
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 28

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

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(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 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—

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- (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.