
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 28

The Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021

Amendment of schedule 1 (persons eligible for education maintenance allowances)

25. In schedule 1 (persons eligible for education maintenance allowances)—

(a) for paragraph 2, substitute—

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

(a) is—

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

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

(c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the qualifying date.

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

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

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

(b) in paragraph 3—

- (i) in sub-paragraph (1), after “A person”, insert “with protected rights”,
- (ii) omit sub-paragraph (1)(a)(i),
- (iii) in sub-paragraph (1)(b), after “resident in”, insert “the United Kingdom, Islands, Gibraltar or”,

- (iv) in sub-paragraph (1)(c), omit “subject to sub-paragraph (2)”,
- (v) omit sub-paragraph (2),
- (c) in paragraph 4—
 - (i) for sub-paragraph (1), substitute—
 - “(1) A person who—
 - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the qualifying date,
 - (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
 - (c) was ordinarily resident on IP completion day—
 - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
 - (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,
 - and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the qualifying date,
 - (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date,
 - (e) in a case where the person’s ordinary residence referred to in head (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (d), and
 - (f) is undertaking a course for which the qualifying date is prior to 31 July 2028,”
 - (ii) in sub-paragraph (2)(a)(ii), for “with rights under”, substitute “for the purposes of”,
 - (iii) in sub-paragraph (2)(a)(iii), for “has a right”, substitute “had a right”,
 - (iv) in sub-paragraph (2)(b)(ii), for “has a right”, substitute “had a right”,
 - (v) in sub-paragraph (3), insert at the end—
 - “and is accompanying or joining that United Kingdom national in the United Kingdom.”
- (d) in paragraph 8—
 - (i) for sub-paragraph (1)(a), substitute—
 - (a) “(1) is—
 - (i) a person with a right of permanent residence, or
 - (ii) a person with protected rights,

- who is an EU national or the family member of an EU national,”
- (ii) in sub-paragraph (1)(d), after “resident in”, insert “Gibraltar or”,
- (iii) for sub-paragraph (2), substitute—
- “(2) For the purposes of this paragraph—
- (a) a person referred to in sub-paragraph (1)(a) does not include an EU national who is also a United Kingdom national who has not utilised a right of residence,
- (b) a United Kingdom national has utilised a right of residence if that person has—
- (i) exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom, or
- (ii) resided in a state—
- (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom, and
- (bb) of which that person is a national,
- in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement,
- (c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2.”,
- (e) for paragraph 9, substitute—
- “9. A person who—
- (a) is the child of a Swiss national,
- (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
- (c) has a right of permanent residence,
- (d) is ordinarily resident in Scotland on the qualifying date,
- (e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date, and
- (f) in a case where the person’s ordinary residence referred to in sub-paragraph (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (e).”,
- (f) in paragraph 10(1), after “Subject to”, insert “regulation 2(6) and”,
- (g) in paragraph 11—
- (i) in sub-paragraph (a), after “worker” insert, “(“T”), where T was ordinarily resident in the United Kingdom immediately before IP completion day”,
- (ii) after sub-paragraph (a), insert—

- “(aa) was ordinarily resident in the United Kingdom immediately before IP completion day,”
- (iii) after “resident” in sub-paragraph (c), insert “in the United Kingdom, Islands, Gibraltar and”,
- (h) for paragraph 12, substitute—
- “**12.**—(1) A person who—
- (a) is an Irish national,
 - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the qualifying date in relation to the course of education in respect of which that person seeks an education maintenance allowance,
 - (c) is ordinarily resident in Scotland on the qualifying date,
 - (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the qualifying date.
- (2) For the purposes of this paragraph, a person who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland, the Islands or the Republic of Ireland for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the part of the United Kingdom, the Islands or the Republic of Ireland from where they moved.”.