

2006 No. 252

EDUCATION

**The Education (Student Support) (2005 Regulations)
(Amendment) Regulations (Northern Ireland) 2006**

Made - - - -

6th June 2006

Coming into operation- -

29th June 2006

The Department for Employment and Learning(a) in exercise of the powers conferred by Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998(b) and now vested in it(c) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Education (Student Support) (2005 Regulations) (Amendment) Regulations (Northern Ireland) 2006 and shall come into operation on 29th June 2006.

Interpretation

2. In these Regulations—

“the 2005 Regulations” means the Education (Student Support) Regulations (Northern Ireland) 2005(d) as amended by the Education (Student Support) (2005 Regulations) (Amendment) Regulations (Northern Ireland) 2005(e);

Amendments to the 2005 Regulations

3. The 2005 Regulations shall be amended as provided by regulations 4 to 19.

4.—(1) Regulation 2 (Interpretation) shall be amended as provided by paragraphs (2) to (4).

(2) The following definitions shall be omitted—

- (a) “EEA Agreement”;
- (b) “EEA migrant worker”;
- (c) “European Economic Area”;
- (d) “student loan account number”; and
- (e) “Switzerland Agreement”.

(a) Formerly known as the Department of Higher and Further Education, Training and Employment: *see* the Department for Employment and Learning Act (Northern Ireland) 2001 c.15
(b) S.I. 1998/1760 (N.I. 14) as amended by the Learning and Skills Act 2000 (c. 21), section 147(3)(a) and (b)
(c) S.R. 1999 No. 481 *see* Article 5(b) and Schedule 3 Part II
(d) S.R. 2005 No. 340
(e) S.R. 2005 No. 445

(3) The definition of “refugee”, the words “and any reference to the child of a refugee includes a reference to a step-child” shall be omitted.

(4) Paragraphs (2), (3), (4) and (5) shall be omitted.

5. In regulation 3 (Revocation, savings and transitional provisions) paragraph (9) shall be omitted.

6. In regulation 4 (Eligible students) in sub-paragraph (a) of paragraph (2), for “is mentioned in Schedule 2” there shall be substituted “falls within one of the categories set out in Part 2 of Schedule 2”.

7. In regulation 9 (Time limits) for sub-paragraphs (a), (b) and (c) of paragraph (2), there shall be substituted—

“(a) one of the events listed in regulation 11(17) occurs after the first day of the academic year in respect of which the applicant is applying for support, in which case the application must reach the Department within a period of nine months beginning with the day on which the relevant event occurred;”.

8. In regulation 11 (Qualifying conditions for grants for fees) for paragraphs (16) and (17) there shall be substituted—

“(16) Where one of the events listed in paragraph (17) occurs in the course of an academic year—

- (a) a student may qualify for fee support in accordance with this Part in respect of that academic year provided that the relevant event occurred within the first three months of the academic year; and
- (b) fee support is not available in respect of any academic year beginning before the academic year in respect of which the relevant event occurred.

(17) The events are—

- (a) the student’s course becomes a designated course;
- (b) the student, his spouse, his civil partner or his parent is recognised as a refugee or becomes a person with leave to enter or remain (as defined in Part 1 of Schedule 2);
- (c) a state accedes to the European Community where the student is a national of that state or the family member (as defined in Part 1 of Schedule 2) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 2) of an EC national;
- (e) the student acquires the right of permanent residence (as defined in Part 1 of Schedule 2);
- (f) the student becomes a person described in paragraph 6(a) of Schedule 2; or
- (g) the student becomes the child of a Swiss national.”.

9.—(1) Regulation 13 (General qualifying conditions for grants for living costs) shall be amended as provided by paragraphs (2) and (3).

(2) For paragraph (2)(a) there shall be substituted—

“(a) a bursary or grant for living costs if the only paragraph in Part 2 of Schedule 2 into which he falls is paragraph 9;”.

(3) For paragraphs (7) and (8) there shall be substituted—

“(7) Where one of the events listed in paragraph (8) occurs in the course of an academic year, a student may qualify for a grant in accordance with this Part in respect of all or part of that academic year but he does not qualify for a grant for living costs in respect of any academic year beginning before the relevant event occurred.

(8) The events are—

- (a) the student's course becomes a designated course;
- (b) the student, his spouse, his civil partner or his parent is recognised as a refugee or becomes a person with leave to enter or remain (as defined in Part 1 of Schedule 2);
- (c) the state of which the student is a national accedes to the European Community where the student has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course;
- (d) the student acquires the right of permanent residence (as defined in Part 1 of Schedule 2);
- (e) the student becomes a person described in paragraph 6(a) of Schedule 2; or
- (f) the student becomes the child of a Swiss national.”.

10.—(1) Regulation 17 (Grants for dependants – adult dependants' grant) shall be amended as provided by paragraphs (2) and (3).

(2) For paragraph (2) there shall be substituted—

“(2) The adult dependants' grant is available in respect of a dependant of an eligible student who is either—

- (a) the eligible student's partner; or
- (b) an adult dependant whose net income does not exceed £3,445.”.

(3) For paragraph (5) there shall be substituted—

“(5) The amount of adult dependants' grant calculated under regulation 20 in respect of an adult dependant shall be reduced by one half where—

- (a) the eligible student's partner—
 - (i) is an eligible student; or
 - (ii) holds a statutory award; and
- (b) account is taken of that partner's dependants in calculating the amount of support for which that partner qualifies or the payment to which he is entitled under the statutory award.”.

11. In regulation 19 (Grants for dependants – parents' learning allowance) for paragraph (1) there shall be substituted—

“(1) An eligible student shall qualify in connection with his attendance on a designated course for the parents' learning allowance if he has one or more dependants who are dependent children.”.

12. In regulation 24 (Qualifying conditions for loans for living costs) for paragraphs (3), (4) and (5) of the 2005 Regulations, there shall be substituted—

“(3) An eligible student shall not qualify for a loan for living costs—

- (a) if—
 - (i) he is absent from his course for the duration of one academic year; and
 - (ii) he is in receipt of funding from the Department to participate in a management development programme known as the Business Education Initiative; or
- (b) if the only paragraph in Part 2 of Schedule 2 into which he falls is paragraph 9.

(4) Where one of the events listed in paragraph (5) occurs in the course of an academic year—

- (a) a student may qualify for a loan for living costs in respect of such quarters of that academic year as are specified in regulation 25(8) provided that he meets the conditions in paragraph (1); and

- (b) a student shall not qualify for a loan for living costs in respect of any academic year beginning before the academic year in which the relevant event occurred.

(5) The events are—

- (a) the student's course becomes a designated course;
- (b) the student, his spouse, his civil partner or his parent is recognised as a refugee or becomes a person with leave to enter or remain (as defined in Part 1 of Schedule 2);
- (c) the state of which the student is a national accedes to the European Community where the student has been ordinarily resident in the United Kingdom and Islands throughout the three year-period immediately preceding the first day of the first academic year of the course;
- (d) the student acquires the right of permanent residence (as defined in Part 1 of Schedule 2);
- (e) the student becomes a person described in paragraph 6(a) of Schedule 2; or
- (f) the student becomes the child of a Swiss national.”.

13.—(1) Regulation 34 (Eligible part-time students) shall be substituted as provided by paragraphs (2) to (4).

(2) In sub-paragraph (a) of paragraph (2) for “is mentioned in Schedule 2” there shall be substituted “falls within one of the categories set out in Part 2 of Schedule 2”.

(3) For paragraph (7) of there shall be substituted—

“(7) An eligible part-time student shall not qualify for support under regulation 37(1)(b) or regulation 38 if the only paragraph in Part 2 of Schedule 2 into which he falls is paragraph 9.”.

(4) For paragraphs (13) and (14) there shall be substituted—

“(13) Where one of the events listed in paragraph (14A) occurs in the course of an academic year—

- (a) a student may qualify for a grant in respect of fees in respect of that academic year in accordance with this Part provided that the relevant event occurred within the first three months of the academic year; and
- (b) a grant in respect of fees is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(14) Where one of the events listed in sub-paragraphs (a), (b), (e), (f), (g) or (h) of paragraph (14A) occurs in the course of an academic year—

- (a) a student may qualify for support under regulation 37(1)(b) in respect of that academic year in accordance with this Part provided that the relevant event occurred within the first three months of the academic year; and
- (b) support of the kind referred to in regulation 37(1)(b) is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(14A) The events are—

- (a) the student's course becomes a designated part-time course;
- (b) the student, his spouse, his civil partner or his parent is recognised as a refugee or becomes a person with leave to enter or remain (as defined in Part 1 of Schedule 2);
- (c) a state accedes to the European Community where the student is a national of that state or a family member (as defined in Part 1 of Schedule 2) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 2) of an EC national;

- (e) the state of which the student is a national accedes to the European Community where the student has been ordinarily resident in the United Kingdom and Islands throughout the three year-period immediately preceding the first day of the first academic year of the course;
- (f) the student acquires the right of permanent residence (as defined in Part 1 of Schedule 2);
- (g) the student becomes a person described in paragraph 6(a) of Schedule 2; or
- (h) the student becomes the child of a Swiss national.”.

14. In regulation 39 (Applications for support) for sub-paragraphs (a) and (b) of paragraph (3) there shall be substituted—

“(a) one of the events listed in regulation 34(14A) occurs after the first day of the academic year in respect of which the applicant is applying for support, in which case the application must reach the Department within a period of six months beginning with the day on which the relevant event occurred.”.

15.—(1) Regulation 46 (Eligible postgraduate students) shall be amended as provided by paragraphs (2) to (4).

(2) In sub-paragraph (a) of paragraph (3) for “mentioned in Schedule 2” there shall be substituted “falls within one of the categories set out in Part 2 of Schedule 2”.

(3) For paragraph (5) there shall be substituted—

“(5) An eligible postgraduate student shall not qualify for a grant under this Part if the only paragraph in Part 2 of Schedule 2 into which he falls is paragraph 9.”.

(4) After paragraph (7) there shall be added—

“(8) Where one of the events listed in paragraph (9) occurs in the course of an academic year—

- (a) a student may qualify for a grant under this Part in respect of that academic year in accordance with this Part; and
- (b) a grant of the kind available under this Part is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(9) The events are—

- (a) the student’s course becomes a designated postgraduate course;
- (b) the student, his spouse, his civil partner or his parent is recognised as a refugee or becomes a person with leave to enter or remain (as defined in Part 1 of Schedule 2);
- (c) the state of which the student is a national accedes to the European Community where the student has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course;
- (d) the student acquires the right of permanent residence (as defined in Part 1 of Schedule 2);
- (e) the student becomes a person described in paragraph 6(a) of Schedule 2;
- (f) the student becomes the child of a Swiss national.”.

16. Part 11 (Modifications applying while the Civil Partnership Act 2004 is not in force) shall be omitted.

17. For Schedule 2 (Eligible students) there shall be substituted the text set out in the Schedule.

18.—(1) Schedule 5 (Financial Assessment) shall be amended as provided by paragraphs (2) and (3).

(2) In paragraph 4(1)(b) and in paragraph 5(2)(a) after the words “Income and Corporation Taxes Act 1988 there shall be inserted “or under section 188 of the Finance Act 2004(a)”.

(3) For paragraph 4(2) there shall be substituted—

“(2) Where the only paragraph in Part 2 of Schedule 2 into which an eligible student falls is paragraph 9 and his income arises from sources or under legislation different from sources or legislation normally relevant to a person referred to in paragraph 2 of Schedule 2, his income shall not be disregarded in accordance with sub-paragraph (1) but shall instead be disregarded to the extent necessary to ensure that he is treated no less favourably than a person who is referred to in any paragraph of Part 2 of Schedule 2 would be treated if in similar circumstances and in receipt of similar income.”

Revocation

19. In the Education (Student Support) (2005 Regulations) (Amendment) Regulations (Northern Ireland) 2005(b) regulation 5 is hereby revoked.

Sealed with the Official Seal of the Department for Employment and Learning on 6th June 2006



David McAuley

A senior officer of the Department for Employment and Learning

SCHEDULE

Regulation 17

“SCHEDULE 2

ELIGIBLE STUDENTS

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004(c) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EC national” means a national of a Member State of the European Community;

(a) 2004 c. 12.

(b) S.R. 2005 No. 445

(c) OJ L158, 30.04.2004, p77-123.

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(a) as adjusted by the Protocol signed at Brussels on 17th March 1993(b);

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in Northern Ireland; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker in Northern Ireland; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“EEA State” means a Member State of the European Economic Area;

“employed person” means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“European Economic Area” means the area comprised by the European Community, the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“family member” unless otherwise indicated, means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) his spouse or civil partner;
 - (ii) his child or the child of his spouse or civil partner; or
 - (iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) his spouse or civil partner; or
 - (ii) his child or the child of his spouse or civil partner;
- (c) in relation to an EC national who is not self sufficient—
 - (i) his spouse or civil partner; or
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner;
- (d) in relation to an EC national who is self-sufficient—
 - (i) his spouse or civil partner;
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner; or

(a) Cm. 2073.

(b) Cm. 2183.

- (iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
 - (i) his spouse or civil partner; or
 - (ii) direct descendants of his or his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner;

“person with leave to enter or remain” means a person who—

- (a) has been informed by a person acting under the authority of the Secretary of the State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom;
- (b) has been granted leave to enter or to remain accordingly; and
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain;

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“self-sufficient” means self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38;

“settled” has the meaning given by section 33(2A) of the Immigration Act 1971(a);

“Swiss Agreement” means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999(b) and which came into force on 1st June 2002;

“Swiss employed person” means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person in Northern Ireland; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person in Northern Ireland; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“United Kingdom national” means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties;

(a) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).
 (b) Cm. 4904.

“worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be;

(2) For the purposes of this Schedule, “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly.

(3) For the purposes of this Schedule, a person who is ordinarily resident in Northern Ireland, England, Wales, Scotland, or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the current course; or
- (b) a course which, disregarding any intervening vacation, the student undertook immediately before undertaking the current course,

is to be considered to be ordinarily resident in the place from which he moved.

(4) For the purposes of this Schedule, a person is to be treated as ordinarily resident in Northern Ireland, the United Kingdom and Islands or in the territory comprising the European Economic Area and Switzerland if he would have been so resident but for the fact that—

- (a) he;
- (b) his spouse or civil partner;
- (c) his parent; or
- (d) in the case of a dependent direct relative in the ascending line, his child or child’s spouse or civil partner,

is or was temporarily employed outside Northern Ireland, the United Kingdom and Islands or, as the case may be, outside the territory comprising the European Economic Area and Switzerland.

(5) For the purposes of sub-paragraph (4), temporary employment outside of Northern Ireland, the United Kingdom and Islands or the territory comprising the European Economic Area and Switzerland includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside of the territory comprising the European Economic Area and Switzerland as members of such forces.

(6) For the purposes of this Schedule an area which—

- (a) was previously not part of the European Community or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of these areas,

is to be considered to have always been a part of the European Economic Area.

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the course—

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;

- (b) is ordinarily resident in Northern Ireland;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose 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(4).

3.—(1) A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where his 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Refugees and persons with leave to enter or remain

4. A person who—

- (a) is either—
 - (i) a refugee ordinarily resident in the United Kingdom and Islands who has not ceased to be so resident since he was recognised as a refugee; or
 - (ii) the spouse, civil partner, child or step-child of a person mentioned in paragraph (i); and
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course.

5. A person who—

- (a) is either—
 - (i) a person with leave to enter or remain; or
 - (ii) the spouse, civil partner, child or step-child of a person with leave to enter or remain;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

Workers, employed persons, self-employed persons and their family members

6.—(1) A person 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 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 paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in Northern Ireland on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

7. A person who—

- (a) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (c) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers^(a), as extended by the EEA Agreement.

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

8.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;
- (c) is ordinarily resident in Northern Ireland on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising 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) in a case where his ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if he 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 has a 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 has a right of permanent residence, if he goes to the state within the territory comprising the European Economic Area and Switzerland of which he is a national or of which the person in relation to whom he is a family member is a national.

(a) OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (II) p475).

EC nationals

9.—(1) A person who—

- (a) is either—
 - (i) an EC national on the first day of the first academic year of the course; or
 - (ii) a family member of a such a person;
- (b) is—
 - (i) attending a designated course in Northern Ireland; or
 - (ii) undertaking a designated part-time course or a designated postgraduate course in Northern Ireland;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising 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 European Economic Area and Switzerland in accordance with paragraph 1(4).

(3) Where a state accedes to the European Community after the first day of the first academic year of the course and a person is a national of that state or the family member of a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EC national on the first day of the first academic year of the course is treated as being satisfied.

10.—(1) A person who—

- (a) is an EC national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where his 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the European Community after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EC national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in Northern Ireland on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

- (d) in a case where his 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Education (Student Support) Regulations (Northern Ireland) 2005 (the “2005 Regulations”). The 2005 Regulations provide for support for students taking designated higher education courses in respect of an academic year beginning on or after 1st September 2005 and before 1st September 2006.

Regulation 17 substitutes the text set out in the Schedule to these Regulations for Schedule 2 to the 2005 Regulations in order to implement the provisions of Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 (OJ L158, 30.04.2004, p77-123) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member states so far as the Directive relates to student support. Certain categories of person who were not formerly eligible for student support under the 2005 Regulations will be eligible as a result of the Directive. To qualify for support under the 2005 Regulations, a student must fall within one of the categories set out in Schedule 2 to those Regulations. Schedule 2 to the 2005 Regulations is amended by these Regulations to include the categories of person who are eligible for student support as a result of the Directive. Consequential changes are made by regulations 4, 6-9, 12-15 and 18(3) of these Regulations to the 2005 Regulations. A copy of the Transposition Note in relation to the implementation of the Directive so far as it relates to student support is available from the Department for Education and Skills, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT or on the website of the Office of Public Sector Information at www.opsi.gov.uk. A copy has also been placed in the library of each House of Parliament.

Schedule 2 to the 2005 Regulations is also amended to take into account the circumstances of students who are settled in the United Kingdom and who have exercised a right of residence within the territory comprising the European Economic Area and Switzerland.

Regulations 5 and 16 remove transitional provisions in the 2005 Regulations relating to the introduction of civil partnerships that are now redundant.

Regulation 10 amends regulation 17 of the 2005 Regulations so that a student cannot qualify for the adult dependants’ grant in respect of an adult dependant or in respect of his partner if that adult dependant or partner is an eligible student in his own right or holds a statutory award.

Regulation 11 amends regulation 19 of the 2005 Regulations so that a student cannot qualify for the parents’ learning allowance in respect of his dependent child if that child is an eligible student in his own right or holds a statutory award.

Regulation 18(2) updates a statutory reference in Schedule 5 to the 2005 Regulations as a result of pensions tax simplification.