

**2021 No. 202**

**EXITING THE EUROPEAN UNION**

**EDUCATION**

**The Further Education (Student Support) (Eligibility)  
(Amendment etc.) (EU Exit) Regulations (Northern Ireland)  
2021**

*Made* - - - -

*6th July 2021*

*Coming into operation* -

*1st August 2021*

The Department for the Economy(a) in exercise of the powers conferred by Articles 3(1), 3(2) and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998(b), paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018(c) and section 14(1), (2) and (3) of the European Union (Withdrawal Agreement) Act 2020(d) makes the following Regulations.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Further Education (Student Support) (Eligibility) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2021 and come into operation on 1st August 2021.

(2) These Regulations apply in relation to the provision of support to a student in relation to an academic year which begins on or after 1st August 2021, whether or not anything done under these Regulations is done before, on, or after that date.

(3) In paragraph (2), an “academic year” is the period of twelve months beginning with 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins, according to whether the academic year of the course in question begins—

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(a) Formerly the Department for Employment and Learning; see Article 6(1)(c) of the Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016 No. 76).

(b) S.I. 1998/1760 (N.I. 14). Article 3 was amended by the Learning and Skills Act 2000 (c.21), section 147(3)(a) and (b), the Student Loans (Amendment) Act (Northern Ireland) 2011, (c.2 (N.I.)), s.1(1), the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, the Finance Act 2003, (c.14), s. 147(4), the Higher Education (Northern Ireland) Order 2005, (S.I. 2005/1116 (N.I. 5)), Articles 11 and 12 and the Schedule, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, (S.I. 2013/1881), Schedule 1, the Education Act (Northern Ireland) 2014 (c.12) Schedule 3 and by the Higher Education and Research Act 2017 (c.29) section 87. Article 5(b) and Part II of Schedule 3 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481) transferred functions under the Education (Student Support) (Northern Ireland) Order 1998 from the Department of Education to the Department of Higher and Further Education, Training and Employment. The Department of Higher and Further Education, Training and Employment was renamed the Department for Employment and Learning by 2001 c.15 (N.I.), section 1, and following the dissolution of that department by the Departments Act (Northern Ireland) 2016 (c.5 (N.I.)), section 1(10), its functions under the Education (Student Support) (Northern Ireland) Order 1998 were transferred to the Department for the Economy by S.R. 2016 No. 76, Article 6(1)(c).

(c) 2018 c.16.

(d) 2020 c.1.

- (a) on or after 1st January and before 1st April;
- (b) on or after 1st April and before 1st July;
- (c) on or after 1st July and before 1st August; or
- (d) on or after 1st August and on or before 31st December.

**Amendment of the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012**

2. Regulations 3 to 12 amend the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012(a) as follows.

**Amendment of regulation 4**

3. In regulation 4 (eligible students), for paragraph (1), substitute—

“(1) Subject to the following provisions of this regulation, a person is an eligible student in connection with a designated course if in assessing that person’s application for support the Department determines that the person falls within one of the categories set out—

- (a) in paragraphs 2, 2A, 2B, 3, 3A, 3B, 3C, 3D, 3E, 3F, 4, , 5A, 5B, 5D, 5F, 6A, 6B, 6C, 6D, 7A, 9 and 10 of the Schedule; or
- (b) in paragraphs 5, 5C, 5E, 6, 6E, 7 and 8 of the Schedule where paragraph (1A) applies.

(1A) This paragraph applies where—

- (a) in connection with a designated course beginning before 1st August 2021, the Department—
  - (i) in assessing an application for support by a person (“A”), determined that A fell within one of the categories set out in paragraphs 5, 5C, 5E, 6, 6E, 7 and 8 of the Schedule in relation to an academic year of the course beginning before 1st August 2021; or
  - (ii) would have so determined had A made an application for support in accordance with this Part in relation to an academic year of the course beginning before that date; and
- (b) A applies for support in connection with that course or a designated course to which A’s status as an eligible student is transferred from that course in accordance with this Part.

(1B) In connection with a designated course beginning on or after 1st January 2028, paragraph (1)(a) has effect as if paragraphs 5F, 6B and 6D were omitted.”.

**Amendment of the Schedule**

4.—(1) The Schedule is amended as follows—

(2) In paragraph 1 (interpretation) —

- (a) in sub-paragraph (1)—
  - (i) omit the definitions of “EEA EFTA separation agreement” and “right of permanent residence”;
  - (ii) before the definition of “Directive 2004/38”, insert—
 

““the 2020 Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020;”;
  - (iii) in the definition of “family member”—

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(a) S.R. 2012 No. 306 as amended by The Further Education (Student Support) (Eligibility) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 296).

- (aa) in paragraph (a), for “or an EEA self-employed person” substitute “, an EEA self-employed person, or a relevant person of Northern Ireland who is treated as an EEA migrant worker or an EEA self-employed person by virtue of paragraph 5A(3)”;
  - (bb) in paragraph (c), after “Directive 2004/38”, insert “or, for the purposes of paragraph 6A, in relation to a relevant person of Northern Ireland who would fall within article 7(1)(c) of Directive 2004/38 if that person were an EU national or solely an EU national”;
  - (cc) in paragraph (d), after “Directive 2004/38”, insert “or, for the purposes of paragraph 6A, in relation to a relevant person of Northern Ireland who would fall within article 7(1)(b) of Directive 2004/38 if that person were an EU national or solely an EU national”;
  - (dd) in paragraph (e), for “paragraph 7” substitute “, paragraphs 6, 6B, 6C and 6D”;
- (iv) after the definition of “family member”, insert—
- ““grace period” has the meaning given by regulation 3 of the 2020 Citizens’ Rights Regulations;”;
- (v) after the definition of “Islands” insert—
- ““person granted Calais leave” means a person who—
- (a) has extant leave to remain in the United Kingdom under paragraph 352J, 352K, 352L or 352T (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave) of the immigration rules, as defined in section 33(1) of the Immigration Act 1971; and
  - (b) has been ordinarily resident in the United Kingdom and Islands since the person was granted such leave;
- “person granted humanitarian protection” means a person—
- (a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules as defined in section 33(1) of the Immigration Act 1971;
  - (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002)(a);
  - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain;
- “person granted indefinite leave to remain as a bereaved partner” means a person—
- (a) granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules, as defined in section 33(1) of the Immigration Act 1971—
    - (i) paragraph 288, as a person in relation to whom the requirements in paragraph 287(b) of those rules are met (bereaved partners),
    - (ii) paragraph 295N, as a person in relation to whom the requirements in paragraph 295M of those rules are met (bereaved partners),
    - (iii) paragraph D-BPILR.1.1 of Appendix FM (bereaved partners), or
    - (iv) paragraph 36 of Appendix Armed Forces (bereaved partner of a member of HM Forces), and
  - (b) who has been ordinarily resident in the United Kingdom and Islands since the person was granted such leave;

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

“person granted indefinite leave to remain as a victim of domestic violence or domestic abuse” means a person—

- (a) granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules, as defined in section 33(1) of the Immigration Act 1971—
  - (i) paragraph 289B (victims of domestic violence);
  - (ii) paragraph D-DVILR.1.1. of Appendix FM (victims of domestic abuse); or
  - (iii) paragraph 40 of Appendix Armed Forces (victims of domestic violence: partners of members of the armed forces); and
- (b) who has been ordinarily resident in the United Kingdom and Islands since the person was granted such leave;

“person granted section 67 leave” means a person who—

- (a) has extant leave to remain as a person granted leave under paragraph 352ZG of the immigration rules<sup>(a)</sup>, having been relocated to the United Kingdom pursuant to arrangements made by the Secretary of State under section 67 of the Immigration Act 2016 or a dependent child of such a person who has been granted “leave in line” under paragraph 352ZO of those rules; and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;

“person granted stateless leave” means a person who—

- (a) has extant leave to remain as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971); and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;”;

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

““person with leave to enter or remain on the grounds of discretionary leave” means a person (“P”)—

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

- (vii) after the newly amended definition of “person with leave to enter or remain on the grounds of discretionary leave” insert—

““person with protected rights” means—

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(a) The immigration rules are made under section 3(2) of the Immigration Act 1971 (c.77).

- (a) a person within the personal scope of the citizens' rights provisions who—
  - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;
  - (ii) is an Irish citizen who, pursuant to section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom;
  - (iii) is a relevant person for the purposes of regulation 3 of the 2020 Citizens' Rights Regulations where the grace period has not ended; or
  - (iv) is an applicant for the purposes of regulation 4 of the 2020 Citizens' Rights Regulations where the relevant period has not expired; or
- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;";
- (viii) after the definition of "refugee", insert—
  - "relevant period" has the meaning given by regulation 4 of the 2020 Citizens' Rights Regulations;
  - "relevant person of Northern Ireland" has the meaning given by residence scheme immigration rules;";
- (ix) after the definition of "Turkish worker", insert—
  - "United Kingdom national" has the meaning given by Article 2(d) of the EU withdrawal agreement;".
- (3) After sub-paragraph (1), insert—
  - "(1A) For the purposes of this Schedule, a reference to a "Member State" or "State" in Article 7 of Directive 2004/38 is to be read as including the United Kingdom.
  - (1B) For the purposes of this Schedule, a person is within the personal scope of the citizens' rights provisions if that person falls within—
    - (a) Article 10 (personal scope) of the EU withdrawal agreement;
    - (b) Article 9 (personal scope) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020) ; or
    - (c) Article 10 (personal scope) of the Swiss citizens' rights agreement.".
- (3) After sub-paragraph (2) insert—
  - "(2A) For the purposes of this Schedule, a person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place.".
- (4) In sub-paragraph (4) after "the territory comprising" where it occurs for the second time insert "the United Kingdom, Gibraltar,".

## **Amendment of paragraph 2**

- 5. For paragraph 2 (persons who are settled in the United Kingdom), substitute—
  - "(1) A person who on the first day of the first academic year of the course—
    - (a) is settled in the United Kingdom, other than a person falling within paragraph 2B
    - (b) is ordinarily resident in Northern Ireland;
    - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
    - (d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

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

### **Insertion of paragraphs 2A and 2B**

6. After paragraph 2, insert—

“**2A.**—(1) A person who—

- (a) is a United Kingdom national or an Irish citizen on the first day of the first academic year of the course, and does not fall within paragraph 2B of this Schedule;
- (b) is attending or undertaking a designated course in Northern Ireland;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, EEA and Switzerland (the relevant territory) throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the relevant territory has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the relevant territory in accordance with paragraph 1(3).

**2B.**—(1) A person who—

- (a) meets one of the following conditions on the first day of an academic year of the course—
  - (i) the person is within the personal scope of the citizens’ rights provisions and is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules;
  - (ii) the person—
    - (aa) is within the personal scope of the citizens’ rights provisions;
    - (bb) is an Irish citizen settled in the United Kingdom who, pursuant to section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom; and
    - (cc) would meet the eligibility requirements for indefinite leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules if that person were to make an application for such leave;
  - (iii) the person—
    - (aa) is within the personal scope of the citizens’ rights provisions;
    - (bb) is a relevant person for the purposes of regulation 3 of the 2020 Citizens’ Rights Regulations; and
    - (cc) has, or is treated as having, a right of permanent residence for the purposes of the Immigration (European Economic Area) Regulations 2016, as those Regulations continue to have effect by virtue of the 2020 Citizens’ Rights Regulations in relation to that person during the grace period;
  - (iv) the person—
    - (aa) is within the personal scope of the citizens’ rights provisions;
    - (bb) is an applicant for the purposes of regulation 4 of the 2020 Citizens’ Rights Regulations; and
    - (cc) has, or is treated as having, a right of permanent residence for the purposes of the Immigration (European Economic Area) Regulations

2016, as those Regulations continue to have effect by virtue of the 2020 Citizens' Rights Regulations in relation to that person during the relevant period; or

- (v) the person is a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) For the purposes of sub-paragraph (1)(a)(ii)(cc), "eligibility requirements for indefinite leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules" means the eligibility requirements for such leave in accordance with paragraph EU11 of Appendix EU to the immigration rules<sup>(a)</sup> (as defined in section 33(1) of the Immigration Act 1971).".

### **Insertion of paragraphs 3A to 3F**

7. After paragraph 3 (refugees and their family members), insert—

#### **“Persons granted section 67 leave**

**3A.** A person who—

- (a) has extant leave to remain as a person granted leave under paragraph 352ZG of the immigration rules, having been relocated to the United Kingdom pursuant to arrangements made by the Secretary of State under section 67 of the Immigration Act 2016, or a dependent child of such a person who has been granted “leave in line” under paragraph 352ZO of those rules; and
- (b) is ordinarily resident in United Kingdom on the first day of the first academic year of the course.

#### **Persons granted Calais leave**

**3B.—**(1) A person who—

- (a) has extant leave to remain in the United Kingdom under paragraph 352J, 352K, 352L or 352T (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave) of the immigration rules, as defined in section 33(1) of the Immigration Act 1971;
- (b) has been ordinarily resident in the United Kingdom and Islands since the person was granted such leave; and
- (c) is ordinarily resident in United Kingdom on the first day of the first academic year of the course.

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(a) The immigration rules were laid before Parliament on 23rd May 1994 (HC 395). Appendix EU was laid before Parliament on 20th July 2018 as part of a command paper that amended the immigration rules entitled “Statement of Changes in Immigration rules” (Cm 9675). Appendix EU was amended by the statement of changes in immigration rules presented to Parliament on 14th May 2020 (CPC 232) and on 22nd October 2020 (HC 813).

### **Persons granted humanitarian protection and their family members**

**3C.**—(1) A person granted humanitarian protection who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(2) A person who—

- (a) is the spouse or civil partner of a person granted humanitarian protection;
- (b) was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”);
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
- (d) who is ordinarily resident in United Kingdom on the first day of the first academic year of the course.

(3) A person who—

- (a) is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
- (b) on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
- (c) was under 18 years of age on the asylum application date;
- (d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
- (e) who is ordinarily resident in Northern Ireland on the first day of the first academic year of the course.

### **Persons granted indefinite leave to remain as a bereaved partner**

**3D.** A person granted indefinite leave to remain as a bereaved partner, who is ordinarily resident in Northern Ireland on the first day of the first academic year of the course.

### **Persons granted indefinite leave to remain as a victim of domestic violence or domestic abuse**

**3E.** A person granted indefinite leave to remain as a victim of domestic violence or domestic abuse, who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

### **Persons granted stateless leave and their family members**

**3F.**—(1) A person granted stateless leave who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(2) A person—

- (a) who—
  - (i) is the spouse or civil partner of a person granted stateless leave; and
  - (ii) on the leave application date, was the spouse or civil partner of the person granted stateless leave; and
- (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(3) A person—

- (a) who—



- (i) is the child of a person granted stateless leave or the child of the spouse or civil partner of a person granted stateless leave; and
- (ii) on the leave application date, was the child of the person granted stateless leave or the child of a person who, on the leave application date, was the spouse or civil partner of the person granted stateless leave;
- (b) who was under 18 years of age on the leave application date; and
- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(4) In this paragraph, “leave application date” means the date on which the person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971).”.

#### **Amendment of paragraph 4**

**8.**—(1) For the paragraph heading “Persons with leave to enter or remain and their family members”, substitute “Persons with leave to enter or remain on the grounds of discretionary leave and their family members”.

(2) For paragraph 4 substitute—

“**4.**—(1) A person granted leave to enter or remain on the grounds of discretionary leave who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(2) A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain on the grounds of discretionary leave;
- (b) who was the spouse or civil partner of the person with leave to enter or remain on the grounds of discretionary leave on the leave application date;
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
- (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(3) A person—

- (a) who is the child of a person with leave to enter or remain on the grounds of discretionary leave or the child of the spouse or civil partner of a person with leave to enter or remain on the grounds of discretionary leave,
- (b) who, on the leave application date, was under 18 and was the child of the person with leave to enter or remain on the grounds of discretionary leave or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on the grounds of discretionary leave on that date;
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
- (d) who is ordinarily resident in Northern Ireland on the first day of the first academic year of the course.

(4) In this paragraph, “leave application date” means the date on which the person with leave to enter or remain on the grounds of discretionary leave made the application that led to that person being granted leave to enter or remain on the grounds of discretionary leave in the United Kingdom.”.

## Insertion of paragraphs 5A to 5F

### 9. After paragraph 5 insert—

**“5A.—**(1) A person with protected rights, or a frontier worker within the meaning of regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020, 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-paragraph (i) or (ii);
  - (iv) an EEA frontier worker or an EEA frontier self-employed person;
  - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
  - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in Northern Ireland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

(3) In this paragraph, a description of a person in sub-paragraph(1)(a)(i) is to be read as if it includes a relevant person of Northern Ireland who would, if that person were an EEA national or solely an EEA national, be an EEA migrant worker or an EEA self-employed person.

(4) For the purposes of sub-paragraph (1)(a)(iii) or (vi), an Irish citizen family member is not required to be living in the United Kingdom on IP completion day.

**5B.—**(1) A person who—

- (a) is—
  - (i) an Irish citizen migrant worker or an Irish citizen self-employed person;
  - (ii) a family member of a person mentioned in sub-paragraph (i);
  - (iii) an Irish citizen frontier worker or an Irish citizen frontier self-employed person; or
  - (iv) a family member of a person mentioned in sub-paragraph (iii);
- (b) subject to sub-paragraph (2), is ordinarily resident in Northern Ireland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iii) or (iv) of sub-paragraph (1).

**5C.** A person who—

- (a) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (c) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers(3), as extended by the EEA Agreement.

**5D.**—(1) A person with protected rights who—

- (a) is ordinarily resident in the Northern Ireland on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (c) is entitled to support by virtue of Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (“the Workers Regulation”), as it had effect immediately before IP completion day, as extended by the EEA Agreement, as it had effect immediately before IP completion day.

(2) For the purposes of sub-paragraph (1)(c), in Article 10 of the Workers Regulation—

- (a) the reference to a “national of a Member State” is to be read as including a relevant person of Northern Ireland; and
- (b) the reference to “another Member State” is to be read as including the United Kingdom, and the references to “that State” construed accordingly.

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

**5E.**—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in Northern Ireland and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence before IP completion day;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where the person’s ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if that person is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who had a right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and had a right of permanent residence, if the person has gone to the state within the territory comprising the European Economic Area and Switzerland of which the person is a national or of which the person in relation to whom the person is a family member is a national.

(3) For the purposes of sub-paragraph (2), a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.

**5F.**—(1) A person who—

- (a) is settled in the United Kingdom;

- (b) was ordinarily resident in Northern Ireland and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence before IP completion day;
- (c) was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising Gibraltar, the European Economic Area and Switzerland; or
  - (i) in the United Kingdom, where that ordinary residence began after 31st December 2017 immediately following a period of ordinary residence in the territory comprising the United Kingdom, Gibraltar, European Economic Area and Switzerland,
 and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before 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 territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period 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 paragraph (e) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (e).

(2) For the purposes of this paragraph, a person has exercised a right of residence if that person is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who had the right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and had the right of permanent residence, if the person has gone to the state within the territory comprising the European Economic Area and Switzerland of which the person is a national or of which the person in relation to whom the person is a family member is a national.

(3) For the purposes of sub-paragraph (2), a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.”.

**Amendment of paragraph 6 and insertion of paragraphs 6A to 6F**

**10.**—(1) For paragraph 6 (EU nationals), substitute—

- “**6.**—(1) A person who—
- (a) is either—
    - (i) an EU national on the first day of an academic year of the course; or
    - (ii) a family member of a such a person;
  - (b) is attending or undertaking a designated course in Northern Ireland;
  - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
  - (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland has

not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the relevant territory in accordance with paragraph 1(3).

(3) Any description of person who would have fallen within this paragraph immediately before IP completion day is to be treated as falling within this paragraph on and after IP completion day.”.

(2) After paragraph 6 insert—

“**6A.**—(1) A person with protected rights—

(a) who is—

- (i) an EU national on the first day of the first academic year of the course;
- (ii) a family member of a person mentioned in sub-paragraph (i); or
- (iii) a family member of a relevant person of Northern Ireland;

(b) who is undertaking the course in Northern Ireland;

(c) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

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

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(3).

### **United Kingdom nationals**

**6B.**—(1) A person—

(a) who is—

- (i) a United Kingdom national on the first day of an academic year of the course;  
or
- (ii) a family member of a person mentioned in sub-paragraph (i);

(b) who was ordinarily resident immediately before IP completion day—

- (i) in the territory comprising the European Economic Area and Switzerland; or
- (ii) in the United Kingdom, where that ordinary residence began after 31st December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area and Switzerland,

and has remained ordinarily resident in the territory comprising the United Kingdom, the European Economic Area and Switzerland (the relevant territory) throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;

(c) who is attending or undertaking a designated course in Northern Ireland;

(d) has been ordinarily resident in the relevant territory throughout the three-year period preceding the first day of the first academic year of the course; and

(e) subject to sub-paragraph (2), whose ordinary residence in the relevant territory has not during any part of the period referred to in paragraph (d) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the relevant territory in accordance with paragraph 1(3).

(3) 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).

**6C.**—(1) A person—

- (a) who is a family member of a person who is a United Kingdom national on the first day of the first academic year of the course;
- (b) who is attending or undertaking a designated course in Northern Ireland;
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(3).

### **Persons resident in Gibraltar**

**6D.**—(1) A person—

- (a) who is—
  - (i) a United Kingdom national who has resident status in Gibraltar granted by the Government of Gibraltar;
  - (ii) a family member of a United Kingdom national, where that family member has resident status in Gibraltar granted by the Government of Gibraltar;
  - (iii) an EU national who has a right of residence in Gibraltar arising under the EU withdrawal agreement; or
  - (iv) a family member of an EU national, where that family member has a right of residence in Gibraltar arising under the EU withdrawal agreement;
- (b) who is attending or undertaking a designated course in Northern Ireland;
- (c) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland (the relevant territory) throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the relevant territory has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the relevant territory in accordance with paragraph 1(3).

### **EU nationals ordinarily resident in the United Kingdom and Islands**

**6E.**—(1) A person who—

- (a) is an EU national on the first day of the first academic year of the course;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where his ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic

Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).

**6F.**—(1) A person with protected rights who—

- (a) is an EU national on the first day of the first academic year of the course;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).

(2) For the purposes of this paragraph, an Irish citizen is not required to be living in the United Kingdom on IP completion day.”.

### **Insertion of paragraph 7A**

**11.** After paragraph 7 insert—

“**7A.** A person with protected rights who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss citizens' rights agreement;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).”.

### **Insertion of paragraphs 9 and 10**

**12.** After paragraph 8, insert—

“**9.** A person who—

- (a) is the child of a Turkish worker (“T”), where T was ordinarily resident in the United Kingdom immediately before IP completion day;
- (b) immediately before IP completion day—
  - (i) was the child of T; and
  - (ii) was ordinarily resident in the United Kingdom;
- (c) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course; and
- (d) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

## Long Residence

10.—(1) A person—

- (a) who on the first day of the first academic year of the course is either—
  - (i) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or
  - (ii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either—
    - (aa) half their life; or
    - (bb) a period of twenty years;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(3).”.

Sealed with the Official Seal of the Department for the Economy on 6th July 2021.



*Beverley Harrison*

A senior officer of the Department for the Economy



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012 (S.R. 2012 No.306). The principal amendments are made in consequence of the United Kingdom's exit from the European Union and take effect in relation to an academic year beginning on or after 1st August 2021.

Regulation 3 amends the provisions relating to eligibility for student support to provide that eligibility categories applicable before 1st August 2021 to nationals of the European Union (including for these purposes nationals of the United Kingdom), EEA EFTA States and Switzerland and their family members and children of Turkish workers are restricted to persons undertaking a course beginning before 1st August 2021. The amendments also make provision for new eligibility categories which apply in relation to applications for support by persons undertaking courses in relation to an academic year beginning on or after 1st August 2021.

Regulations 4 to 12 amend the Schedule to the 2012 Regulations. Regulations 4, 7 and 8 amend the Schedule to insert definitions of, and residency criteria for, relevant categories of students.

The relevant categories of student are:

- (a) persons granted section 67 leave under paragraph 352ZG of the immigration rules;
- (b) dependent children of persons granted section 67 leave, who are granted "leave in line" under paragraph 352ZO of the immigration rules;
- (c) persons granted Calais leave;
- (d) dependent children of a person granted Calais leave who are granted "leave in line";
- (e) persons granted humanitarian protection;
- (f) family members of persons granted humanitarian protection;
- (g) persons granted indefinite leave to remain as a bereaved partner
- (h) persons granted indefinite leave to remain as a victim of domestic violence or domestic abuse
- (i) persons granted stateless leave;
- (j) family members of persons granted stateless leave;
- (k) persons granted leave to enter or remain on the grounds of discretionary leave;
- (l) family members of persons granted leave to enter or remain on the grounds of discretionary leave.

There is no requirement that these students must have been ordinarily resident in the UK, the EEA or Switzerland for the 3 years immediately prior to the start of their course to qualify for funding. Further, if a student is granted the above leave after their course has begun, the student may become eligible for funding.

Regulations 5, 6, and 9 to 12 amend the Schedule principally to include new eligibility paragraphs and related definitions. The new paragraphs apply in relation to—

- (i) UK nationals and Irish citizens who have been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA or Switzerland.
- (ii) persons falling within the personal scope of the citizens' rights provisions of the EU withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement ("the Agreements") who have leave to enter or remain in the United Kingdom granted under residence scheme immigration rules (as defined in section 17 of the European Union (Withdrawal Agreement) Act 2020), and those with equivalent rights;

- (iii) frontier workers within the meaning of regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (S.I. 2020/1213) who have a right of admission to the United Kingdom under regulation 6 of those Regulations;
- (iv) Irish citizen migrant and frontier workers and their family members;
- (v) persons settled in the United Kingdom who exercised a right of residence in the European Economic Area or Switzerland before IP completion day;
- (vi) persons with protected rights who are EU nationals or their family members, or family members of a relevant person of Northern Ireland who have been ordinarily resident in the UK, Gibraltar, the European Economic Area or Switzerland;
- (vii) nationals of the United Kingdom and their family members who before IP completion day have been ordinarily resident in the European Economic Area or Switzerland and who come to the United Kingdom to study;
- (viii) family members of nationals of the United Kingdom who are resident in the United Kingdom and Islands;
- (ix) persons resident in Gibraltar before IP completion day; and
- (x) EU nationals ordinarily resident in the United Kingdom and Islands
- (xi) children of Swiss nationals entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss citizens' rights agreement.
- (xii) children of Turkish workers resident in the United Kingdom before IP completion day.
- (xiii) persons entitled to claim long residence status.

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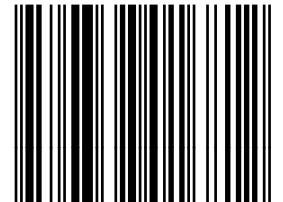
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.



£6.90

<http://www.legislation.gov.uk/id/misr/2021/202>

ISBN 978-0-33-801681-2



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