

2012 No. 1818

EDUCATION, ENGLAND

The Further Education Loans Regulations 2012

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The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 22 and 42(6) of the Teaching and Higher Education Act 1998(a).

**PART 1
GENERAL**

Citation, commencement and application

1.—(1) These Regulations may be cited as the Further Education Loans Regulations 2012 and come into force on 1st September 2012.

(2) These Regulations apply in relation to England(b).

(3) These Regulations apply to the provision of fee loans to students in connection with a further education course which begins on or after 1st August 2013 whether anything done under these Regulations is done before, on or after 1st August 2013.

Interpretation

2. In these Regulations—

“the 1998 Act” means the Teaching and Higher Education Act 1998;

(a) 1998 c.30; section 22 was amended by the Learning and Skills Act 2000 (c.21), section 146 and Schedule 11, the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, the Finance Act 2003 (c.14), section 147, the Higher Education Act 2004 (c.8), sections 42 and 43 and Schedule 7, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), section 257 and the Education Act 2011 (c.21) section 76. See section 43(1) of the 1998 Act for the definition of “prescribed” and “regulations”.

(b) In relation to Wales, the functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 were transferred to the Welsh Ministers under section 44 of the Higher Education Act 2004 except so far as they relate to the making of any provision authorised by subsection (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22.

“Access to HE Diploma” means a qualification which is specifically designed to prepare persons for study at university;

“applicant” means a person applying for a fee loan under regulation 10(1);

“Apprenticeship Framework” has the meaning given to it in section 12 of the Apprenticeships, Skills, Children and Learning Act 2009;

“borrower” means a person to whom a fee loan has been made;

“current course” means the designated further education course in respect of which a person is applying for a fee loan;

“designated further education course” means a course designated by regulation 4 or by the Secretary of State under regulation 4;

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

“electronic signature” is so much of anything in electronic form as—

(a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

(b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible prisoner” means a prisoner—

(a) who begins the current course on or after 1st August 2013;

(b) who is serving a sentence of imprisonment in England;

(c) has been authorised by the prison Governor or Director or other appropriate authority to study the current course; and

(d) whose earliest release date is within 6 years of the first day of the current course;

“eligible student” has the meaning given in regulation 3;

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

“fee loan” means a loan for fees made to an eligible student pursuant to regulations made by the Secretary of State under section 22 of the 1998 Act;

“fees” has the meaning given in section 41(1) of the Higher Education Act 2004(b);

“further education course” means a course providing further education as defined by section 2(3) of the Education Act 1996(c);

“information” includes documents;

“institution” means an organisation delivering further education courses;

“Islands” means the Channel Islands and the Isle of Man and “the United Kingdom and Islands” means the United Kingdom and the Islands taken together;

“loan”, except where otherwise indicated, means a loan made pursuant to regulations made by the Secretary of State under section 22 of the 1998 Act, including the interest accrued on the loan and any penalties or charges incurred in connection with it;

“period of eligibility” has the meaning given in regulation 5 in relation to an eligible student;

“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 as defined in section 33(1) of the Immigration Act 1971(d);

(a) OJL158, 30.4.2004, p77.

(b) 2004 c.8.

(c) 1996 c.56. Section 2(3)(a) repealed by Education Act 2006 (c.32.), ss.215 (2), 216(4), Schedule 22 Pt 3 (with ss.210(8), 214(4)); S.I. 2002/2439, S.I.2002/3185, art.4, Sch.1,Part1.

(d) 1971 c.77.

(b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002(a)); and

(c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain;

“public funds” means moneys provided by Parliament or by a government authority outside the United Kingdom;

“publicly funded”, unless otherwise indicated, means maintained or assisted by recurrent grants out of public funds and related expressions are to be interpreted accordingly;

“refugee” means a person who is recognised by Her 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(b) as extended by the Protocol thereto which entered into force on 4th October 1967(c);

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

“student loans legislation” means the Education (Student Loans) Act 1990(d), the Education (Student Loans) (Northern Ireland) Order 1990(e), the Education (Scotland) Act 1980 and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998(f) and regulations made under that Order or the 1998 Act;

“Turkish worker” means a Turkish national who—

(a) is ordinarily resident in the United Kingdom and Islands; and

(b) is, or has been, lawfully employed in the United Kingdom.

PART 2 ELIGIBILITY

Eligible students

3.—(1) An eligible student qualifies for a fee loan in connection with a designated further education course subject to and in accordance with this regulation.

(2) A person is an eligible student in connection with a designated further education course if in assessing that person’s application for a fee loan the Secretary of State determines that the person falls within one of the categories set out in Part 2 of Schedule 1 and the person satisfies the requirements of the other paragraphs of this regulation.

(3) The requirements of this paragraph are that the eligible student (“A”)—

(a) has reached the age of 24 on the first day of A’s designated further education course;

(b) is not in breach of any obligation to repay any loan;

(c) has ratified any agreement for a loan made with A when A was under the age of 18;

(d) has not, in the opinion of the Secretary of State, shown by A’s conduct that A is unfitted to receive support.

(a) 2002 c.41; section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19), section 26 and Schedule 2 and the Immigration, Asylum and Nationality Act 2006 (c.13), section 9.

(b) Cmnd. 9171.

(c) Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Finance Policy Division, Department for Business, Innovation and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

(d) 1990 c.6; repealed by the Teaching and Higher Education Act 1998, Schedule 4.

(e) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No 306.

(f) S.I. 1998/1760 (N.I. 14) to which there have been amendments not relevant to these Regulations.

(4) If A is an eligible prisoner A can qualify for a fee loan under this regulation in respect of a designated further education course which is taking place at the time which A enters prison, is in prison or is released from prison.

(5) For the purposes of paragraphs (4)(b) and (4)(c), “loan” means a loan made under any provision of the student loans legislation.

(6) In a case where the agreement for a loan is subject to the law of Scotland, paragraph (4)(c) only applies if the agreement was made—

- (a) before 25th September 1991; and
- (b) with the concurrence of the borrower’s curator or at a time when the borrower had no curator.

(7) Where the Secretary of State has determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person (“A”) is—

- (a) an eligible student in connection with an application for a fee loan for a designated further education course; and
- (b) as at the day before that course begins, the refugee status of A or of A’s spouse, civil partner, parent or step-parent, as the case may be, has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A’s status as an eligible student terminates immediately before the first day of the course.

(8) Where the Secretary of State has determined that, by virtue of being a person granted humanitarian protection or the spouse, civil partner, child or step-child of such a person, a person (“A”) is—

- (a) an eligible student in connection with an application for a fee loan for a designated further education course; and
- (b) as at the day before that course begins, the period for which the person granted humanitarian protection is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A’s status as an eligible student terminates immediately before the first day of the course.

Designated courses

4.—(1) Subject to paragraphs (2) and (3), a further education course is a designated further education course for the purposes of section 22(1) of the 1998 Act and this regulation if it is one of the following—

- (a) a number of A levels not greater than four;
- (b) an Access to HE Diploma;
- (c) a Level 3 Certificate;
- (d) a Level 3 Diploma;
- (e) a Level 4 Certificate;
- (f) a Level 4 Diploma;
- (g) an Advanced Apprenticeship Framework; or
- (h) a Higher Apprenticeship Framework.

(2) A further education course is a designated further education course if—

- (a) it began on or after 1st August 2013;
- (b) the institution providing the course receives public funds for a course listed in regulation 4(1);
- (c) the further education course is publicly funded; and
- (d) the institution providing the course is situated in England.

(3) For the purposes of section 22 of the 1998 Act the Secretary of State may designate further education courses which are not designated under paragraphs (1) and (2).

Period of eligibility

5.—(1) A student's status as an eligible student is retained in connection with a designated further education course until the status terminates in accordance with this regulation.

(2) The period for which an eligible student retains that status is the "period of eligibility".

(3) Subject to the following paragraphs the maximum periods of eligibility are determined by the type of further education course and are as follows—

- (a) two years for A Levels;
- (b) two years for an Access to HE Diploma;
- (c) two years for a Level 3 Certificate;
- (d) three years for a Level 3 Diploma;
- (e) two years for a Level 4 Certificate;
- (f) three years for a Level 4 Diploma;
- (g) three years for an Advanced Apprenticeship Framework;
- (h) three years for a Higher Apprenticeship Framework.

(4) The period of eligibility terminates when the eligible student ("A")—

- (a) withdraws from A's further education course in circumstances where the Secretary of State has not transferred or will not transfer A's status as an eligible student under regulation 8, or
- (b) abandons or is expelled from A's further education course.

(5) The Secretary of State may terminate the period of eligibility where A has shown by A's conduct that A is unfitted to receive a fee loan.

(6) If the Secretary of State is satisfied that an eligible student has failed to comply with any requirement to provide information under these Regulations or has provided information which is inaccurate in a material particular, the Secretary of State may take such of the following actions as the Secretary of State considers appropriate in the circumstances—

- (a) terminate the period of eligibility;
- (b) determine that the student no longer qualifies for any fee loan or particular amount of fee loan;
- (c) treat any fee loan paid to the student as an overpayment which may be recovered under regulation 24.

(7) Where the period of eligibility terminates before the student completes the further education course, the Secretary of State may, at any time, renew the period of eligibility for such period as the Secretary of State determines.

Students becoming eligible other than prior to the beginning of a designated further education course

6. Where one of the events listed in regulation 7 occurs other than prior to the beginning of a designated further education course a student may qualify for a fee loan in accordance with this Part in respect of that course.

7. The events are—

- (a) the student's course becomes a designated further education course;
- (b) the student or the student's spouse, civil partner, parent or step-parent is recognised as a refugee or becomes a person granted humanitarian protection;

- (c) a state accedes to the EU where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the student acquires the right of permanent residence;
- (f) the student becomes the child of a Turkish worker;
- (g) the student becomes a person described in paragraph 6(1)(a) of Schedule 1; or
- (h) the student becomes the child of a Swiss national.

Transfer of status within same institution

8.—(1) Where an eligible student (“A”) transfers to another designated further education course at the same institution, the Secretary of State may transfer their status as an eligible student to that further education course where—

- (a) the Secretary of State receives a request from the eligible student to transfer to a further education course at an equivalent level to the course which the eligible student is currently taking, and
- (b) the period of eligibility has not terminated.

(2) Where A transfers under paragraph (1), A is entitled to receive in connection with the further education course to which A transfers, any remainder of the fee loan assessed by the Secretary of State in respect of the remainder of the period of eligibility of the further education course to which A transfers.

Transfer to another institution

9. Where an eligible student transfers to a designated further education course at an alternative institution that eligible student must apply for a fee loan under regulation 10 unless that eligible student has transferred to an alternative institution because the institution at which that eligible student began a designated further education course ceases to be publicly funded or, if an eligible student is an apprentice, that eligible student’s employment status is terminated.

PART 3

APPLYING FOR A FEE LOAN, PROVISION OF INFORMATION AND LOAN CONTRACTS

Applications for a fee loan

10.—(1) A person (the “applicant”) must apply for a fee loan in connection with each further education course by completing and submitting to the Secretary of State an application in such form and accompanied by such documentation as the Secretary of State may require.

(2) The Secretary of State may take such steps and make such inquiries as the Secretary of State considers necessary to determine whether the applicant is an eligible student, whether the applicant qualifies for a fee loan and the amount of fee loan payable, if any.

(3) The Secretary of State must notify the applicant of whether the applicant qualifies for a fee loan and, if so, the amount of fee loan payable in respect of the further education course.

Time limits

11. An application must reach the Secretary of State within the period of eligibility for the further education course for which support is required.

Information

12. Schedule 2 deals with the provision of information.

Requirement to enter into a contract for a fee loan

13. To receive a fee loan a student must enter into a contract with the Secretary of State.

PART 4

FEE LOANS

Availability of fee loans to eligible students - general

14. When assessing an application for a fee loan in respect of a designated further education course, the Secretary of State must determine the standard entitlement.

Standard entitlement of eligible students

15.—(1) The standard entitlement of an eligible student is a maximum of four loans where each loan is for a different category of further education course, as listed at regulation 4.

(2) In addition to the standard entitlement, if the Secretary of State determines that the eligible student is repeating a further education course because of compelling personal reasons, an eligible student can qualify for further fee loans in respect of any period or periods of repeat study.

(3) If the eligible student has failed to complete a previous further education course for which the student had received a fee loan an eligible student qualifies for one further fee loan in respect of the period of repeat study.

(4) Where a student is taking more than one designated further education course at any one time, the student qualifies for only one fee loan during that time.

Amount of the fee loan

16. The amount of a fee loan in respect of a further education course must not exceed the lesser of—

- (a) the maximum level of public funding in connection with that further education course, or
- (b) the amount which the institution is charging the eligible student for the further education course.

17. A fee loan must be for an amount no less than £300.

Amount of fee loan for transferring students

18.—(1) If a student's status as an eligible student is transferred from one further education course to another under regulation 8 or 9 and the circumstances in paragraph (2) apply, the student may apply to the Secretary of State to borrow an additional amount by way of a fee loan in respect of the further education course to which that student transfers.

(2) The circumstances are that the fees payable in respect of the further education course to which the student transfers exceed the fees payable in respect of the course from which the student is transferring.

(3) If a student's status as an eligible student is transferred from one course to another under these Regulations and the circumstances in paragraph (4) apply, the student shall apply to the Secretary of State to reduce the amount of fee loan applied for in respect of the course to which the eligible student has transferred.

(4) The circumstances are that the fees payable in respect of the course to which the student transfers are lower than the fees payable in respect of the course from which the student is transferring.

PART 5 PAYMENTS

Interpretation

19. In this Part “confirmation of the student’s attendance” means—

- (a) confirmation from the institution that the student has been present at the institution and has begun to attend the further education course where the student is applying for a fee loan in connection with that further education course; or
- (b) confirmation from the institution that the student has enrolled for a further education course where the student is applying for a fee loan in connection with that further education course, and the student is undertaking the further education course but not attending (regardless of whether the reason for not attending relates to the student’s disability); or
- (c) confirmation that the student remains enrolled, continues to attend the further education course or is undertaking the further education course but not attending, where the confirmation relates to payment of an instalment of the fee loan other than the first instalment.

PAYMENT OF LOANS

Provision of United Kingdom national insurance number

20.—(1) The Secretary of State may make it a condition of entitlement to payment of any fee loan that the eligible student must provide the Secretary of State with the student’s United Kingdom national insurance number.

(2) Where the Secretary of State has imposed a condition under paragraph (1), the Secretary of State must not make any payment of the fee loan to the eligible student before the Secretary of State is satisfied that the student has complied with that condition.

(3) Notwithstanding paragraph (2), the Secretary of State may make a payment of a fee loan to an eligible student if the Secretary of State is satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the eligible student having complied with the condition imposed under paragraph (1).

Information requirements

21.—(1) The Secretary of State may at any time request from an applicant or eligible student information that the Secretary of State considers is required to recover a fee loan.

(2) The Secretary of State may at any time request from an applicant or eligible student sight of their national identity card, passport issued by the state of which they are a national or their birth certificate.

(3) Where the Secretary of State has requested information under this regulation, the Secretary of State may withhold any payment of a fee loan until the person provides what has been requested or provides a satisfactory explanation for not complying with the request.

Payment of fee loans

22.—(1) The Secretary of State must pay the fee loan for which an eligible student qualifies to an institution to which the student is liable to make payment.

- (2) The Secretary of State may pay the fee loan in instalments.
- (3) The Secretary of State must not pay the fee loan or instalment of fee loan until the Secretary of State has received from the institution—
- (a) a request for payment; and
 - (b) confirmation (in such form as may be required by the Secretary of State) of the student's attendance on the course for the period to which the instalment relates.
- (4) The institution must inform the Secretary of State if a student ceases to attend or undertake the further education course.

Method of repayment

23.—(1) The Secretary of State may at any time require an applicant or eligible student to enter into an agreement to repay a fee loan by a particular method.

(2) Where the Secretary of State has required an agreement as to the method of repayment under this regulation, the Secretary of State may withhold any payment of a fee loan until the person provides what has been required.

OVERPAYMENTS

Overpayments of fee loan

24.—(1) Any overpayment of fee loan is recoverable by the Secretary of State from—

- (a) the institution; or
- (b) the student in respect of whom the payment of fee loan was made.

(2) An overpayment of fee loan may be recovered from a student under paragraph (1)(b) in whichever one or more of the following ways the Secretary of State considers appropriate in all the circumstances—

- (a) by subtracting the overpayment from any amount of the fee loan which remains to be paid;
- (b) by requiring the student to repay the fee loan in accordance with regulations made under section 22 of the 1998 Act;
- (c) by taking such other action for the recovery of an overpayment as is available to the Secretary of State.

11th July 2012

John Hayes
Minister of State for Further Education, Skills and Lifelong Learning
Department for Business, Innovation and Skills

SCHEDULE 1 ELIGIBLE STUDENTS

Regulations 3 and 7

PART 1

Interpretation

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

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

- (a) is a self-employed person in England; and

- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national's 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 England; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national's 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;

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

unless otherwise indicated, “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) that person's spouse or civil partner;
 - (ii) direct descendants of the person or of the person's spouse or civil partner who are dependants of the person or the person's spouse or civil partner; or
 - (iii) dependent direct relatives in the ascending line of that person or that of the person's 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) that person's spouse or civil partner; or
 - (ii) that person's child or the child of that person's spouse or civil partner;
- (c) in relation to an EU national who falls within article 7(1)(b) of Directive 2004/38—
 - (i) that person's spouse or civil partner;
 - (ii) direct descendants of the person or of the person's spouse or civil partner who are dependants of the person or the person's spouse or civil partner; or
 - (iii) dependent direct relatives in the person's ascending line or that of the person's spouse or civil partner;
- (d) in relation to an EU national who falls within article 7(1)(c) of Directive 2004/38—
 - (i) that person's spouse or civil partner; or
 - (ii) direct descendants of the person or of the person's spouse or civil partner who are dependants of the person or the person's spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
 - (i) the person's spouse or civil partner; or
 - (ii) direct descendants of the person or the person's spouse or civil partner who are dependants of the person or the person's spouse or civil partner;

“self-employed person” means—

- (a) in relation to an EEA national, a person who is a self-employed person 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(a);

“Swiss Agreement” means the Agreement between the EU 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 England; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national’s 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 England; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national’s 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;

“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 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 England, Wales, Scotland, Northern Ireland 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 the person undertook before undertaking the current course,

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

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

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

is or was temporarily employed outside the area in question.

(6) For the purposes of sub-paragraph (5), temporary employment outside of England, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey 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

(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.

- (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; and
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

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

- (a) was previously not part of the EU 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.

(8) For the purposes of this Schedule, an eligible prisoner is to be considered ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of a designated further education 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 the United Kingdom;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the further education 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(5).

3.—(1) A person who—

- (a) is settled in the United Kingdom by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom on the first day of a designated further education course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the further education 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Refugees and their family members

4.—(1) A person who—

- (a) is a refugee;
- (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was recognised as a refugee; and

- (c) is ordinarily resident in the United Kingdom on the first day of the designated further education course.
- (2) A person who—
 - (a) is the spouse or civil partner of a refugee;
 - (b) was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum;
 - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
 - (d) is ordinarily resident in the United Kingdom on the first day of the designated further education course.
- (3) A person who—
 - (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
 - (b) on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;
 - (c) was under 18 on the date on which the refugee made the application for asylum;
 - (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
 - (e) is ordinarily resident in the United Kingdom on the first day of the designated further education course.

Persons granted humanitarian protection and their family members

- 5.—(1) A person granted humanitarian protection who—
- (a) is ordinarily resident in the United Kingdom on the first day of the designated further education course; and
 - (b) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the designated further education course.
- (2) A person who—
- (a) is the spouse or civil partner of a person granted humanitarian protection;
 - (b) was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”);
 - (c) is ordinarily resident in the United Kingdom on the first day of the designated further education course; and
 - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the designated further education course.
- (3) A person who—
- (a) is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
 - (b) on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
 - (c) was under 18 on the asylum application date;
 - (d) is ordinarily resident in the United Kingdom on the first day of the designated further education course; and
 - (e) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the designated further education 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 England on the first day of the further education 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 designated further education course.

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

7. A person who—

- (a) is ordinarily resident in the United Kingdom on the first day of the designated further education 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 designated further education 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) was ordinarily resident in England and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (c) is ordinarily resident in the United Kingdom on the day on which the designated further education course 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 designated further education course; and
- (e) in a case where the person's 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 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 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

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

settled in the United Kingdom and has a right of permanent residence, if the person goes 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.

EU nationals

9.—(1) A person who—

- (a) is either—
 - (i) an EU national on the first day of the designated further education course; or
 - (ii) a family member of a such a person;
- (b) is attending or undertaking a designated further education course in England;
- (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 designated further education 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(5).

(3) Where a state accedes to the EU after the first day of the designated further education 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 EU national on the first day of the designated further education course is treated as being satisfied.

10.—(1) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the designated further education course;
- (b) is ordinarily resident in the United Kingdom on the first day of the designated further education course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the designated further education 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 European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the EU after the first day of the designated further education course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national other than a United Kingdom national on the first day of the designated further education 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 the United Kingdom on the first day of the designated further education 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 designated further education 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

12. A person who—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in the United Kingdom on the first day of the designated further education course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the designated further education course.

SCHEDULE 2 INFORMATION

Regulation 12

1. Every applicant and eligible student must, as soon as reasonably practicable after being requested to do so, provide the Secretary of State with such information as the Secretary of State requires for the purposes of these Regulations.

2. Every applicant and eligible student must inform the Secretary of State and provide the Secretary of State with particulars if any of the following occurs—

- (a) the applicant or student withdraws from, abandons or is expelled from their further education course;
- (b) the applicant or student transfers to any other further education course at the same or at a different institution;
- (c) the applicant or student ceases to undertake the further education course and does not intend to or is not permitted to continue it;
- (d) the applicant or student is absent from the further education course for more than 60 days due to illness or for any period for any other reason;
- (e) any changes to the start or end date of a further education course;
- (f) the applicant or student's home or term-time address or telephone number changes;
- (g) the applicant or student's name changes.

3. Information provided to the Secretary of State pursuant to these Regulations must be in the format that the Secretary of State requires and, if the Secretary of State requires the information to be signed by the person providing it, an electronic signature in such form as the Secretary of State may specify satisfies such a requirement.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for fee loans for students taking designated further education courses which begin on or after 1st September 2013.

Regulation 3 makes provisions about which students are eligible for a fee loan. Prisoners studying in English prisons for all or part of a further education course may be eligible for a loan. Regulation 3(2) prohibits an eligible student from having more than one fee loan at any time.

Regulation 4 makes provision about which types of further education courses are designated for the purposes of the fee loan system. Loans are available for full time and part time courses and for distance learning courses. Regulations 5, 8 and 9 make provision for the time periods during which a student is eligible for a fee loan and how transfers to alternative further education courses affect eligibility.

Part 3 makes provision for the application process. A student cannot apply for a fee loan retrospectively.

Part 4 explains how many loans a student may be entitled to. A student is entitled to a maximum of 4 loans and may be entitled to others at the discretion of the Secretary of State. Regulation 15(4) prohibits an eligible student from having more than one fee loan at any one time.

Part 5 makes provision for the payment of a fee loan following confirmation of attendance from the course provider.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the BIS website (www.bis.gov.uk). It is also annexed to the Explanatory Memorandum which is available alongside the Regulations on the OPSI website (www.opsi.gov.uk).

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