
STATUTORY RULES OF NORTHERN IRELAND

2021 No. 85

**The Education (Student Fees and Support) (Amendment)
(No.2) Regulations (Northern Ireland) 2021**

Amendment of Schedule 2 (eligible students)

13.—(1) Schedule 2 (eligible students) is amended as follows—

(2) in paragraph 1 (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), for “EC” substitute “EU” and 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), for “EC” substitute “EU” and 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.”;

(3) in paragraph 2(1) (persons who are settled in the United Kingdom), for sub-paragraph (a) substitute—

“(a) is settled in the United Kingdom, other than a person falling within paragraph 3;”;

(4) after paragraph 2, insert—

“**2A.**—(1) A person who—

- (a) is a United Kingdom national or an Irish citizen on the first day of the first academic year of the course, and does not fall within paragraph 3 of this Schedule;
 - (b) is —
 - (i) attending or undertaking a designated course in Northern Ireland; or
 - (ii) undertaking a compressed degree course, a designated distance learning course, designated part-time course or a designated Master’s, etc. course in Northern Ireland;
 - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, EEA and Switzerland (the relevant territory) 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 relevant territory 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 relevant territory in accordance with paragraph 1(4).”;
- (5) in paragraph 3—
 - (a) number existing text as (1);
 - (b) in the newly numbered sub-paragraph (1), for paragraph (a) 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;”;

- (c) after newly numbered 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⁽¹⁾ (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⁽²⁾, 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 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 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.

(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).

(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.

(4) For the purposes of sub-paragraph 1(a)(iii) or (vi), an Irish citizen family member is not required to be living in the United Kingdom on IP completion day.

6B.—(1) A person who—

- (a) is—

- (i) an Irish citizen migrant worker or an Irish citizen self-employed person;
- (ii) a family member of a person mentioned in sub-paragraph (i);

(1) The immigration rules were laid before Parliament on 23rd May 1994 (HC 395). Appendix EU was laid before Parliament on 20th July 2018 as part of a command paper that amended the immigration rules entitled “Statement of Changes in Immigration rules” (Cm 9675). Appendix EU was amended by the statement of changes in immigration rules presented to Parliament on 14th May 2020 (CPC 232) and on 22nd October 2020 (HC 813)

(2) [S.I. 2020/1213](#)

- (iii) an Irish citizen frontier worker or an Irish citizen frontier self-employed person; or
 - (iv) a family member of a person mentioned in sub-paragraph (iii);
 - (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 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.
- (2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iii) or (iv) of sub-paragraph (1).”;
- (7) after paragraph 7, insert—

“**7A.**—(1) A person with protected rights 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 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
 - (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⁽³⁾ (“the Workers Regulation”), as it had effect immediately before IP completion day, as extended by the EEA Agreement⁽⁴⁾, 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 Northern Ireland 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,

(3) See also the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20), section 1 and Schedule 1, Part 2, paragraph 4 for the application of Article 10 after IP completion day

(4) Annex V of the EEA Agreement refers to [Regulation \(EU\) 492/2011](#), with modifications that are not relevant for these purposes

and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland (the relevant territory) throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;

- (d) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (e) has been ordinarily resident in the relevant territory throughout the three-year period 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 paragraph (e) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the relevant territory 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, for “EC nationals” substitute “EU nationals etc.”;

(10) in paragraph 9, at sub-paragraph (1)(a)(i) for “EC” substitute “EU” and omit sub-paragraph (3);

(11) after paragraph 9, insert—

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

(a) who is —

- (i) an EU national on the first day of the first academic year of the 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—

- (i) attending or undertaking a designated course in Northern Ireland; or
- (ii) undertaking an intensive course, a designated distance learning course, designated part-time course or a designated Master's, etc. course in Northern Ireland;

(c) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland (the relevant territory) 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 relevant territory 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 relevant territory in accordance with paragraph 1(4).

United Kingdom nationals

9B.—(1) A person—

- (a) who is—
 - (i) a United Kingdom national on the first day of the first academic year of the 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 (the relevant territory) 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 —
 - (i) attending or undertaking a designated course in Northern Ireland; or
 - (ii) undertaking an intensive course, a designated distance learning course, designated part-time course or a designated Master’s, etc. course in Northern Ireland;
- (d) has been ordinarily resident in the relevant territory 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 relevant territory 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 relevant territory in accordance with paragraph 1(4).

(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-paragraphs (1)(b) and (d).

9C. A person—

- (a) who is a family member of a person who is a United Kingdom national on the first day of the first academic year of the course;
- (b) who is—
 - (i) attending or undertaking a designated course in Northern Ireland; or
 - (ii) undertaking an intensive course, a designated distance learning course, a designated part-time course or a designated Master’s, etc. course in Northern Ireland;
- (c) who 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 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 territory comprising the United Kingdom and Islands in accordance with paragraph 1(4).

Persons resident in Gibraltar

9D.—(1) A person—

- (a) who is—
 - (i) 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 —
 - (i) attending or undertaking a designated course in Northern Ireland; or
 - (ii) undertaking an intensive course, a designated distance learning course, a designated part-time course or a designated Master’s, etc. course in Northern Ireland;
- (c) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland (the relevant territory) 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 relevant territory 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 relevant territory in accordance with paragraph 1(4).”;

(12) before paragraph 10, insert the heading “EU nationals ordinarily resident in the United Kingdom and Islands”;

(13) in paragraph 10(1)(a) substitute “EC” with “EU” and omit sub-paragraph (2);

(14) after paragraph 10, insert—

“**10A.**—(1) A person with protected rights who—

- (a) is an EU 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 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);

(2) For the purposes of this paragraph, an Irish citizen is not required to be living in the United Kingdom on IP completion day.”;

(15) 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 Northern Ireland on the first day of the first academic year of the course;
 - (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland (the relevant territory) throughout the three-year period preceding the first day of the first academic year of the 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 relevant territory immediately prior to the period of ordinary residence referred to in paragraph (c).";
- (16) after paragraph 12 (children of Turkish workers), insert—
- “12A.** 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 Northern Ireland on the first day of the first academic year of the 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.”.