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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 28**

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

**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(1) 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.”.