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STATUTORY INSTRUMENTS

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**2021 No. 929**

**EDUCATION, ENGLAND**

**The Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2021**

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| <i>Made</i>                   | - - - - | <i>6th August 2021</i>    |
| <i>Laid before Parliament</i> |         | <i>11th August 2021</i>   |
| <i>Coming into force</i>      | - -     | <i>1st September 2021</i> |

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1 and 2 of the Education (Fees and Awards) Act 1983<sup>(1)</sup>, sections 22 and 42(6) of the Teaching and Higher Education Act 1998<sup>(2)</sup> and sections 10(4)(b) and 119(5) of the Higher Education and Research Act 2017<sup>(3)</sup>.

**PART 1**

**Introductory**

**Citation, commencement and extent**

**1.—(1)** These Regulations may be cited as the Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2021 and come into force on 1st September 2021.

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- (1) 1983 c. 40. Section 1 was amended by paragraph 91 of Schedule 12 to the Education Reform Act 1988 (c. 40); paragraph 19 of Schedule 8 to the Further and Higher Education Act 1992 (c. 13); paragraph 8 of Schedule 9 to the Further and Higher Education (Scotland) Act 1992 (c. 37); paragraph 7 of Schedule 2 to the Education Act 1994 (c. 30); paragraph 57 of Schedule 37 to the Education Act 1996 (c. 56); paragraph 5 of Schedule 3 to the Teaching and Higher Education Act 1998 (c. 30); paragraph 11 of Schedule 9 to the Learning and Skills Act 2000 (c. 21); paragraph 5 of Schedule 21, and Part 3 of Schedule 22, to the Education Act 2002 (c. 32); paragraph 9 of Schedule 14 to the Education Act 2005 (c. 18); paragraph 5 of Schedule 5, and paragraph 5 of Schedule 16, to the Education Act 2011 (c. 21); paragraph 33 of Schedule 14 to the Deregulation Act 2015 (c. 20); S.I. 2005/3238, S.I. 2010/1080 and S.I. 2010/1158. Section 2 was amended by paragraph 1 of Schedule 4 to the Teaching and Higher Education Act 1998.
- (2) 1998 c. 30. Section 22 was amended by section 146(2) of, and paragraph 1 of Schedule 11 to, the Learning and Skills Act 2000 (c. 21); paragraph 236 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1); section 147(3) of the Finance Act 2003 (c. 14); sections 42(1) and 43(2) and (3) of, and Schedule 7 to, the Higher Education Act 2004 (c. 8); section 257(2) of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22); section 76(1) and (2)(a) of the Education Act 2011 (c. 21); section 88(2) to (5) of the Higher Education and Research Act 2017 (c. 29); and S.I. 2013/1881. Section 22 is also amended by section 86(2) to (7) of the Higher Education and Research Act 2017 but those amendments are not yet in force. Section 42 was amended by paragraph 9 of Schedule 12 to the Education Act 2002 (c. 32); paragraph 9 of Schedule 6 to the Higher Education Act 2004; and paragraph 15 of Schedule 2 to the Education Act 2011. See section 43(1) for the definitions of “prescribed” and “regulations”.
- (3) 2017 c. 29. See section 10(9) for the definition of “prescribed”.

- (2) These Regulations extend to England and Wales but apply in England only.

## PART 2

### Amendment of the Education (Student Support) Regulations 2011

#### CHAPTER 1

##### Introductory

#### **Amendment of the Education (Student Support) Regulations 2011**

2. The Education (Student Support) Regulations 2011(4) are amended in accordance with regulations 3 to 8.

#### CHAPTER 2

##### Citizens' rights and residency criteria

#### **Amendment to regulation 2**

3. In regulation 2(1), in the definition of “person with protected rights”(5)—
- (a) the existing text after “means—” is numbered as paragraph (1) of the definition;
  - (b) in that paragraph as so numbered, omit the terminal “or” after sub-paragraph (a)(iii), and after sub-paragraph (a)(iv), insert—
    - “(v) otherwise has rights deemed to apply by virtue of any citizens' rights deeming provisions; or”;
  - (c) after that paragraph as so numbered, insert—
    - “(2) In paragraph (1)(a)(v), “citizens' rights deeming provisions” means—
      - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(6)); or
      - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement.”.

#### **Amendment to regulation 4**

4. In regulation 4(13B)(a)(i)(7), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

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(4) S.I. 2011/1986, amended by S.I. 2012/1653, 2013/235, 630, 1728 and 3106, 2014/1766, 2103 and 2765, 2015/1951, 2016/211, 270 and 584, 2017/52, 114 and 204, 2018/136, 137, 434, 443, 472 and 599, 2019/142, 983 and 1094, 2020/46, 48, 853, 1181 and 1203, and 2021/127 and 268.

(5) Definition inserted by S.I. 2021/127.

(6) 2020 c. 1.

(7) Paragraph (13B) was inserted by S.I. 2021/127.

### Amendment to regulation 137

5. In regulation 137(11B)(a)(i)(8), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

### Amendment to regulation 159

6. In regulation 159(16B)(a)(i)(9), for “paragraph (a)(iii) or (iv)” substitute “paragraph (1)(a)(iii), (iv) or (v)”.

### Amendment to Schedule 1

7. In Schedule 1—

(a) in paragraph 2A(10)—

- (i) in sub-paragraph (1)(a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”,
- (ii) in sub-paragraph (1)(c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for least part of that period”, and move the terminal “and” to after sub-paragraph (1)(d),
- (iii) after sub-paragraph (1)(d) insert—

“(e) who did not move to England from the Islands for the purpose of undertaking the current course, or a course which, disregarding any intervening vacation, the person undertook immediately before the current course.”;

(b) in paragraph 3(1)(a)(iv)—

- (i) in paragraph (bb)(11), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
- (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
- (iii) after sub-paragraph (2) insert—

“(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—

- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”;

(c) in paragraph 9C(1)(12), move the terminal “and” after sub-paragraph (c) to after sub-paragraph (d), and after that sub-paragraph insert—

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(8) Paragraph (11B) was inserted by [S.I. 2021/127](#).

(9) Paragraph (16B) was inserted by [S.I. 2021/127](#).

(10) Paragraph 2A was inserted by the [S.I. 2021/127](#).

(11) Paragraph 3(1)(a) was substituted by [S.I. 2021/127](#).

(12) Paragraph 9C was inserted by [S.I. 2021/127](#).

- “(e) who did not move to England from the Islands for the purpose of undertaking the current course or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the current course.”.

## CHAPTER 3

### Irish citizens in the EEA and Switzerland

#### Eligibility of Irish citizens in the EEA and Switzerland

- 8.**—(1) In regulation 4(**13**)—
- (a) in paragraph (2)(a), after “9B,” insert “9BA,”;
  - (b) in paragraph (2B), for “, 9B and 9D” substitute “, 9B, 9BA and 9D”.
- (2) In regulation 38(3)(**14**), after “9A,” insert “9BA,”.
- (3) In regulation 69(3)(a)(**15**), after “9A,” insert “9BA,”.
- (4) In regulation 137(**16**),
- (a) in paragraph (2)(a), after “9B,” insert “9BA”;
  - (b) in paragraph (2B) for “, 9B and 9D” substitute “, 9B, 9BA and 9D”.
- (5) In regulation 147(2)(a)(**17**), after “9A,” insert “9BA,”.
- (6) In regulation 157B(2)(a)(**18**), after “9A,” insert “9BA,”.
- (7) In regulation 159(**19**)—
- (a) in paragraph (3)(a)(i), after “9B,” insert “9BA,”;
  - (b) in paragraph (3B), for “, 9B and 9D” substitute “, 9B, 9BA and 9D”;
  - (c) in paragraph (8), after “9A,” insert “9BA,”.
- (8) In Schedule 1—
- (a) after paragraph 9B insert—
 

“**9BA.**—(1) A person—

    - (a) who is an Irish citizen on the first day of the first academic year of the course;
    - (b) who was ordinarily resident 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, 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;

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(13) Paragraph (2) of regulation 4 was substituted, and paragraph (2B) inserted, by [S.I. 2021/127](#).

(14) Paragraph (3) of regulation 38 was amended by [S.I. 2021/127](#).

(15) Paragraph (3) of regulation 69 was amended by [S.I. 2021/127](#).

(16) Paragraph (2) of regulation 137 was substituted, and paragraph (2B) inserted, by [S.I. 2021/127](#).

(17) Regulation 147 was moved to Part 11A by [S.I. 2018/472](#) and paragraph (2)(a) of regulation 147 was substituted by [S.I. 2021/127](#).

(18) Regulation 157B was inserted by [S.I. 2018/472](#) and paragraph (2)(a) was substituted by [S.I. 2021/127](#).

(19) Paragraph (3) of regulation 159 was substituted, paragraph (3B) inserted, and paragraph (8) amended, by [S.I. 2021/127](#).

- (c) who is—
  - (i) attending or undertaking a designated course in England; or
  - (ii) undertaking an intensive course, designated part-time course or a designated postgraduate course in England;
- (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) 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 (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 territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(4).”.

## PART 3

### Corresponding amendments to other regulations

#### CHAPTER 1

#### Amendment of the Education (Fees and Awards) (England) Regulations 2007

##### SECTION 1

##### *Introductory*

#### **Amendment of the Education (Fees and Awards) (England) Regulations 2007**

9. The Education (Fees and Awards) (England) Regulations 2007(20) are amended in accordance with regulations 10 and 11.

##### SECTION 2

##### *Citizens’ rights and residency criteria*

#### **Amendment to Schedule 1**

10. In Schedule 1—

- (a) in paragraph 1(1), in the definition of “person with protected rights”—
  - (i) the existing text after “means—” is numbered as paragraph (1) of that definition,
  - (ii) in that paragraph as so numbered, omit the terminal “or” after sub-paragraph (a)(iii), and after sub-paragraph (a)(iv), insert—
    - “(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”,
  - (iii) after that paragraph as so numbered, insert—

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(20) S.I. 2007/779; amendments corresponding to those made to S.I. 2011/1986 and described in footnotes to the amendments to that instrument were made to this instrument.

- “(2) In paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—
- (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
  - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
  - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”;
- (b) in paragraph 2A(1)(a) and (b), for “on the first day of the first academic year of the course”, in each case substitute “on the day on which the first term of the first academic year actually begins”;
- (c) in paragraph 3(1)(a)(iv)—
- (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (iii) after sub-paragraph (2) insert—
- “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
  - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
  - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”.

### *SECTION 3*

#### *Irish citizens in the EEA and Switzerland*

#### **Eligibility of Irish citizens in the EEA and Switzerland**

- 11.—**(1) In regulation 4—
- (a) in paragraph (1)(a), after “9B,” insert “9BA,”;
  - (b) in paragraph (1B), for “8A and 9B” substitute “8A, 9B and 9BA”.
- (2) In regulation 5—
- (a) in paragraph (1)(b), after “9B,” insert “9BA,”;
  - (b) in paragraph (2) for “8A and 9B” substitute “8A, 9B and 9BA”.
- (3) In regulation 6—
- (a) in paragraph (1)(b)(i), after “9B,” insert “9BA,”;
  - (b) in paragraph (1C) for “8A and 9B” substitute “8A, 9B and 9BA,”;
  - (c) in sub-paragraph (3), after “paragraph 9B,” insert “paragraph 9BA,”.
- (4) In regulation 7—

- (a) in paragraphs (1) and (2), after “9B,” insert “9BA,”;
  - (b) in paragraph (3) for “8A and 9B” substitute “8A, 9B and 9BA,”.
- (5) In regulation 8—
- (a) in paragraphs (1)(a) and (2)(a), after “9B,” insert “9BA,”;
  - (b) in paragraph (4) for “8A and 9B” substitute “8A, 9B and 9BA”.
- (6) In regulation 9—
- (a) in paragraphs (1)(a) and (2)(a), after “9B,” insert “9BA,”;
  - (b) in paragraph (4) for “8A and 9B” substitute “8A, 9B and 9BA”.
- (7) In regulation 9A—
- (a) in paragraphs (1) and (2), after “9B,” insert “9BA,”;
  - (b) in paragraph (4) for “8A and 9B” substitute “8A, 9B and 9BA”.
- (8) In Schedule 1—
- (a) after paragraph 9B insert—
    - “**9BA.**—(1) A person—
    - (a) who is an Irish citizen on the first day of an academic year of the course;
    - (b) who was ordinarily resident immediately before IP completion day—
      - (i) in the territory comprising the European Economic Area, Switzerland and the EU overseas territories; 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, Switzerland and the EU overseas territories,
    - and has remained ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the EU overseas territories 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 undertaking the course in the United Kingdom;
    - (d) who has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
    - (e) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories 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 territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with regulation 2(4).
  - (3) In this paragraph, “EU overseas territories” means Aruba; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); St Barthélemy; St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; and Wallis and Futuna.”.

## CHAPTER 2

### Amendment of the Education (Student Support) (European University Institute) Regulations 2010

#### SECTION 1

##### *Introductory*

### **Amendment of the Education (Student Support) (European University Institute) Regulations 2010**

12. The Education (Student Support) (European University Institute) Regulations 2010(21) are amended in accordance with regulations 13 to 16.

#### SECTION 2

##### *Citizens' rights and residency criteria*

#### **Amendment to regulation 3**

13. In regulation 3(1), in the definition of “person with protected rights”—
- (a) the existing text after “means—” is numbered as paragraph (1) of that definition;
  - (b) in that paragraph as so numbered, omit the terminal “or” after sub-paragraph (a)(iii), and after sub-paragraph (a)(iv), insert—
    - “(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”;
  - (c) after that paragraph as so numbered, insert—
    - “(2) In paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—
      - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”.

#### **Amendment to regulation 9**

14. In regulation 9(11B)(a)(i), for “paragraph (a)(iii) or (iv)” substitute “paragraph (a)(iii), (iv) or (v)”.

#### **Amendment to Schedule 1**

15. In Schedule 1—
- (a) in paragraph 3(1)(a)(iv)—
    - (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”;

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(21) [S.I. 2010/447](#); amendments corresponding to those made to [S.I. 2011/1986](#) and described in footnotes to the amendments to that instrument were made to this instrument.



- (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”;
- (iii) after sub-paragraph (2) insert—
  - “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
    - (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
    - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
    - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”.

### SECTION 3

#### *Irish citizens in the EEA and Switzerland*

#### **Eligibility of Irish citizens in the EEA and Switzerland**

**16.—**(1) In regulation 9—

- (a) in paragraph (2)(b)(i), after “9B,” insert “9BA,”;
  - (b) in paragraph (2B), for “, 9B and 9D” substitute “, 9B, 9BA and 9D”.
- (2) In regulation 17(2), after “9A,” insert “9BA,”.
- (3) In regulation 19(2), after “9A,” insert “9BA,”.
- (4) In regulation 22(3), after “9A,” insert “9BA,”.
- (5) In regulation 24(2), after “9A,” insert “9BA,”.
- (6) In Schedule 1, after paragraph 9B, insert—

**“9BA.—**(1) A person—

- (a) who on the relevant date is an Irish citizen;
- (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, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the relevant date;
- (c) who is ordinarily resident in England on the relevant date;
- (d) 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 relevant date; and
- (e) 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 (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 territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(7).”

## CHAPTER 3

### Amendment of the Further Education Loans Regulations 2012

#### SECTION 1

##### *Introductory*

### **Amendment of the Further Education Loans Regulations 2012**

17. The Further Education Loans Regulations 2012<sup>(22)</sup> are amended in accordance with regulations 18 to 21.

#### SECTION 2

##### *Citizens’ rights and residency criteria*

### **Amendment to regulation 2**

18. In regulation 2(1), in the definition of “person with protected rights”—

- (a) the existing text after “means—” is numbered as paragraph (1) of that definition;
- (b) in that paragraph as so numbered, omit the terminal “or” after sub-paragraph (a)(iii), and after sub-paragraph (a)(iv) insert—

“(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”;

- (c) after that paragraph as so numbered, insert—

“(2) In paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—

- (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”.

### **Amendment to regulation 3**

19. In regulation 3(10)(a)(i) for “paragraph (a)(iii) or (iv)” substitute “paragraph (a)(iii), (iv) or (v)”.

### **Amendment to Schedule 1**

20. In Schedule 1—

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<sup>(22)</sup> [S.I. 2012/1818](#); amendments corresponding to those made to [S.I. 2011/1986](#) and described in footnotes to the amendments to that instrument were made to this instrument.

- (a) in paragraph 2A(1)—
  - (i) in sub-paragraph (c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for least part of that period”, and move the terminal “and” to after sub-paragraph (1)(d),
  - (ii) after sub-paragraph (d) insert—
    - “(e) who did not move to England from the Islands for the purpose of undertaking the current course or a course which the person undertook before undertaking the current course.”;
- (b) in paragraph 3(1)(a)(iv)—
  - (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (ii) in sub-paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (iii) after sub-paragraph (2) insert—
    - “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
      - (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”;
- (c) in paragraph 9C(1), move the terminal “and” after sub-paragraph (c) to after sub-paragraph (d), and after that sub-paragraph insert—
  - “(e) who did not move to England from the Islands for the purpose of undertaking the current course or a course which the person undertook before undertaking the current course.”.

### SECTION 3

#### *Irish citizens in the EEA and Switzerland*

#### **Eligibility of Irish citizens in the EEA and Switzerland**

##### **21.—(1) In regulation 3—**

- (a) in paragraph (2)(a)(i), after “9B,” insert “9BA,”;
- (b) in paragraph (2B), for “, 9B and 9D” substitute “, 9B, 9BA and 9D”.

##### **(2) In Schedule 1, after paragraph 9B, insert—**

##### **“9BA.—(1) A person—**

- (a) who is an Irish citizen on the first day of the designated further education course;
- (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, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the first day of the designated further education course;

- (c) who is attending or undertaking a designated further education course in England;
- (d) 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 designated further education course; and
- (e) 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 (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 territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(5).”

## CHAPTER 4

### Amendment of the Education (Postgraduate Master’s Degree Loans) Regulations 2016

#### SECTION 1

##### *Introductory*

### **Amendment of the Education (Postgraduate Master’s Degree Loans) Regulations 2016**

**22.** The Education (Postgraduate Master’s Degree Loans) Regulations 2016(23) are amended in accordance with regulation 23 to 26.

#### SECTION 2

##### *Citizens’ rights and residency criteria*

### **Amendment to regulation 2**

**23.** In regulation 2(1), in the definition of “person with protected rights”—

- (a) the existing text after “means—” is numbered as paragraph (1) of that definition;
- (b) in that paragraph as so numbered, omit the terminal “or” after sub-paragraph (a)(iii), and after sub-paragraph (a)(iv), insert—
  - “(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”;
- (c) after that paragraph as so numbered, insert—
  - “(2) In paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—

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(23) S.I. 2016/606; amendments corresponding to those made to S.I. 2011/1986 and described in footnotes to the amendments to that instrument were made to this instrument.

- (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement.”.

### **Amendment to regulation 3**

**24.** In regulation 3(9)(a)(i) for “paragraph (a)(iii) or (iv)” substitute “paragraph (a)(iii), (iv) or (v)”.

### **Amendment to Schedule 1**

**25.** In Schedule 1—

(a) in paragraph 2A—

- (i) in sub-paragraph (1)(a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”,
- (ii) in sub-paragraph (1)(c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for least part of that period”, and move the terminal “and” to after sub-paragraph (1)(d),
- (iii) after sub-paragraph (1)(d) insert—
  - “(e) who did not move to England from the Islands for the purpose of undertaking the designated course or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”;

(b) in paragraph 3(1)(a)(iv)—

- (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
- (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,

(iii) after sub-paragraph (2) insert—

“(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—

- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”;

(c) in paragraph 9C(1), move the terminal “and” after sub-paragraph (c) to after sub-paragraph (d), and after that sub-paragraph insert—

- “(e) who did not move to England from the Islands for the purpose of undertaking the designated course or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”.

### SECTION 3

#### *Irish citizens in the EEA and Switzerland*

#### **Eligibility of Irish citizens in the EEA and Switzerland**

**26.**—(1) In regulation 3—

- (a) in paragraph (2)(a), after “9B,” insert “9BA,”;
- (b) in paragraph (2B), for “, 9B and 9D” substitute “, 9B, 9BA and 9D”.

(2) In Schedule 1, after paragraph 9B, insert—

“**9BA.**—(1) A person—

- (a) who is an Irish citizen on the first day of the first academic year of the course;
- (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, 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;
- (c) who is attending or undertaking a designated course in England;
- (d) 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
- (e) 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 (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 territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(5).”.

## CHAPTER 5

### Amendment of the Higher Education (Fee Limit Condition) (England) Regulations 2017

#### SECTION 1

##### *Introductory*

### **Amendment of the Higher Education (Fee Limit Condition) (England) Regulations 2017**

27. The Higher Education (Fee Limit Condition) (England) Regulations 2017<sup>(24)</sup> are amended in accordance with regulations 28 and 29.

#### SECTION 2

##### *Citizens' rights and residency criteria*

### **Amendment to the Schedule**

28. In the Schedule—

- (a) in paragraph 1(1), in the definition of “person with protected rights”—
  - (i) the existing text after “means—” is numbered as paragraph (1) of that definition;
  - (ii) in that paragraph as so numbered, omit the terminal “or” after sub-paragraph (a)(ii), and after sub-paragraph (a)(iii), insert—
    - “(iv) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”;
  - (iii) after that paragraph as so numbered, insert—
    - “(2) In paragraph (1)(iv) “citizens’ rights deeming provisions” means—
      - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”.
- (b) in paragraph 3A(1)(a) and (b), for “on the first day of the first academic year of the course”, in each case substitute “on the day on which the first term of the first academic year actually begins”;
- (c) in paragraph 4(1)(a)(iii)—
  - (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (ii) in paragraph (cc) after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (iii) after sub-paragraph (2) insert—

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<sup>(24)</sup> [S.I. 2017/1189](#); amendments corresponding to those made to [S.I. 2011/1986](#) and described in footnotes to the amendments to that instrument were made to this instrument.

“(3) For the purposes of sub-paragraph (1)(a)(iii), the citizens’ rights provisions referred to are—

- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”.

### *SECTION 3*

#### *Irish citizens in the EEA and Switzerland*

#### **Eligibility of Irish citizens in the EEA and Switzerland**

**29.**—(1) In regulation 4—

- (a) in paragraph (4)(a), after “10B,” insert “10BA,”;
- (b) in paragraph (6), for “9A and 10B” substitute “9A, 10B and 10BA”.

(2) In the Schedule, after paragraph 10B, insert—

“**10BA.**—(1) A person—

- (a) who is an Irish citizen on the first day of an academic year of the course;
- (b) who was ordinarily resident immediately before IP completion day—
  - (i) in the territory comprising the European Economic Area, Switzerland and the EU overseas territories; 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, Switzerland and the EU overseas territories,

and has remained ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the EU overseas territories 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 undertaking the course in the United Kingdom;
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories 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 territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with paragraph 2(2).

(3) In this paragraph, “EU overseas territories” means Aruba; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Netherlands Antilles (Bonaire,



Curaçao, Saba, Sint Eustatius, Sint Maarten); St Barthélemy; St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; and Wallis and Futuna.”.

## CHAPTER 6

### Amendment of the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No 2) etc.) Regulations 2018

#### SECTION 1

##### *Introductory*

#### **Amendment of the Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No. 2) etc.) Regulations 2018**

**30.** The Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No. 2) etc.) Regulations 2018<sup>(25)</sup> are amended in accordance with regulations 31 to 34.

#### SECTION 2

##### *Citizens' rights and residency criteria*

#### **Amendment to regulation 2**

- 31.** In regulation 2(1), in the definition of “person with protected rights”—
- (a) the existing text after “means—” is numbered as paragraph (1) of that definition;
  - (b) in that paragraph as so numbered, omit the terminal “or” after sub-paragraph (a)(iii), and after sub-paragraph (a)(iv), insert—
    - “(v) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or”;
  - (c) after that paragraph as so numbered, insert—
    - “(2) In paragraph (1)(a)(v) “citizens’ rights deeming provisions” means—
      - (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”.

#### **Amendment to regulation 3**

**32.** In regulation 3(12)(a)(i) for “paragraph (a)(iii) or (iv)” substitute “paragraph (a)(iii), (iv) or (v)”.

#### **Amendment to Schedule 1**

**33.** In Schedule 1—

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<sup>(25)</sup> *S.I. 2018/599*; amendments corresponding to those made to *S.I. 2011/1986* and described in footnotes to the amendments to that instrument were made to this instrument.

- (a) in paragraph 2A—
  - (i) in sub-paragraph (1)(a), for “on the first day of the first academic year of the course” substitute “on the day on which the first term of the first academic year actually begins”;
  - (ii) in sub-paragraph (1)(c), after “course” insert “and who has been ordinarily resident in the Republic of Ireland for least part of that period”, and move the terminal “and” to after sub-paragraph (1)(d),
  - (iii) after sub-paragraph (1)(d) insert—
    - “(e) who did not move to England from the Islands for the purpose of undertaking the designated course or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”;
- (b) in paragraph 3(1)(a)(iv)—
  - (i) in paragraph (bb), after “Regulations” insert “or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (ii) in paragraph (cc), after “relevant period” insert “or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3)”,
  - (iii) after sub-paragraph (2) insert—
    - “(3) For the purposes of sub-paragraph (1)(a)(iv), the citizens’ rights provisions referred to are—
      - (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;
      - (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
      - (c) Article 16(3) (issuance of residence documents) of the Swiss citizens’ rights agreement.”;
- (c) in paragraph 10C(1), move the terminal “and” after sub-paragraph (c) to after sub-paragraph (d), and after that sub-paragraph insert—
  - “(e) who did not move to England from the Islands for the purpose of undertaking the designated course or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course.”.

### SECTION 3

#### *Irish citizens in the EEA and Switzerland*

#### **Eligibility of Irish citizens in the EEA and Switzerland**

- 34.**—(1) In regulation 3—
- (a) in paragraph (2)(a), after “10B,” insert “10BA,”;
  - (b) in paragraph (2B), for “, 10B and 10D” substitute “, 10B, 10BA and 10D”.
- (2) In Schedule 1, after paragraph 10B, insert—
- “**10BA.**—(1) A person—
    - (a) who is an Irish citizen on the first day of the first academic year of the course;

- (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, 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;
  - (c) who is attending or undertaking a designated course in England;
  - (d) 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
  - (e) 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 (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 territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland in accordance with paragraph 1(5).”.

6th August 2021

*Michelle Donelan*  
Minister of State  
Department for Education

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

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## EXPLANATORY NOTE

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

This instrument amends the Education (Student Support) Regulations 2011.

The amendments made by regulations 3 to 6 and 7(b) ensure that the Regulations fully reflect the requirements of the EU Withdrawal Agreement (and the EEA EFTA Separation Agreement and Swiss Citizens' Rights Agreement) as they relate to the rights of those making late applications to the EU Settlement Scheme (EUSS) and to joining family members who have yet to apply to the EUSS and are still within the deadline for doing so.

The amendments made by regulation 7(a) and (c) have the effect that persons who come to England from the Isle of Man and the Channel Islands for the purpose of study are not eligible for student support. Regulation 7(a) also amends the date on which persons who have spent part of the last 3 years in Ireland must be settled in the UK to the day on which the first term of the first academic year actually begins.

The amendments made by regulation 8 make Irish citizens living in the EEA or Switzerland at the end of the transition period eligible for student support if starting courses in England on or before 31 December 2027.

The instrument makes corresponding amendments to—

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

The Education (Student Support) (European University Institute) Regulations 2010;

The Further Education Loans Regulations 2012;

The Education (Postgraduate Master's Degree Loans) Regulations 2016;

The Higher Education (Fee Limit Condition) (England) Regulations 2017;

The Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No. 2) etc.) Regulations 2018.

An impact assessment has not been published as no substantial impact on the private or voluntary sector is anticipated.