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## STATUTORY INSTRUMENTS

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**2017 No. 1189**

### **EDUCATION, ENGLAND**

#### **The Higher Education (Fee Limit Condition) (England) Regulations 2017**

*Made* - - - - *30th November 2017*  
*Laid before Parliament* *4th December 2017*  
*Coming into force* - - *1st April 2018*

The Secretary of State, in exercise of the powers conferred by section 10(1), (4)(b) and (6) and section 119(3) and 119(5) of the Higher Education and Research Act 2017<sup>M1</sup>, makes the following Regulations.

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#### **Marginal Citations**

**M1** [2017 c.29](#).

#### **Citation, commencement and application**

1. These Regulations may be cited as the Higher Education (Fee Limit Condition) (England) Regulations 2017 and come into force on 1st April 2018, immediately after the coming into force of section 10 of the Higher Education and Research Act 2017.

[<sup>F1</sup>1A. These Regulations apply to English higher education providers.]

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#### **Textual Amendments**

**F1** Reg. 1A inserted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **13**

#### **Interpretation**

2. In these Regulations—

- (a) “the Act” means the Higher Education and Research Act 2017;
- (b) “academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins, according to whether that academic year begins on or after 1st January

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and before 1st April, on or after 1st April and before 1st July, on or after 1st July and before 1st August or on or after 1st August and before 31st December, respectively;

- [<sup>F2</sup>(ba) “allied health profession subject” means chiropody, a dental profession subject, dietetics, dietetics and nutrition, occupational therapy, orthoptics, orthotics and prosthetics, physiotherapy, podiatry, radiography, radiotherapy or speech and language therapy;
- (bb) “dental profession subject” means dental hygiene, dental therapy and dental hygiene or dental therapy;
- (bc) “pre-registration course” means an education and training programme leading to a qualification, the standard of which is not higher than a first degree course and which qualification is a condition of inclusion in the register (or, as the case may be, the relevant part or parts of the register) maintained by—
- (i) the Health and Care Professions Council, for operating department practice and allied health profession subjects other than dental profession subjects;
  - (ii) the Nursing and Midwifery Council, for midwifery or nursing;
  - (iii) the General Dental Council, for dental profession subjects;
  - (iv) the Health and Care Professions Council and the Nursing and Midwifery Council, for nursing and social work;]

(c) “register” means the register maintained by the Office for Students under section 3 of the Act; and

(d) “single course” means a course to which regulation 5(8) of the Education (Student Support) Regulations 2011 <sup>M2</sup> applies and which falls within the description of a course in that regulation.

#### Textual Amendments

**F2** Reg. 2(ba)-(bc) inserted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, 14

#### Marginal Citations

**M2** [S.I. 2011/1986](#).

### Prescribed Registered Higher Education Provider

3. A higher education provider registered in the ‘Approved (fee cap)’ part of the register is prescribed for the purposes of section 10(1) of the Act.

### Qualifying Person

4.—(1) Subject to paragraph (3) and regulations 5 and 6, a qualifying person is a person who falls within a prescribed category on the first day of an academic year which commences on or after 1st September 2019.

(2) Paragraph (1) includes a person who undertakes a qualifying course in an academic year which began before the date in that paragraph but who nevertheless falls within a prescribed category on the first day of an academic year commencing on or after that date.

(3) Paragraph (1) does not apply to a person ineligible for support by reason of regulations 4(3) (c), (d), (e), (f) or (g), 4(4), 137(3) and 137(4) of the Education (Student Support) Regulations 2011.

(4) In this regulation “prescribed category” means any category of persons described in Part 2 of the Schedule to these Regulations.

### Qualifying person: exceptions

- 5.—(1) A person is not a qualifying person if—
- (a) the person holds a higher education qualification; and
  - (b) the qualifying course leads to a qualification which is an equivalent or lower qualification.
- (2) But paragraph (1) does not apply—
- (a) where—
    - (i) the qualifying course is a course for the initial training of teachers (including such a course leading to a first degree);
    - (ii) the duration of a full-time course does not exceed two years; or
    - (iii) the duration of a part-time course does not exceed four years; and
    - (iv) the qualifying person is not a qualified teacher; or
  - (b) in respect of any part of a single course where—
    - (i) the single course leads to an honours degree being conferred on the qualifying person from an institution in the United Kingdom before the final degree or equivalent qualification; and
    - (ii) the qualifying person only has an honours degree which was received as part of that single course; or
  - (c) where the qualifying course is a foundation degree.
- (3) In this regulation—
- (a) Subject to paragraphs (3)(b) to (3)(e) “equivalent or lower qualification” has the meaning given in regulation 2 of the Education (Student Support) Regulations 2011;
  - (b) but a qualification is not an equivalent or lower qualification where it relates to a part-time course—
    - (i) which is a course in [<sup>F3</sup>engineering and technology or computing] (or a combination of those subjects);
    - (ii) which leads to an honours degree; and
    - (iii) in respect of which the student begins the course on or after 1 August 2015.
  - (c) a qualification is not an equivalent or lower qualification where it relates to a part-time course—
    - [<sup>F4</sup>(i) which is a course in agriculture, food and related studies, biological and sport studies, general and others in sciences, geographical and environmental studies, mathematical sciences, medicine and dentistry, physical sciences, psychology, subjects allied to medicine or veterinary sciences (or a combination of those subjects);]
    - (ii) which leads to an honours degree; and
    - (iii) in respect of which the student begins the course on or after 1 August 2017.
  - [<sup>F5</sup>(d) a qualification is not an equivalent or lower qualification where—
    - (i) it relates to a pre-registration course in an allied health profession subject, midwifery, nursing, nursing and social work or operating department practice;
    - (ii) that course commenced on or after 1st August 2017 (or in the case of a course in a dental profession subject, commences on or after 1st August 2018); and
    - (iii) the qualification falls within sub-paragraph (da);
  - (da) a qualification falls within this sub-paragraph if—

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- (i) it leads to an ordinary or an honours degree;
  - (ii) in respect of a course in a dental profession subject, it leads to an ordinary degree, an honours degree, a diploma or a foundation degree; or
  - (iii) in respect of a course in operating department practice, it leads to an ordinary degree, an honours degree or a diploma;]
- (e) “qualified teacher” has the meaning given in section 132(1) of the Education Act 2002 <sup>M3</sup> but does not include any person who—
- (i) is a qualified teacher by virtue of paragraph 13B of Schedule 2 to the Education (School Teachers' Qualifications) (England) Regulations 2003 <sup>M4</sup> (“the 2003 Regulations”); and
  - (ii) has not been assessed by an accredited institution within the meaning of regulation 11 of the 2003 Regulations as meeting the specified standards within the meaning of paragraph 1 of Schedule 2 to the 2003 Regulations.

#### Textual Amendments

- F3** Words in reg. 5(3)(b)(i) substituted (with application in accordance with reg. 1(2)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) Regulations 2019 \(S.I. 2019/142\)](#), regs. 1(1), **46(2)(a)**
- F4** Reg. 5(3)(c)(i) substituted (with application in accordance with reg. 1(2)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) Regulations 2019 \(S.I. 2019/142\)](#), regs. 1(1), **46(2)(b)**
- F5** Reg. 5(3)(d)(da) substituted for reg. 5(3)(d) (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **15**

#### Marginal Citations

- M3** 2002 c.32.
- M4** S.I. 2003/1662.

### Qualifying person: effect of event during academic year

**6.—(1)** Where an event specified in paragraph (2) occurs in the course of an academic year which results in a person falling within Part 2 of the Schedule to these Regulations in the course of that academic year, that person is not a qualifying person in respect of the academic year in which the event occurred.

(2) The events are—

- (a) the student's course becomes a designated course;
- (b) the student or the student's spouse, civil partner or parent is recognised as a refugee or becomes [<sup>F6</sup>a person granted stateless leave or] 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 the Schedule) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of the Schedule) 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 7(1)(a) of Part 2 of the Schedule; <sup>F7</sup>...

- (h) the student becomes the child of a Swiss national <sup>[F8]</sup>; or]  
<sup>[F9]</sup>(i) the student becomes a person granted section 67 leave.]

#### Textual Amendments

- F6** Words in reg. 6(2)(b) inserted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **16**
- F7** Word in reg. 6(2)(g) omitted (with application in accordance with [reg. 1\(2\)\(3\)\(5\)](#) of the amending S.I.) by virtue of [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) Regulations 2019 \(S.I. 2019/142\)](#), regs. 1(1), **46(3)(a)**
- F8** Word in reg. 6(2)(h) substituted for full stop (with application in accordance with [reg. 1\(2\)\(3\)\(5\)](#) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) Regulations 2019 \(S.I. 2019/142\)](#), regs. 1(1), **46(3)(b)**
- F9** Reg. 6(2)(i) inserted (with application in accordance with [reg. 1\(2\)\(3\)\(5\)](#) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) Regulations 2019 \(S.I. 2019/142\)](#), regs. 1(1), **46(3)(c)**

#### Qualifying course

7.—(1) For the purposes of section 10(6) of the Act, but subject to paragraph (2), a qualifying course is a higher education course which—

- (a) is designated for the purposes of section 22 of the Teaching and Higher Education Act 1998 <sup>M5</sup> on the first day of an academic year which begins during the payment period; and
- (b) is provided by a higher education provider whose activities are wholly or principally carried on in England.

<sup>[F10]</sup>(1A) Paragraph (2) applies only where the first academic year (as defined in regulation 2(b)) of a course begins on or after 1st September 2019.]

(2) A course is not a qualifying course if at the time the qualifying person received an offer of a place on that course the higher education provider was not within the ‘Approved (fee cap)’ part of the register.

#### Textual Amendments

- F10** Reg. 7(1A) inserted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **17**

#### Marginal Citations

- M5** 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, sections 42 and 43 and Schedule 7, and the [Education Act 2011 \(c.21\)](#), **section 76**.

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## SCHEDULE

Regulation 5

### PART 1

#### Interpretation

##### Interpretation: general

##### 1.—(1) In this Schedule—

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council of 29th April 2004 <sup>M6</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EEA Agreement” means the European Economic Area Agreement signed at Porto on 2 May 1992 and which came into force on 1 January 1994;

“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 other than the United Kingdom and returns to the person's 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 another EEA State other than the United Kingdom and returns to the person's 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 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;

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

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

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

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

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

“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) the person's spouse or civil partner;
  - (ii) direct descendants of the person or of the person's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or the person's spouse or civil partner; or

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- (iii) dependent direct relatives in the person's ascending line 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) the person's spouse or civil partner; or
  - (ii) the person's child or the child of the person's spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
  - (i) the person's spouse or civil partner; or
  - (ii) direct descendants of the person or of the person's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or of the person's spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
  - (i) the person's spouse or civil partner;
  - (ii) direct descendants of the person or of the person's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) 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;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
  - (i) the person's spouse or civil partner;
  - (ii) direct descendants of the person or of the person's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or the person's spouse or civil partner.

“the Islands” means the Channel Islands and the Isle of Man;

“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; Mayotte; Greenland; Montserrat; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; St Barthélemy; St Helena and Dependencies (Ascension Island and Tristan da Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

[<sup>F11</sup>“parent” means a parent, guardian or any other person having parental responsibility for a child, and “child” is to be construed accordingly;

“person granted stateless leave” means a person who—

- (a) has extant leave to remain as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971); and
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the period since the person was granted such leave;]

“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 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 <sup>M7</sup>

“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 at Luxembourg on 21<sup>st</sup> June 1999 and which came into force on 1 June 2002 <sup>M8</sup>;

“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 the person's 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 other than the United Kingdom and returns to the person's 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;

“worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be.

(2) In this Schedule, an area which—

- (a) was previously not part of the European Union or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or the other or both of those areas,

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

#### Textual Amendments

**F11** Words in Sch. para. 1(1) inserted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **18(a)**

#### Marginal Citations

**M6** OJ L158, 30.4.2004, p77-123.

**M7** [1971 c.77](#); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the [British Nationality Act 1981 \(c.61\)](#).

**M8** Cm. 4904.

#### Interpretation: ordinarily resident

2.—(1) This paragraph applies for the purposes of this Schedule to determine whether a person is to be treated as ordinarily resident in a given place.



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(2) A person (“A”) is to be treated as ordinarily resident in the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories 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.

(3) 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 course is to be considered to be ordinarily resident in the Islands.

(4) A person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place.

(5) In sub-paragraph (2)—

- <sup>F12</sup>(a) . . . . .
- (b) “temporarily employed” includes in the case of members of the regular naval, military or air forces of—
  - (i) the Crown, any period which they serve outside the United Kingdom as members of such forces;
  - (ii) an EEA State or Switzerland, any period which they serve outside the territory comprising the European Economic Area and Switzerland as members of such forces; and
  - (iii) Turkey, any period which they serve outside the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

**Textual Amendments**

**F12** Sch. para. 2(5)(a) omitted (25.7.2018) by virtue of [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **18(b)**

## PART 2

### Qualifying Persons

#### Persons who are settled in the United Kingdom

- 3.—(1) A person who on the first day of the [<sup>F13</sup>first] academic year of the 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 first academic year of the course; and

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- (d) 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) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 2(2).

#### Textual Amendments

**F13** Word in Sch. para. 3(1) inserted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **18(c)**

4. A person who—

- (a) is settled in the United Kingdom by reason of having acquired the right of permanent residence on the first day of an academic year of the course;
- (b) is ordinarily resident in the United Kingdom 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 preceding the first day of the first academic year of the course; and
- (d) in a case where the residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, the person was ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories immediately before the period of residence referred to in paragraph (c).

#### Refugees and their family members

5.—(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;
- (c) is ordinarily resident in the United Kingdom on the first day of the academic year of the 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 applied for asylum;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was given leave to remain in the United Kingdom; and
- (d) is ordinarily resident in the United Kingdom on the first day of the first academic year of the 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 applied 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 years of age on the date on which the refugee applied for asylum;
- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was given leave to remain in the United Kingdom; and

(e) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(4) In this paragraph, “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 28<sup>th</sup> July 1951 <sup>M9</sup> as extended by the Protocol thereto which entered into force on 4<sup>th</sup> October 1967 <sup>M10</sup>.

#### Marginal Citations

**M9** Cmnd. 9171.

**M10** Cmnd. 3906.

### [<sup>F14</sup>Persons granted stateless leave and their family members

**5A.—**(1) A person granted stateless leave who—

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the three-year period preceding that date.

(2) A person—

- (a) who—
  - (i) is the spouse or civil partner of a person granted stateless leave; and
  - (ii) on the leave application date, was the spouse or civil partner of the person granted stateless leave;
- (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (c) who has been ordinarily resident in the United Kingdom and the Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) A person—

- (a) who—
  - (i) is the child of a person granted stateless leave or the child of the spouse or civil partner of a person granted stateless leave; and
  - (ii) on the leave application date, was the child of the person granted stateless leave or the child of a person who, on the leave application date, was the spouse or civil partner of the person granted stateless leave;
- (b) who was under 18 years of age on the leave application date;
- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (d) who has been ordinarily resident in the United Kingdom and the Islands throughout the three-year period preceding the first day of the first academic year of the course.

(4) In this paragraph, “leave application date” means the date on which the person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules (within the meaning given in section 33(1) of the Immigration Act 1971).]

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#### Textual Amendments

**F14** Sch. para. 5A inserted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **18(d)**

#### [<sup>F15</sup>Persons granted section 67 leave

**5B.** A person who—

- (a) has extant leave to remain as a person granted leave under paragraph 352ZG of the immigration rules, having been relocated to the United Kingdom pursuant to arrangements made by the Secretary of State under section 67 of the Immigration Act 2016, or a dependent child of such a person who has been granted “leave in line” under paragraph 352ZO of those rules;
- (b) 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;
- (c) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (d) 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.]

#### Textual Amendments

**F15** Sch. para. 5B inserted (with application in accordance with [reg. 1\(2\)\(3\)\(5\)](#) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) Regulations 2019 \(S.I. 2019/142\)](#), regs. 1(1), **46(4)**

#### Persons granted humanitarian protection and their family members

**6.—(1)** A person granted humanitarian protection who—

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (b) 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.

**(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 first academic year of the course; and
- (d) 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.

**(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;

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- (c) was under 18 years of age on the asylum application date;
  - (d) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (e) 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.
- (4) In this paragraph, “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;
  - (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)<sup>M11</sup>;
  - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain.

#### Marginal Citations

**M11** 2002 c.41; section 104 was amended by the [Asylum and Immigration \(Treatment of Claimants etc.\) Act 2004 \(c.19\)](#), [section 26](#) and Schedules 2 and 4, the [Immigration, Asylum and Nationality Act 2006 \(c.13\)](#), [section 9](#), and the [Immigration Act 2014 \(c.22\)](#), [Schedule 9](#).

### Workers, employed persons, self-employed persons and their family members

- 7.—(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) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories 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 falls within paragraph (a) (iv), (a)(v) or (a)(vi) of that sub-paragraph.
8. A person who—
- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories 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 12 of Council Regulation [\(EEC\) No. 1612/68](#)<sup>M12</sup> on the freedom of movement of workers, as extended by the EEA Agreement.

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### Marginal Citations

M12 OJ L257, 19.10.1968 p2 (OJ/SE 1968 (II) p475).

## Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

9.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in the United Kingdom 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 first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where the ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full-time education, the person 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) In this paragraph, a person has exercised a right of residence if the 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 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 a person in relation to whom the person is a family member is a national.

## EU nationals

10.—(1) A person who—

- (a) is either—
  - (i) an EU national on the first day of an academic year of the course; or
  - (ii) a family member of such a person;
- (b) is undertaking the course in the United Kingdom;
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) 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 (c) of sub-paragraph (1) does not apply to a family member of an EU national, where that national—

- (a) is—

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- (i) a United Kingdom national who has exercised a right to reside in the territory of another Member State under Article 7(1) of Directive 2004/38; or
  - (ii) not a United Kingdom national; and
- (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first academic year of the course.
- (3) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the [F16relevant territory] in accordance with paragraph (2)(2).

#### Textual Amendments

**F16** Words in Sch. para. 10(3) substituted (25.7.2018) by [The Higher Education \(Fee Limits and Fee Limit Condition\) \(England\) Regulations 2018 \(S.I. 2018/903\)](#), regs. 1, **18(e)**

#### 11.—(1) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in the United Kingdom 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 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, Switzerland and the overseas territories immediately prior to the period of ordinary residence referred to in that paragraph.

(2) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) is treated as being satisfied.

#### Children of Swiss nationals

##### 12. 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 first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, the person 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

##### 13.—(1) A person who—

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- (a) is the child of a Turkish worker;
  - (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.
- (2) In sub-paragraph (1)(a), “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.

### Long residence

- 14.—(1) A person who on the first day of the first academic year of the course—
- (a) is either—
    - (i) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or
    - (ii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either—
      - (aa) half their life; or
      - (bb) a period of twenty years;
  - (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 first academic year of the course; and
  - (d) 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 (2)(2).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

<sup>M13</sup>These Regulations, made under the Higher Education and Research Act 2017 (“the Act”) apply to registered higher education providers, which by virtue of section 3(3) of the Act means providers which are, or which intend to become, English higher education providers.

These Regulations prescribe:

- registered higher education providers of a certain description for the purposes of section 10(1) of the Act;
- the meaning of “qualifying person” for the purposes of section 10(4) of the Act;
- the meaning of “qualifying course” for the purposes of section 10(6) of the Act.



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<sup>M14</sup>Definitions used in these Regulations are set out in Regulation 2, save that (i) where a definition applies to one regulation or paragraph of the Schedule only, they are set out in that regulation or Schedule paragraph, and (ii) where a definition applies to a term used only in the Schedule, it is set out in Part 1 of the Schedule. By virtue of section 11 of the Interpretation Act 1978, words and phrases which have defined meanings in an Act have the same meanings in subordinate legislation such as Regulations unless the context otherwise requires.

The following terms are set out in section 83 of the Act—

— “English higher education provider” means a higher education provider whose activities are carried on, or principally carried on, in England.

— “higher education provider” means an institution which provides higher education;

— “higher education” means education provided by means of a higher education course;

<sup>M15</sup>— “higher education course” means a course of any description mentioned in Schedule 6 to the Education Reform Act 1988; and

— “institution” means any training provider (whether or not the training provider would otherwise be regarded as an institution).

Other relevant definitions are—

— “fees” has the meaning given by section 85(2) of the Act;

— “fee limit condition” means a condition of registration which requires the governing body of the provider to secure that regulated course fees do not exceed the fee limit (section 10(2) of the Act);

— “registered higher education provider” means an institution which is registered in the register (section 3(10) of the Act);

— “register” means the register which the Office for Students must establish and maintain in relation to English higher education providers (section 3(1) of the Act); and

— “regulated course fees” is defined in section 10(3) of the Act.

Regulation 3 prescribes the providers for the purposes of section 10(1) of the Act as those who appear in a specified category in the register. Under section 3(2) of the Act the Office for Students has the power to divide the register into different categories of registration.

Regulations 4, 5 and 6 prescribe the requirements necessary to be a “qualifying person”.

Regulation 7 prescribes the meaning of “qualifying course”.

The Schedule relates to regulation 5 which states that the persons falling within Part 2 of the Schedule (subject to the exceptions in regulations 5(2), 6 and 7) are to be regarded as qualifying persons. Part 1 of the Schedule relates to definitions which apply for the purposes of the Schedule.

The qualifying persons are—

— persons who are settled in the United Kingdom (paragraphs 3 and 4 of the Schedule);

— refugees and their family members (paragraph 5 of the Schedule);

— persons granted humanitarian protection and their family members (paragraph 6 of the Schedule);

— workers, employed persons, self-employed persons and their family members (paragraphs 7 and 8 of the Schedule);

— persons who are settled in the United Kingdom and who have exercised a right of residence elsewhere (paragraph 9 of the Schedule);

— EU nationals (paragraphs 10 and 11 of the Schedule);

— children of Swiss nationals (paragraph 12 of the Schedule);

— children of Turkish workers (paragraph 13 of the Schedule); and

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— persons who are qualifying persons by virtue of long residence (paragraph 14 of the Schedule).

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