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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 bursaries)**

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

(a) for paragraph 2, substitute—

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

(a) is—

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

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

(c) is—

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

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

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

(b) in paragraph 3—

(i) after “A person”, insert “with protected rights”,

- (ii) omit sub-paragraph (a)(i),
- (iii) in sub-paragraph (b), after “resident in”, insert “the British Islands, Gibraltar or”,
- (c) in paragraph 4—
  - (i) for sub-paragraph (1), substitute—
    - “(1) A person who—
      - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
      - (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
      - (c) was ordinarily resident on IP completion day—
        - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
        - (ii) in the United Kingdom, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,
    - and has remained ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the relevant date,
  - (d) is—
    - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which that person seeks a bursary, or
    - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority,
  - (e) has been ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,
  - (f) in a case where the person’s ordinary residence referred to in head (e) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (e), and
  - (g) is undertaking a course for which the relevant date is prior to 31 July 2028,”,
- (ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,
- (iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”,
- (iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,
- (v) in sub-paragraph (3), insert at the end—
  - “and is accompanying or joining that United Kingdom national in the United Kingdom”.

- (d) omit paragraph 8,
- (e) in paragraph 9—
  - (i) for sub-paragraph (1), substitute—
    - “(1) A person who—
      - (a) is either an EC national or the family member of an EC national and is—
        - (i) a person with a right of permanent residence who has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the qualifying day,
        - (ii) a person with protected rights who has been ordinarily resident in the British Islands throughout the period of 3 years immediately preceding the qualifying day, or
        - (iii) a person with protected rights who has been ordinarily resident in the British Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying day,
      - (b) seeks a bursary in respect of a course of study at an establishment in the area of the education authority,
      - (c) where that person is a person referred to in head (a)(i) or (ii), is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which that person seeks a bursary,
      - (d) where that person is a person referred to in head (a)(iii), is ordinarily resident in the British Islands on the qualifying day,
      - (e) in the case where their ordinary residence referred to in head (a)(i) or (ii) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising Gibraltar, the European Economic Area and Switzerland immediately prior to the period of residence referred to in head (a)(i) or (ii).”,
    - (ii) omit sub-paragraph (2),
    - (iii) in sub-paragraph (3)—
      - (aa) in head (a), for “an EC national does not include”, substitute, “a person referred to in sub-paragraph 1(a) does not include an EC national who is also”,
      - (bb) insert at the end—
        - “(c) in sub-paragraph (1)(a), the reference to a “family member of an EC national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EC national” in regulation 2.”,
    - (iv) omit sub-paragraph (4),
  - (f) for paragraph 10, substitute—
    - “**10.** A person who—
      - (a) is the child of a Swiss national,
      - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
      - (c) is—

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