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STATUTORY INSTRUMENTS

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**2021 No. 127**

**The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021**

**PART 5**

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

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

**45.** The Further Education Loans Regulations 2012(1) are amended as follows.

**Amendment of regulation 2**

**46.** In regulation 2(2) (interpretation)—

- (a) number the existing text as paragraph (1);
- (b) in paragraph (1) as so numbered—

- (i) after the definition of “the 1998 Act”, insert—

- “the 2020 Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020;”;

- (ii) after the definition of “further education course”, insert—

- ““grace period” has the meaning given by regulation 3 of the 2020 Citizens’ Rights Regulations;”;

- (iii) after the definition of “person granted stateless leave”, insert—

- ““person with protected rights” means—

- (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

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(1) S.I. 2012/1818, amended by S.I. 2014/290, 1766, 2015/181, 2016/238, 584, 2017/336, 2018/182, 2019/142, 2020/48, 1181, 1203.

(2) Regulation 2 was amended by S.I. 2014/1766, 2018/182, 2019/142, 2020/48, 1181, 1203.

- (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;";
- (iv) 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;
  - “residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;”;
- (v) after the definition of "student loans legislation", insert—
  - ““Swiss citizens' rights agreement” has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;”;
- (c) after paragraph (1), insert—
  - “(2) For the purposes of these Regulations, 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.”.

### **Amendment of regulation 3**

**47.** In regulation 3(3) (eligible students)—

(a) for paragraph (2) substitute—

“(2) A person is an eligible student in connection with a designated further education course if—

- (a) in assessing that person's application for a fee loan the Secretary of State determines that the person falls within one of the categories set out—
  - (i) in paragraphs 2, 2A, 3, 4, 4A, 4B, 4C, 4D, 4E, 5, 6A, 7A, 8A, 9A, 9B, 9C, 9D, 10A, 11A, 12A and 13 in Part 2 of Schedule 1; or
  - (ii) in paragraphs 6, 7, 8, 9, 10, 11 and 12 in Part 2 of Schedule 1, where paragraph (2A) applies; and
- (b) the person satisfies the requirements of the other paragraphs of this regulation.

(2A) This paragraph applies where—

- (a) in connection with a designated further education course beginning before 1st August 2021, the Secretary of State—
  - (i) in assessing an application for a fee loan by a person (“A”) determined that A fell within one of the categories set out in paragraphs 6, 7, 8, 9, 10, 11 and 12 in Part 2 of Schedule 1 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 a fee loan in accordance with this Part in relation to an academic year of the course beginning before that date; and
  - (b) A applies for a fee loan in connection with that course or a designated further education course to which A's status as an eligible student is transferred from that course in accordance with these Regulations.
- (2B) In connection with a designated further education course beginning on or after 1st January 2028, paragraph (2) has effect as if it did not mention paragraphs 8A, 9B and 9D.”;
- (b) after paragraph 8, insert—
- “(9) Where—
- (a) the Secretary of State has determined that, by virtue of being a person with protected rights with limited leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, a person (“A”) is an eligible student in connection with an application for support for a fee loan for a designated further education course; and
  - (b) as at the day before that course begins, A no longer has extant limited leave to enter or remain granted by virtue of residence scheme immigration rules and no further leave to enter or remain has been granted under those rules,
- A's status as an eligible student terminates immediately before the first day of the course.
- (10) Where—
- (a) the Secretary of State has determined that, by virtue of—
    - (i) falling within paragraph (a)(iii) or (iv) of the definition of “person with protected rights”; or
    - (ii) meeting the conditions in paragraph 3(1)(a)(iii) or (iv) in Part 2 of Schedule 1,a person (“A”) is an eligible student in connection with an application for a fee loan for a designated further education course; and
  - (b) as at the day before that course begins, A is not a person with protected rights,
- A's status as an eligible student terminates immediately before the first day of the course.”.

#### **Amendment of regulation 5**

- 48.** In regulation 5(1) (period of eligibility), at the end, insert “or regulation 3”.

#### **Amendment of regulation 7**

- 49.** In regulation 7(4) (students becoming eligible other than prior to the beginning of a designated further education course)—
- (a) omit paragraph (c);
  - (b) for paragraph (d) substitute—
    - “(d) the student becomes a family member described in paragraph 9A(1)(a), 9B(1)(a), 9C(1)(a) or 9D(1)(a) of Schedule 1;”;
  - (c) omit paragraph (f);
  - (d) in paragraph (g), for “6(1)(a)” substitute “6A(1)(a)”;

(e) for paragraph (h) substitute—

“(h) the student becomes a person described in paragraph 11A(a) of Schedule 1;”.

### **Amendment of regulation 8**

**50.** In regulation 8 (transfer of status within same institution), after paragraph (1), insert—

“(1A) Paragraph (1) applies to a person who is an eligible student by virtue of regulation 3(2)(a)(ii) only where that person’s status as an eligible student has not been transferred on or after 1st August 2021 from the designated further education course referred to in regulation 3(2A)(a) to another designated further education course.”.

### **Amendment of Schedule 1**

**51.**—(1) Schedule 1 (eligible students) is amended as follows.

(2) In paragraph 1(5) (interpretation)—

(a) in sub-paragraph (1)—

(i) omit the definitions of “EEA EFTA separation agreement”, “residence scheme immigration rules”, “right of permanent residence” and “Swiss citizens’ rights agreement”;

(ii) in the definition of “family member”—

(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 6A(3)”;

(bb) in paragraph (c), after “Directive 2004/38”, insert “or, for the purposes of paragraph 9A, 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 9A, 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 9” substitute “paragraphs 9, 9B, 9C and 9D”;

(iii) after the definition of “Swiss self-employed person”, insert—

““United Kingdom national” has the meaning given by Article 2(d) of the EU withdrawal agreement;”;

(b) 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.”;

(c) in sub-paragraph (5), after “Islands”, insert “, the territory comprising the United Kingdom, the Islands and the Republic of Ireland”;

(d) in sub-paragraph (6)—

(i) after “Islands”, insert “, the territory comprising the United Kingdom, the Islands and the Republic of Ireland”;

(ii) after paragraph (a)—

(aa) omit “and”;

(bb) insert—

“(aa) in the case of members of the regular armed forces of the Republic of Ireland, any period which they serve outside the territory comprising the United Kingdom, the Islands and the Republic of Ireland as members of such forces;”.

(3) In paragraph 2(1) (persons settled in the United Kingdom), for paragraph (a) substitute—

“(a) is settled in the United Kingdom and does not fall within paragraph 3;”.

(4) After paragraph 2, insert—

“2A.—(1) A person—

- (a) who is settled in the United Kingdom on the first day of the designated further education course and does not fall within paragraph 3;
- (b) who is attending or undertaking a designated further education course in England;
- (c) who has been ordinarily resident in the territory comprising the United Kingdom, the Islands and the Republic of Ireland throughout the three-year period preceding the first day of the designated further education course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the Islands and the Republic of Ireland 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, the Islands and the Republic of Ireland in accordance with paragraph 1(5).”.

(5) In paragraph 3—

(a) for sub-paragraph (1)(a)(6) substitute—

“(a) meets one of the following conditions—

(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) after sub-paragraph (1), insert—
- “(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 (as defined in section 33(1) of the Immigration Act 1971).”.
- (6) After paragraph 6 (workers, employed persons, self-employed persons and their family members), insert—
- “**6A.**—(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 England on the first day of the further education 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 designated further education course.
- (2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for a fee loan 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.”.

(7) After paragraph 7, insert—

“**7A.**—(1) A person with protected rights who—

- (a) is ordinarily resident in the United Kingdom on the first day of the designated further education 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 designated further education 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.”.

(8) After paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere), insert—

“**8A.**—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in England 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
  - (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 Gibraltar, 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;

- (d) is ordinarily resident in the United Kingdom on the day on which the designated further education course 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 designated further education 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.”.

(9) In the heading to paragraph 9 (EU nationals), at the end, insert “etc.”.

(10) After paragraph 9, insert—

“**9A.**—(1) A person with protected rights—

(a) who is —

- (i) an EU national on the first day of the designated further education 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 attending or undertaking a designated further education course in England;

(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 designated further education 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(5).

### **United Kingdom nationals**

**9B.**—(1) A person—

(a) who is—

- (i) a United Kingdom national on the first day of the designated further education 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, 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).

(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).

**9C.—(1) A person—**

- (a) who is a family member of a person who is a United Kingdom national on the first day of the designated further education course;
- (b) who is attending or undertaking a designated further education course in England;
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the designated further education 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(5).

**Persons resident in Gibraltar**

**9D.—(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 further education course in England;

- (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 designated further education 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(5).”

(11) Before paragraph 10, insert the heading “EU nationals ordinarily resident in the United Kingdom and Islands”.

(12) After paragraph 10, insert—

“**10A.** A person with protected rights who—

- (a) is an EU national on the first day of the designated further education course;
- (b) is ordinarily resident in the United Kingdom on the first day of the designated further education course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the designated further education 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).”

(13) After paragraph 11 (children of Swiss nationals), insert—

“**11A.** 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 the United Kingdom on the first day of the designated further education 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 designated further education 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).”

(14) After paragraph 12 (children of Turkish workers), insert—

“**12A.**—(1) 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 the United Kingdom on the first day of the designated further education 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.”.