

SCHEDULE 2

QUALIFYING PERSONS

PART 1

Interpretation

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

“the 2020 Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020⁽¹⁾;

“Directive 2004/38” means [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29th April 2004⁽²⁾ on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member State;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽³⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁴⁾;

“EEA EFTA separation agreement” has the meaning given by section 39(1) of the European (Withdrawal Agreement) Act 2020⁽⁵⁾;

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

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State and returns to their residence in Switzerland or that EEA State daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State and returns to their residence in Switzerland or that EEA State 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;

“EU national” means a national of a Member State of the European Union;

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

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

“employment” means full-time or part-time employment;

“European Economic Area” means the area comprised by the EEA States;

“European Union” means the territory comprised by the Member States of the European Union as constituted from time to time;

“EU withdrawal agreement” means the withdrawal agreement within the meaning of the European Union (Withdrawal Agreement) Act 2020⁽⁶⁾ (see section 39(1) and (6) of the Act);

(1) [S.R. 2020 No. 1209](#)

(2) [OJ L158, 30.4.2004, p77-123](#)

(3) [Cmnd. 2073](#)

(4) [Cmnd, 2183](#)

(5) [2020 c.1.](#)

(6) [2020 c.1.](#)

Changes to legislation: There are currently no known outstanding effects for the *The Agriculture (Student Fees) Regulations (Northern Ireland) 2023, Paragraph 1.* (See end of Document for details)

“family member” has the meaning assigned by paragraph 3;

“immigration rules” has the meaning given in section 33(1) of the Immigration Act 1971⁽⁷⁾;

“overseas territories” means Anguilla; Aruba; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Gibraltar; Greenland; Mayotte; Montserrat; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten); Pitcairn, Henderson, Ducie & Oeno Islands; South Georgia and the South Sandwich Islands; St-Barthélemy; St Helena, Ascension Island and Tristan de Cunha; St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

“person granted humanitarian protection” means a person—

- (a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules;
- (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002⁽⁸⁾); and
- (c) who has been ordinarily resident in the United Kingdom and the Islands throughout the period since the person was granted such leave to remain;

“person granted stateless leave” means a person who—

- (a) has extant leave to remain as stateless person under the immigration rules; and
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the period since the person was granted such leave;

“person with protected rights” means—

- (a) (i) a person within the personal scope of the citizens’ rights provisions who—
 - (aa) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;
 - (bb) 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;
 - (cc) is an applicant for the purposes of regulation 4 of the 2020 Citizens’ Rights Regulations where the relevant period has not expired; or
 - (dd) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or
- (ii) 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;
- (b) in paragraph (a)(i)(dd), “citizens’ rights deeming provisions” means—
 - (i) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
 - (ii) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or

(7) 1971 c.77.

(8) 2002 c.41.

(iii) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement;

“refugee” means a person who is recognised by His Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951⁽⁹⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽¹⁰⁾;

“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⁽¹¹⁾;

“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;

“settled” has the meaning given by section 33(2A) of the Immigration Act 1971⁽¹²⁾;

“specified British overseas territories” means Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; St Helena, Ascension Island and Tristan da Cunha; and Turks and Caicos Islands;

“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 in Luxembourg on 21st June 1999⁽¹³⁾ and which came into force on 1st June 2002;

“Swiss citizens’ rights agreement” has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;

“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 the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State and returns to their residence in Switzerland or that EEA State daily or at least once a week;

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

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State and returns to their residence in Switzerland or that EEA State 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;

⁽⁹⁾ Cmnd. 9171

⁽¹⁰⁾ Cmnd. 3906

⁽¹¹⁾ 2020 c.1.

⁽¹²⁾ 1979 c.77, section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61)

⁽¹³⁾ Cmd. 4904.

Changes to legislation: There are currently no known outstanding effects for the *The Agriculture (Student Fees) Regulations (Northern Ireland) 2023, Paragraph 1*. (See end of Document for details)

“Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom; and
- (b) is, or has been, lawfully employed in the United Kingdom;

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

“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” means a parent, guardian or any other person having parental responsibility for a child and “child” is to be construed accordingly.

(3) For the purposes of this Schedule, a person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place.

(4) For the purposes of this Schedule, a person who is ordinarily resident in the United Kingdom as a result of having moved from the Islands for the purpose of undertaking a higher education course is to be considered to be ordinarily resident in the Islands.

(5) For the purposes of this Schedule, a person who is ordinarily resident in Northern Ireland as a result of having moved from Great Britain and the Islands for the purpose of undertaking a higher education course is to be considered as ordinarily resident in Great Britain.

(6) For the purposes of this Schedule, a person who is ordinarily resident in the United Kingdom as a result of having moved from the Republic of Ireland for the purposes of undertaking a higher education course is to be considered as ordinarily resident in the Republic of Ireland.

(7) For the purposes of this Schedule, an area, other than the United Kingdom and Gibraltar, which—

- (a) was previously part of the European Union or the European Economic Area; but
- (b) at any time or after these Regulations come into operation has become part of one or the other or both of these areas,

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

(8) 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.

(9) For the purposes of this Schedule, 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; or
- (c) Article 10 (personal scope) of the Swiss citizens’ rights agreement.

Commencement Information

II [Sch. 2 para. 1](#) in operation at 1.9.2023, see [reg. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Agriculture (Student Fees) Regulations (Northern Ireland) 2023, Paragraph 1.