

STATUTORY INSTRUMENTS

2006 No. 930

The Education (Mandatory Awards) (Amendment) Regulations 2006

PROSPECTIVE

Amendment of the Principal Regulations

14. After Schedule 5, insert—

“SCHEDULE 5A

Regulation 13

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(1) 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;

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

- (a) is self-employed in the United Kingdom; 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 the United Kingdom; 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;

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“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 Switzerland Agreement;

“family member” 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 his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or of 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 his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or of his spouse or civil partner;
 - (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 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 British 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—

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(a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38; or

(b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Switzerland 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(2);

“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 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 the United Kingdom; 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, 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;

“worker” means a worker within the meaning of article 7 of Directive 2004/38.

(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 is to be treated as ordinarily resident in the British 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 the British Islands or, as the case may be, outside the territory comprising the European Economic Area and Switzerland.

(4) For the purposes of sub-paragraph (3), temporary employment outside of the British 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 British Islands as members of such forces; and

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

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- (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.
- (5) 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 with settled status

- 2.—(1) A person who—
- (a) at the beginning of the first year of the course, is settled in the United Kingdom other than by reason of having acquired a right of permanent residence;
 - (b) has been ordinarily resident throughout the three years preceding the first year of the course in the British Islands; and
 - (c) subject to sub-paragraph (2), whose residence in the British Islands has not during any part of the period referred to in paragraph (b) been wholly or mainly for the purpose of receiving full-time education.
- (2) Paragraph (c) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the British Islands in accordance with paragraph 1(3).
3. A person who—
- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
 - (b) has been ordinarily resident throughout the three years preceding the first year of the course in the British Islands; and
 - (c) in a case where his ordinary residence referred to in paragraph (b) 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 (b).

Refugees and persons with leave to enter or remain

4. A person who is either—
- (a) a refugee ordinarily resident in the British Islands who has not ceased to be so resident since he was recognised as a refugee; or
 - (b) the spouse, civil partner, child or step-child of a person mentioned in sub-paragraph (a).
5. A person who—
- (a) is either—
 - (i) a person with leave to enter or remain; or

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- (ii) the spouse, civil partner, child or step-child of a person with leave to enter or remain; and
- (b) has been ordinarily resident throughout the three years preceding the first year of the course in the British Islands.

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); and
 - (b) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland.
7. A person who—
- (a) has been ordinarily resident throughout the three years preceding the start of the course in the territory comprising the European Economic Area and Switzerland; and
 - (b) is entitled to support by virtue of article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽³⁾, 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) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland; and
 - (d) in a case where his ordinary residence referred to in paragraph (c) 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 Switzerland Agreement) or a person who has 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 Switzerland 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

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

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of which he is a national or of which the person in relation to whom he is a family member is a national.

EC nationals

9.—(1) A person who—

- (a) is either
 - (i) an EC national at the beginning of the first year of the course; or
 - (ii) a family member of such a person;
- (b) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland; and
- (c) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland was not wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (c) 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(3).

(3) Where a state accedes to the European Community after the beginning of the first 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 at the beginning of the first year of the course does not apply.

10. A person who—

- (a) is an EC national other than a United Kingdom national;
- (b) has been ordinarily resident throughout the three years preceding the first of the course in the British Islands; and
- (c) in a case where his ordinary residence referred to in paragraph (b) 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 (b).

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 Switzerland Agreement;
- (b) has been ordinarily resident throughout the three years preceding the first year of the course in the territory comprising the European Economic Area and Switzerland; and
- (c) in a case where his ordinary residence referred to in paragraph (b) 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 prior to the period of ordinary residence referred to in paragraph (b).”.

Commencement Information

II Reg. 14 in force at 30.4.2006, see [reg. 2\(1\)](#)

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Changes and effects yet to be applied to :

- Regulations revoked by [S.I. 2024/85 reg. 65\(1\)\(e\)](#)