,
 - (iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens' Rights Regulations in relation to that person during the relevant period,
 - (iv) the person is an Irish national (“P”) settled in the United Kingdom who—
 - (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of “person with protected rights”,
 - (bb) has not made a valid application under residence scheme immigration rules, and
 - (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
 - (v) the person is a person (“P”) referred to in sub-paragraph (b) of the definition of “person with protected rights”, where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,
- “self-employed person” means—

(22) 2020 c.1. The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

- (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 Switzerland Agreement,
“Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,”
- (xiii) in the definition of “Swiss frontier employed person”, for sub-paragraph (b), substitute—
- “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (xiv) in the definition of “Swiss frontier self employed person”, for sub-paragraph (b), substitute—
- “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (xv) in the definition of “Switzerland Agreement”, insert at the end—
- “, and reference to a provision of the Agreement—
- (a) is reference to the Agreement as it had effect immediately before IP completion day,
 - (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”
- (xvi) after the definition of “Turkish worker”, insert—
- ““worker” means a worker within the meaning of article 7 of Directive 2004/38 or the EEA Agreement as the case may be,”
- (b) after paragraph (4), insert—
- “(5) Where—
- (a) a student (“A”) is a person eligible for an allowance within the meaning of schedule 1 for the purposes of—
 - (i) an application for support for the first year of A’s current course, or
 - (ii) an application for support for an earlier year of A’s current course, and
 - (b) as at the day before the relevant date for the academic year in respect of which A is applying for support—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
 - (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
 - (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has

ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an eligible student under schedule 1,

A ceases to be a person eligible for an allowance immediately before the first day of the academic year in respect of which the student is applying for support.”.

Amendment of regulation 4 (amount of allowances)

17. In regulation 4(2), for “9”, substitute “9(1)(a)(iii)”.

Amendment of schedule 1 (persons eligible for allowances)

18. In schedule 1 (persons eligible for allowances)—

(a) for paragraph 2, substitute—

“2.—(1) A person with protected rights or a qualifying frontier worker who—

(a) is—

- (i) an EEA migrant worker or an EEA self-employed person,
- (ii) a Swiss employed person or a Swiss self-employed person,
- (iii) a family member of a person mentioned in sub-head (i) or (ii),
- (iv) an EEA frontier worker or an EEA frontier self-employed person,
- (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
- (vi) a family member of a person mentioned in sub-head (iv) or (v),

(b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and

(c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020(23) who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.”.

(b) in paragraph 3—

- (i) in sub-paragraph (1), after “A person”, insert “with protected rights”,
- (ii) omit sub-paragraph (1)(a)(i),
- (iii) in sub-paragraph (1)(b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,
- (iv) in sub-paragraph (1)(c), omit “subject to sub-paragraph (2)”.

- (v) omit sub-paragraph (2),
- (c) in paragraph 4—
 - (i) for sub-paragraph (1), substitute—
 - “(1) A person who—
 - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course,
 - (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
 - (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom or Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the first day of the first academic year of the course,
 - (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
 - (e) in a case where the person’s ordinary residence referred to in head (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (d), and
 - (f) is undertaking a course for which the first day of the first academic year of the course is prior to 31 July 2028,”
 - (ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,
 - (iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”, and
 - (iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,
 - (v) in sub-paragraph (3), insert at the end—
 - “and is accompanying or joining that United Kingdom national in the United Kingdom.”,
- (d) omit paragraph 8,
- (e) in paragraph 9—
 - (i) for sub-paragraph (1), substitute—
 - “(1) A person who—
 - (a) is either an EC national or the family member of an EC national who is—

- (i) a person with a right of permanent residence who has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date,
 - (ii) a person with protected rights who has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date, or
 - (iii) a person with protected rights who has been ordinarily resident in the United Kingdom and Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,
- (b) seeks an allowance in respect of a course of education at an establishment in Scotland,
 - (c) where that person is a person referred to in head (a)(i) or (ii), is ordinarily resident in Scotland on the relevant date,
 - (d) where that person is a person referred to in head (a)(iii), is ordinarily resident in the United Kingdom and Islands on the relevant date,
 - (e) in the case where their ordinary residence referred to in paragraph (a) (i) or (ii) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising Gibraltar or the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (a)(i) or (ii).”,
- (ii) omit sub-paragraph (2),
 - (iii) in sub-paragraph (3)—
 - (aa) in head (a), for “an EC national does not include”, substitute, “a person referred to in sub-paragraph 1(a) does not include an EC national who is also”,
 - (bb) insert at the end—
 - “(c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2.”,
 - (iv) omit sub-paragraph (4),
- (f) for paragraph 10, substitute—
 - “**10.** A person who—
 - (a) is the child of a Swiss national,
 - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement
 - (c) is—
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,
 - (d) is ordinarily resident in Scotland on the relevant date,
 - (e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and

- (f) in a case where the person's ordinary residence referred to in sub-paragraph (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, the Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (e)."
- (g) in paragraph 11—
 - (i) in sub-paragraph (a), after "worker" insert, "(("T"))", where T was ordinarily resident in the United Kingdom immediately before IP completion day",
 - (ii) after sub-paragraph (a), insert—
 - "(aa) was ordinarily resident in the United Kingdom immediately before IP completion day,"
 - (iii) after "resident" in sub-paragraph (c), insert "in the United Kingdom, Islands, Gibraltar and",
- (h) in paragraph 12(1), after "Subject to", insert "regulation 2(5) and",
- (i) for paragraph 13, substitute—
 - "13. A person who—
 - (a) is an Irish national,
 - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
 - (c) is ordinarily resident in Scotland on the relevant date,
 - (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the relevant date."

Amendment of schedule 2 (ordinary residence)

- 19. In schedule 2 (ordinary residence)—
 - (a) in paragraph 1(1), for "8(1)(b)", substitute "9(1)(c)",
 - (b) in paragraph 2(1)—
 - (i) for "8(1)(c), 9(1)(b), 10(b) and 11(c)", substitute "9(1)(a), 9(1)(d), 10(e), 11(c) and 13(d)",
 - (ii) after "United Kingdom,", insert "the Islands, Gibraltar, the Republic of Ireland",
 - (c) in paragraph 2(2)(b), after "resident in", insert "the United Kingdom, the Islands, Gibraltar or in",
 - (d) omit paragraph 2(3).

Amendment of the Education (Student Loans) (Scotland) Regulations 2007

- 20. The Education (Student Loans) (Scotland) Regulations 2007(24) are amended in accordance with regulations 21 and 22.

(24) S.S.I. 2007/154, amended by S.S.I. 2007/503, S.S.I. 2008/205, S.S.I. 2008/206, S.S.I. 2009/188, S.S.I. 2009/189, S.S.I. 2009/309, S.S.I. 2010/300, S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2015/212, S.S.I. 2016/82, S.S.I. 2017/180, S.S.I. 2018/171, S.S.I. 2019/70 and S.S.I. 2020/213.

Amendment of regulation 2 (interpretation)

21. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the Act”, insert—

““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(25),”

(ii) in the definition of “Directive 2004/38”, insert at the end—

“, and reference to a provision of this Directive—

(a) is reference to the Directive as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(iii) after the definition of “Directive 2004/38”, insert—

““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”

(iv) in the definition of “EEA frontier self-employed person”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”,

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(v) in the definition of “EEA frontier worker”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”,

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(vi) in the definition of “EEA migrant worker”, omit “within the meaning of article 7 of Directive 2004/38”,

(vii) in the definition of “EEA national”, omit “other than the United Kingdom”,

(viii) after the definition of “EEA national”, insert-

““EEA Regulations 2016” means the Immigration (European Economic Area) Regulations 2016(26),”

(ix) in the definition of “EEA self-employed person, omit “within the meaning of article 7 of Directive 2004/38”,

(25) S.I. 2020/1209.

(26) S.I. 2016/1052.

- (x) in the definition of “loan”, after sub-paragraph (aa) insert—
 - “(ab) in relation to a student who is a person mentioned in paragraph 8A(2), 10A, 10B or 10C of schedule 1, a loan towards that student’s tuition fees under the Act and any regulations made under the Act, including the interest accrued on the loan and any penalties or charges made in connection with it,”,
- (xi) omit the definition of “non UK EU national”,
- (xii) after the definition of “period”, insert—
 - ““person with protected rights” means—
 - (a) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is a relevant person within the meaning of regulation 3 (grace period) of the Citizens’ Rights Regulations where the grace period (within the meaning of that regulation) has not ended,
 - (iii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended, or
 - (iv) is an Irish national (“P”) who—
 - (aa) has not made a valid application under residence scheme immigration rules, and
 - (bb) would be granted leave to remain or enter in the United Kingdom if P made such an application, or
 - (b) a family member (“P”) of a relevant person of Northern Ireland (“R”) where—
 - (i) P has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, and
 - (ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement,”
- (xiii) after the definition of “relevant date”, insert—
 - ““relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,”
- (xiv) after the definition of “Repayment Regulations”, insert—
 - ““residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020(27),

(27) 2020 c.1. The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

“right of permanent residence” means a person who—

- (a) meets one of the following conditions—
 - (i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
 - (ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the grace period,
 - (iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the relevant period,
 - (iv) the person is an Irish national (“P”) settled in the United Kingdom who—
 - (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of “person with protected rights”,
 - (bb) has not made a valid application under residence scheme immigration rules, and
 - (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
 - (v) the person is a person (“P”) referred to in sub-paragraph (b) of the definition of “person with protected rights”, where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,

“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 Switzerland Agreement,”

(xv) after the definition of “student loan account number”, insert—

““Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,”

(xvi) in the definition of “Swiss frontier employed person”, for sub-paragraph (b), substitute—

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

- (xvii) in the definition of “Swiss frontier self-employed person”, for sub-paragraph (b), substitute—
- “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (xviii) in the definition of “Switzerland Agreement”, insert at the end—
- “, and reference to a provision of the Agreement—
- (a) is reference to the Agreement as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”
- (xix) after the definition of “Turkish worker”, insert—
- ““worker” means a worker within the meaning of article 7 of Directive 2004/38 or the EEA Agreement as the case may be,”
- (b) in paragraph (3), for “8(1)(b)”, substitute “8A(1)(d)”,
- (c) in paragraph (4), for “8(1)(c), 8A(1)(b), 9(b) and 10(c)”, substitute “8A(1)(b), 9(e), 10(c), 10A(1)(d), 10B(c), 10C(c) and 10D(d)”,
- (d) in paragraph (5), for “paragraph 1(a)”, substitute “paragraphs 1(a) and 10D(d),
- (e) in paragraph (7)(b), after “resident in”, insert—
- “the United Kingdom, Islands and Gibraltar or in”,
- (f) after paragraph (8), insert—
- “(9) Where—
- (a) a student (“A”) is an eligible student within the meaning of schedule 1 for the purposes of—
- (i) an application for support for the first year of A’s current course, or
- (ii) an application for support for an earlier year of A’s current course, and
- (b) as at the day before the relevant date for the academic year in respect of which A is applying for support—
- (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
- (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
- (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an eligible student under schedule 1,
- A ceases to be an eligible student immediately before the first day of the academic year in respect of which the student is applying for support.”.

Amendment of schedule 1 (eligible students)

- 22.** In schedule 1 (eligible students)—
- (a) for paragraph 2, substitute—

- “2.—(1) A person with protected rights or a qualifying frontier worker who—
- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person,
 - (ii) a Swiss employed person or a Swiss self-employed person,
 - (iii) a family member of a person mentioned in sub-head (i) or (ii),
 - (iv) an EEA frontier worker or an EEA frontier self-employed person,
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
 - (vi) a family member of a person mentioned in sub-head (iv) or (v),
 - (b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course, and
 - (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the first day of the first academic year of the course.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020(28) who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.”

- (b) in paragraph 3—
 - (i) in sub-paragraph (1), after “A person”, insert “with protected rights”,
 - (ii) omit sub-paragraph (1)(a)(i),
 - (iii) in sub-paragraph (1)(b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,
 - (iv) in sub-paragraph (1)(c), omit “subject to sub-paragraph (2)”,
 - (v) omit sub-paragraph (2),
- (c) in paragraph 4—
 - (i) for sub-paragraph (1), substitute—
 - “(1) A person who—
 - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course,
 - (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United

- Kingdom and who has utilised a right of residence before IP completion day,
- (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the first day of the first academic year of the course,
 - (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
 - (e) in a case where the person’s ordinary residence referred to in head (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (d), and
 - (f) is undertaking a course for which the first day of the first academic year of the course is prior to 31 July 2028,”
- (ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,
 - (iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”,
 - (iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,
 - (v) in sub-paragraph (3), insert at the end—

“and is accompanying or joining that United Kingdom national in the United Kingdom.”,
- (d) omit paragraph 8,
 - (e) in paragraph 8A—
 - (i) for sub-paragraph (1), substitute—

“(1) A person who is either an EU national or the family member of an EU national who—

 - (a) is, on the first day of the first academic year of the course —
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,
 - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
 - (c) seeks an allowance in respect of a course of education at an establishment in Scotland, and
 - (d) is ordinarily resident in Scotland on the relevant date,

- (e) in a case where the person’s ordinary residence referred to in head (b) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in head (b).”,
- (ii) for sub-paragraph (2), substitute—
 - “(2) Where the person seeks a loan in respect of a taught course leading to a Postgraduate Diploma or to a Postgraduate masters degree, or a research course leading to a Postgraduate masters degree, at an establishment in Scotland—
 - (a) the requirement in sub-paragraph (1)(b) is to be read as a requirement to have been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area or Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course, and
 - (b) the requirement in sub-paragraph (1)(d) to be ordinarily resident in Scotland on the relevant date does not apply.”,
- (iii) in sub-paragraph (3)—
 - (aa) in head (a), for “an EU national does not include”, substitute, “a person referred to in sub-paragraph 1(a) does not include an EU national who is also”,
 - (bb) insert at the end—
 - “(c) in sub-paragraph (1), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2.”,
- (iv) omit sub-paragraph (4),
- (f) for paragraph 9, substitute—
 - “9. A person who—
 - (a) is the child of a Swiss national,
 - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
 - (c) is—
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,
 - (d) is ordinarily resident in Scotland on the first day of the first academic year of the course,
 - (e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course, and
 - (f) in a case where the person’s ordinary residence referred to in sub-paragraph (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (e).”,
- (g) in paragraph 10—

- (i) in sub-paragraph (a), after “worker” insert, “(“T””, where T was ordinarily resident in the United Kingdom immediately before IP completion day”,
 - (ii) after sub-paragraph (a), insert—
 - “(aa) was ordinarily resident in the United Kingdom immediately before IP completion day,”
 - (iii) in sub-paragraph (c), after “resident” insert “in the United Kingdom, Islands, Gibraltar and”,
- (h) after paragraph 10, insert—

“10A.—(1) A person who—

- (a) is—
 - (i) a United Kingdom national, or
 - (ii) a family member of such a person,
 - (b) was ordinarily resident on IP completion day—
 - (i) in the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in the territory comprising the European Economic Area and Switzerland,
- and has remained ordinarily resident in the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland from IP completion day to the first day of the first academic year of the course,
- (c) is ordinarily resident in Scotland on the first day of the first academic year of the course,
 - (d) has been ordinarily resident in the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
 - (e) is undertaking a course for which the first day of the first academic year is prior to 31 July 2028
 - (f) in a case where the person’s ordinary residence referred to in head (d) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in head (d).

(2) Where a person (“P”) falls within sub-paragraph (1)(a)(ii), the person in relation to whom P is a family member must also meet the requirements of sub-paragraph (1)(b) and (d).

10B. A person who—

- (a) is an Irish national or a United Kingdom national,
- (b) is ordinarily resident in the Republic of Ireland on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
- (d) is undertaking a course in Scotland,

- (e) in a case where the person's ordinary residence referred to in sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

10C. A person who—

- (a) is—
 - (i) a United Kingdom national, or
 - (ii) an EU national with a right of residence in Gibraltar arising under the EU withdrawal agreement,
- (b) is ordinarily resident in Gibraltar,
- (c) is undertaking a course in Scotland,
- (d) has been ordinarily resident in the territory comprising the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course,
- (e) is undertaking a course for which the first day of the first academic year is prior to 31 July 2028,
- (f) in a case where the person's ordinary residence referred to in sub-paragraph (d) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (d).

10D. A person who—

- (a) is an Irish national,
- (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course,
- (c) is ordinarily resident in Scotland on the first day of the first academic year of the course,
- (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the first day of the first academic year of the course.”,
- (i) in paragraph 11—
 - (i) in sub-paragraph (1), after “Subject to”, insert “regulation 2(9) and”,
 - (ii) in sub-paragraph (2), for “8A” substitute “, 8A(2), 10A, 10B or 10C,”,
- (j) omit paragraph 12.

Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007

23. The Education Maintenance Allowances (Scotland) Regulations 2007(29) are amended in accordance with regulations 24 to 26.

Amendment of regulation 2 (interpretation)

24. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the Act”, insert—

““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(30),”

(ii) in the definition of “Directive 2004/38”, insert at the end-

“, and reference to a provision of this Directive-

(a) is reference to the Directive as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(iii) after the definition of “education maintenance allowance”, insert—

““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”

(iv) in the definition of “EEA frontier self-employed person”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(v) in the definition of “EEA frontier worker”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(vi) in the definition of “EEA migrant worker”, omit “within the meaning of article 7 of Directive 2004/38”

(vii) in the definition of “EEA national”, omit “other than the United Kingdom”

(viii) after the definition of “EEA national”, insert—

““EEA Regulations 2016” means the Immigration (European Economic Area) Regulations 2016(31),”

(ix) in the definition of “EEA self-employed person”, omit “within the meaning of article 7 of Directive 2004/38”

(30) S.I. 2020/1209.

(31) S.I. 2016/ 1052.

- (x) after the definition of “employed”, insert—
- ““EU national” means a person who is a national of any member State for the purposes of the EU Treaties,”
- (xi) omit the definition of “non UK EC national”,
- (xii) after the definition of “parent”, insert—
- ““person with protected rights” means—
- (a) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement who—
- (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
- (ii) is a relevant person within the meaning of regulation 3 (grace period) of the Citizens’ Rights Regulations where the grace period (within the meaning of that regulation) has not ended,
- (iii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended, or
- (iv) is an Irish national (“P”) who—
- (aa) has not made a valid application under residence scheme immigration rules, and
- (bb) would be granted leave to remain or enter in the United Kingdom if P made such an application, or
- (b) a family member (“P”) of a relevant person of Northern Ireland (“R”) where—
- (i) P has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, and
- (ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement,”
- (xiii) after the definition of “refugee”, insert—
- ““relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,
- “residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020(32),
- “right of permanent residence” means a person who—
- (a) meets one of the following conditions—
- (i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in

(32) 2020 c.1. The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

the United Kingdom by virtue of having acquired the right of permanent residence,

- (ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the grace period,
- (iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the relevant period,
- (iv) the person is an Irish national (“P”) settled in the United Kingdom who—
 - (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of “person with protected rights”,
 - (bb) has not made a valid application under residence scheme immigration rules, and
 - (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
- (v) the person is a person (“P”) referred to in sub-paragraph (b) of the definition of “person with protected rights”, where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,

“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 Switzerland Agreement,

“Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,”

- (xiv) in the definition of “Swiss frontier employed person”, for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

- (xv) in the definition of “Swiss frontier self-employed person”, for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

- (xvi) in the definition of “Switzerland Agreement”, insert at the end—

“, and reference to a provision of the Agreement—

- (a) is reference to the Agreement as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(xvii) after the definition of “Turkish worker”, insert—

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

(b) after paragraph (3), insert—

“(4) Where—

- (a) a student (“A”) is a person eligible for education maintenance allowances within the meaning of schedule 1 for the purposes of—
 - (i) an application for support for the first year of A’s current course, or
 - (ii) an application for support for an earlier year of A’s current course, and
- (b) as at the day before the qualifying date for the academic year in respect of which A is applying for support—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
 - (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
 - (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise a person eligible under schedule 1,

A ceases to be a person eligible for education maintenance allowances immediately before the first day of the academic year in respect of which the student is applying for support.”

Amendment of schedule 1 (persons eligible for education maintenance allowances)

25. In schedule 1 (persons eligible for education maintenance allowances)—

(a) for paragraph 2, substitute—

“**2.**—(1) A person with protected rights or a qualifying frontier worker who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person,
 - (ii) a Swiss employed person or a Swiss self-employed person,
 - (iii) a family member of a person mentioned in sub-head (i) or (ii),
 - (iv) an EEA frontier worker or an EEA frontier self-employed person,
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
 - (vi) a family member of a person mentioned in sub-head (iv) or (v),

- (b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date, and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the qualifying date.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020⁽³³⁾ who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.”

(b) in paragraph 3—

- (i) in sub-paragraph (1), after “A person”, insert “with protected rights”,
- (ii) omit sub-paragraph (1)(a)(i),
- (iii) in sub-paragraph (1)(b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,
- (iv) in sub-paragraph (1)(c), omit “subject to sub-paragraph (2)”,
- (v) omit sub-paragraph (2),

(c) in paragraph 4—

(i) for sub-paragraph (1), substitute—

“(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the qualifying date,
- (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
- (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,

and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the qualifying date,

- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland

throughout the period of 3 years immediately preceding the qualifying date,

- (e) in a case where the person’s ordinary residence referred to in head (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (d), and
- (f) is undertaking a course for which the qualifying date is prior to 31 July 2028,”
- (ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,
- (iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”,
- (iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,
- (v) in sub-paragraph (3), insert at the end—
“and is accompanying or joining that United Kingdom national in the United Kingdom.”,
- (d) in paragraph 8—
 - (i) for sub-paragraph (1)(a), substitute—
 - (a) “(1) is—
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,
who is an EU national or the family member of an EU national,”
 - (ii) in sub-paragraph (1)(d), after “resident in”, insert “Gibraltar or”,
 - (iii) for sub-paragraph (2), substitute—
“(2) For the purposes of this paragraph—
 - (a) a person referred to in sub-paragraph (1)(a) does not include an EU national who is also a United Kingdom national who has not utilised a right of residence,
 - (b) a United Kingdom national has utilised a right of residence if that person has—
 - (i) exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom, or
 - (ii) resided in a state—
 - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom, and
 - (bb) of which that person is a national,
in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement,
 - (c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2.”,

- (e) for paragraph 9, substitute—
- “9. A person who—
- (a) is the child of a Swiss national,
 - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
 - (c) has a right of permanent residence,
 - (d) is ordinarily resident in Scotland on the qualifying date,
 - (e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date, and
 - (f) in a case where the person’s ordinary residence referred to in sub-paragraph (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (e).”
- (f) in paragraph 10(1), after “Subject to”, insert “regulation 2(6) and”,
- (g) in paragraph 11—
- (i) in sub-paragraph (a), after “worker” insert, “(“T””, where T was ordinarily resident in the United Kingdom immediately before IP completion day”,
 - (ii) after sub-paragraph (a), insert—
 - “(aa) was ordinarily resident in the United Kingdom immediately before IP completion day,”
 - (iii) after “resident” in sub-paragraph (c), insert “in the United Kingdom, Islands, Gibraltar and”,
- (h) for paragraph 12, substitute—
- “12.—(1) A person who—
- (a) is an Irish national,
 - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the qualifying date in relation to the course of education in respect of which that person seeks an education maintenance allowance,
 - (c) is ordinarily resident in Scotland on the qualifying date,
 - (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the qualifying date.
- (2) For the purposes of this paragraph, a person who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland, the Islands or the Republic of Ireland for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the part of the United Kingdom, the Islands or the Republic of Ireland from where they moved.”

Amendment of schedule 2 (ordinary residence)

- 26.** In schedule 2 (ordinary residence), in paragraph 2—
- (a) in sub-paragraph (1)—

- (i) for “9(b)”, substitute “9(e)”,
- (ii) after “Islands,”, insert “Gibraltar,”,
- (b) in sub-paragraph (2)(b), after “resident in”, insert “the Islands, Gibraltar or in”,
- (c) omit sub-paragraph (3).

Amendment of the Education (Fees) (Scotland) Regulations 2011

27. The Education (Fees) (Scotland) Regulations 2011⁽³⁴⁾ are amended in accordance with regulations 28 to 30.

Amendment of regulation 2 (interpretation)

28. In regulation 2 (interpretation)—

- (a) in paragraph (1)—
 - (i) after the definition of “child of an asylum seeker”, insert—
 - ““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020⁽³⁵⁾,”
 - (ii) in the definition of “Directive 2004/38”, insert at the end—
 - “, and reference to a provision of this Directive—
 - (a) is reference to the Directive as it had effect immediately before IP completion day,
 - (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”
 - (iii) after the definition of “education”, insert—
 - ““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”
 - (iv) in the definition of “EEA frontier self-employed person”—
 - (aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”,
 - (bb) for sub-paragraph (b), substitute—
 - “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
 - (v) in the definition of “EEA frontier worker”—
 - (aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”,
 - (bb) for sub-paragraph (b), substitute—

⁽³⁴⁾ S.S.I. 2011/389, amended by S.S.I. 2012/72, S.S.I. 2013/80, S.S.I. 2016/82, S.S.I. 2018/171, S.S.I. 2019/70 and S.S.I. 2020/213.

⁽³⁵⁾ S.I. 2020/1209.

“residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020(36),

“Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,”

(xiii) in the definition of “Swiss frontier self-employed person”, for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(xiv) in the definition of “Swiss frontier employed person”, for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(xv) in the definition of “Switzerland Agreement”, insert at the end—

“, and reference to a provision of the Agreement—

(a) is reference to the Agreement as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(xvi) after the definition of “Turkish worker”, insert—

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

(b) after paragraph (6) insert—

“(7) Where—

(a) a student (“A”) is an excepted student within the meaning of schedule 1 for the purposes of—

(i) an application for support for the first year of A’s current course, or

(ii) an application for support for an earlier year of A’s current course, and

(b) as at the day before the relevant date for the academic year in respect of which A is applying for support—

(i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,

(ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or

(iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an excepted student under schedule 1,

(36) 2020 c.1. The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>

A ceases to be an excepted student immediately before the first day of the academic year in respect of which the student is applying for support.”.

Amendment of schedule 1 (fees – excepted students)

29. In schedule 1 (fees – excepted students)—

(a) for paragraph 1, substitute—

“1.—(1) A person with protected rights or a qualifying frontier worker who—

(a) is—

- (i) an EEA migrant worker or an EEA self-employed person,
- (ii) a Swiss employed person or a Swiss self-employed person,
- (iii) a family member of a person mentioned in sub-head (i) or (ii),
- (iv) an EEA frontier worker or an EEA frontier self-employed person,
- (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
- (vi) a family member of a person mentioned in sub-head (iv) or (v),

(b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.

(2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020⁽³⁷⁾ who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.”.

(b) in paragraph 2—

- (i) in sub-paragraph (a), after “is”, insert “a person with protected rights who is”,
- (ii) omit sub-paragraph (a)(i),
- (iii) in sub-paragraph (b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,
- (iv) insert at the end—

“, and

(c) is ordinarily resident in Scotland on the relevant date.”.

(c) in paragraph 3,

(i) for sub-paragraph (1), substitute—

“(1) A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
- (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A)

of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,

- (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,

and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the first day of the relevant date

- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,
- (e) in a case where the person's ordinary residence referred to in head (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (d), and
- (f) is undertaking a course for which the first day of the first academic year of the course is prior to 31 July 2028,”

(ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,

(iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”, and

(iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”

(v) in sub-paragraph (3), insert at the end—

“and is accompanying or joining that United Kingdom national in the United Kingdom.”.

(d) omit paragraph 9,

(e) in paragraph 10—

(i) for sub-paragraph (1), substitute—

“(1) A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) is a person with protected rights who is either an EU national or the family member of an EU national,
- (b) has been ordinarily resident in the area comprising the United Kingdom and Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,
- (c) is ordinarily resident in the United Kingdom and Islands on the relevant date,
- (d) in a case where the person's ordinary residence referred to in head (b) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in head (b).”.

(ii) omit sub-paragraph (2),

- (iii) in sub-paragraph (3)—
 - (aa) in head (a), for “an EU national does not include a”, substitute, “a person with protected rights does not include an EU national who is also”,
 - (bb) insert at the end—
 - “(c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2.”,
 - (iv) omit sub-paragraph (4),
- (f) for paragraph 11, substitute—
 - “**11.** A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is the child of a Swiss national,
 - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
 - (c) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
 - (d) in a case where the person’s ordinary residence referred to in sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).”,
- (g) in paragraph 13—
 - (i) in sub-paragraph (a), after “worker” insert, “(“T””, where T was ordinarily resident in the United Kingdom immediately before IP completion day”,
 - (ii) after sub-paragraph (a), insert—
 - “(aa) was ordinarily resident in the United Kingdom immediately before IP completion day,”
 - (iii) after “resident” in sub-paragraph (c), insert “in the United Kingdom, Islands, Gibraltar and”,
- (h) after paragraph 13, insert—
 - “**13A.** A person who—
 - (a) is an Irish national,
 - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
 - (c) is ordinarily resident in Scotland on the relevant date,
 - (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the relevant date.”.
- (i) for paragraph 14, substitute—
 - “**14.** Subject to regulation 2(7), a post 2011/12 student is an excepted student if that student is a person to whom, or in respect of whom, relevant fees have been paid in accordance with these Regulations within the year immediately preceding the first day of

the academic year of the course for which that person is applying for funding, provided the person is continuing to undertake the same course.”.

Amendment of schedule 2 (ordinary residence)

30. In schedule 2 (ordinary residence)—

- (a) in paragraph 1(1), omit “and paragraph 9(1)(b) of Schedule 1”,
- (b) in paragraph 2(1)—
 - (i) for “3(1)(c), 9(1)(c)”, substitute “3(1)(d)”,
 - (ii) for “11(b) and 13(c)”, substitute “11(c), 13(c) and 13A(d)”,
 - (iii) after “United Kingdom and Islands,”, insert “the Republic of Ireland, Gibraltar,”,
 - (iv) omit “, the EU overseas territories”,
- (c) in paragraph 2(2), after “comprising”, insert “the United Kingdom and Islands, Gibraltar,”,
- (d) omit paragraph 2(3).

St Andrew’s House,
Edinburgh
19th January 2021

RICHARD LOCHHEAD
Authorised to sign by the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (“the SLTF Regulations”), the Education Authority Bursaries (Scotland) Regulations 2007 (“the Bursaries Regulations”), the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (“the Nursing Regulations”), the Students’ Allowances (Scotland) Regulations 2007 (“the Allowances Regulations”), the Education (Student Loans) (Scotland) Regulations 2007 (“the Loans Regulations”), the Education Maintenance Allowances (Scotland) Regulations 2007 (“the EMA Regulations”) and the Education (Fees) (Scotland) Regulations 2011 (“the Fees Regulations”).

These Regulations are required to implement changes to student support following the United Kingdom’s departure from the European Union and to provide continuing support for eligible students in order to reflect the United Kingdom’s commitments in the EU Withdrawal Agreement, the EEA EFTA Withdrawal Agreement and the Swiss Citizens’ Rights Agreement.