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STATUTORY INSTRUMENTS

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^{M1}, makes the following Regulations.

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.

[^{F1}1A. These Regulations apply to English higher education providers.]

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;

- [^{F2}(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;

- [“person granted indefinite leave to remain as a bereaved partner” means a person—
- ^{F3}(bbza) (i) granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules, as defined in section 33(1) of the Immigration Act 1971—
- (aa) paragraph 288, as a person in relation to whom the requirements in paragraph 287(b) of those rules are met (bereaved partners);
 - (bb) paragraph 295N, as a person in relation to whom the requirements in paragraph 295M of those rules are met (bereaved partners);
 - (cc) paragraph D-BPILR.1.1 of Appendix FM (bereaved partners); or
 - (dd) paragraph 36 of Appendix Armed Forces (bereaved partner of a member of HM Forces); and
- (ii) who has been ordinarily resident in the United Kingdom and Islands since the person was granted such leave;]

- [“person granted indefinite leave to remain as a victim of domestic violence or domestic abuse” means a person—
- ^{F4}(bba) (i) granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules, as defined in section 33(1) of the Immigration Act 1971—
- (aa) paragraph 289B (victims of domestic violence);
 - (bb) paragraph D-DVILR.1.1. of Appendix FM (victims of domestic abuse); or
 - (cc) paragraph 40 of Appendix Armed Forces (victims of domestic violence: partners of members of the armed forces); and
- (ii) who has been ordinarily resident in the United Kingdom and the Islands since the person was granted such leave;]

- [“person granted Calais leave” means a person who—
- ^{F5}(bbb) (i) has extant leave to remain in the United Kingdom under paragraph 352J, 352K, 352L or 352T (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave) of the immigration rules, as defined in section 33(1) of the Immigration Act 1971; and
- (ii) has been ordinarily resident in the United Kingdom and the Islands since the person was [^{F6}granted such leave to remain];]

- (bbc) [^{F7}“person granted leave under the Afghan Relocations and Assistance Scheme” means a person—
- (a) who has —
- (i) indefinite leave to enter the United Kingdom under paragraph 276BA2 of or has indefinite leave to remain under paragraph 276BS2 of the Immigration Rules, having been relocated to the United Kingdom pursuant to paragraph 276BB1(iv) of the Immigration Rules as defined in section 33(1) of the Immigration Act 1971;

- (ii) leave to enter the United Kingdom on the basis of the Afghan Relocations and Assistance Scheme;
 - (iii) indefinite leave to enter or remain in the United Kingdom, outside those rules, on the basis of the Afghan Relocations and Assistance Scheme; or
 - (iv) leave to enter or indefinite leave to enter the United Kingdom as the spouse, civil partner or dependent child of such a person, or dependent child of the spouse or civil partner, having been granted that leave under paragraph 276BJ1 or 276BO1 of those rules;
- (b) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;]
- (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 ^{M2} 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**
- F3** Reg. 2(bbza) inserted (with application in accordance with reg. 1(4)(a) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **16(2)**
- F4** Reg. 2(bba) inserted (13.2.2020) (with application in accordance with reg. 1(3)(a) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/48\)](#), regs. 1(1), **2(6)(a)**
- F5** Reg. 2(bbb) inserted (13.2.2020) (with application in accordance with reg. 1(3)(b) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/48\)](#), regs. 1(1), **3(6)(a)**
- F6** Words in reg. 2(bbb)(ii) substituted (23.12.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **55**
- F7** Words in reg. 2 inserted (with application in accordance with reg. 1(3)(c) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **51(1)**

Marginal Citations

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

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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 [F8 paragraphs (3) and (6)] 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.

[F9(4) In this regulation, subject to paragraph (6), “prescribed category” means any category of persons described—

- (a) in paragraphs 3, 3A, 4, 5, 5A, 5B, 5C, 5D, 5E, [F10 5F,] 6, 7A, 8A, 9A, 10A, 10B, [F11 10BA,] 10C, 10D, 10E, 11A, 12A, 13A and 14 in Part 2 of the Schedule; or
 - (b) in paragraphs 7, 8, 9, 10, 11, 12 and 13 in Part 2 of the Schedule, where paragraph (5) applies.
- (5) This paragraph applies where—
- (a) in connection with a qualifying course beginning before 1st August 2021, a person (“A”) was a qualifying person by virtue of falling within any category of persons described in paragraphs 7, 8, 9, 10, 11, 12 and 13 in Part 2 of the Schedule in relation to an academic year beginning before 1st August 2021; and
 - (b) A is undertaking an academic year of that qualifying course, or of a qualifying course to which A transfers from that qualifying course.]

[F12(6) In relation to a qualifying course which begins on or after 1st January 2028, paragraph (4) has effect as if sub-paragraph (a) did not mention paragraphs [F13 9A, 10B, 10BA and 10E] in Part 2 of the Schedule.]

Textual Amendments

- F8** Words in reg. 4(1) substituted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **59(a)**
- F9** Reg. 4(4)(5) substituted for reg. 4(4) (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **59(b)**
- F10** Word in reg. 4(4)(a) inserted (with application in accordance with reg. 1(3)(c) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **51(2)**
- F11** Word in reg. 4(4)(a) inserted (1.9.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/929\)](#), regs. 1(1), **29(1)(a)**
- F12** Reg. 4(6) inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **59(c)**
- F13** Words in reg. 4(6) substituted (23.12.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **52**

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^{F14} ...;
 - (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.
- [^{F15}(2A) Paragraph (2)(a) does not apply where—
- (a) the current course is a course for the initial training of teachers in further education which has content equivalent to a Diploma in Education and Training, a Professional Graduate Certificate in Education or a Postgraduate Certificate in Education; and
 - (b) the student already holds qualified teacher learning and skills status.]
- (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 [^{F16}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—
 - [^{F17}(i) which is a course in agriculture, food and related studies, biological and sport studies,^{F18} ... [^{F19}geography, earth] 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.
 - [^{F20}(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;

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- (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—
 - (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 ^{M3} 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 ^{M4} (“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.
- [^{F21}(f) “qualified teacher learning and skills status” means the status held by a person who is outside the definition of “qualified teacher” in this regulation by virtue of that person falling within the proviso described in paragraphs (i) and (ii) of that definition;
- (g) “course for the initial training of teachers” has the same meaning as in regulation 2(1) of the Education (Student Support) Regulations 2011.]

Textual Amendments

- F14** Words in reg. 5(2)(a)(i) omitted (with application in accordance with reg. 1(3)(b) of the amending S.I.) by virtue of [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **50(a)**
- F15** Reg. 5(2A) inserted (with application in accordance with reg. 1(3)(b) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **50(b)**
- F16** 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)**
- F17** 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)**
- F18** Words in reg. 5(3)(c)(i) omitted (13.2.2020) (with application in accordance with reg. 1(2)(b) of the amending S.I.) by virtue of [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/48\)](#), regs. 1(1), **8(2)(a)**
- F19** Words in reg. 5(3)(c)(i) substituted (13.2.2020) (with application in accordance with reg. 1(2)(b) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/48\)](#), regs. 1(1), **8(2)(b)**
- F20** 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**
- F21** Reg. 5(3)(f)(g) inserted (with application in accordance with reg. 1(3)(b) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **50(c)**

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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 [^{F22}a person granted stateless leave or] a person granted humanitarian protection;
- ^{F23}(c)
- ^{F24}(d) the student becomes a family member described in paragraph 10A(1)(a), 10B(1)(a), 10C(1)(a), 10D(1)(a) or 10E(1)(a) in Part 2 of the Schedule;]
- ^{F25}(e) the student becomes a person described in paragraph 4(a) of Part 2 of the Schedule;]
- ^{F26}(f)
- (g) the student becomes a person described in [^{F27}paragraph 7A(1)(a) in Part 2 of the Schedule] of Part 2 of the Schedule; ^{F28} ...
- ^{F29}(h) the student becomes a person described in paragraph 12A(a) in Part 2 of the Schedule;]
- ^{F30}(i) the student becomes a person granted section 67 leave;]
- ^{F31}(j) the student becomes a person granted indefinite leave to remain as a victim of domestic violence or domestic abuse; ^{F32}...]
- ^{F33}(k) the student becomes a person granted Calais leave;]
- ^{F34}(l) the student becomes a person granted indefinite leave to remain as a bereaved partner;][^{F35}or]
- ^{F36}(m) the student becomes a person granted leave under the Afghan Relocations and Assistance Scheme.]

Textual Amendments

- F22** 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**
- F23** Reg. 6(2)(c) omitted (1.3.2021) by virtue of [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **60(a)**
- F24** Reg. 6(2)(d) substituted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **60(b)**
- F25** Reg. 6(2)(e) substituted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **29(b)**
- F26** Reg. 6(2)(f) omitted (1.3.2021) by virtue of [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **60(c)**
- F27** Words in reg. 6(2)(g) substituted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **60(d)**

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- F28** 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)**
- F29** Reg. 6(2)(h) substituted (1.3.2021) by *The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021* (S.I. 2021/127), regs. 1(1), **60(e)**
- F30** 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)**
- F31** Reg. 6(2)(j) inserted (13.2.2020) (with application in accordance with reg. 1(3)(a) of the amending S.I.) by *The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 2) Regulations 2020* (S.I. 2020/48), regs. 1(1), **2(6)(b)(ii)**
- F32** Word in reg. 6(2)(j) omitted (with application in accordance with reg. 1(4)(a) of the amending S.I.) by virtue of *The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 3) Regulations 2020* (S.I. 2020/1203), regs. 1(2), **16(3)(a)**
- F33** Reg. 6(2)(k) inserted (13.2.2020) (with application in accordance with reg. 1(3)(b) of the amending S.I.) by *The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 2) Regulations 2020* (S.I. 2020/48), regs. 1(1), **3(6)(b)**
- F34** Reg. 6(2)(l) and preceding word inserted (with application in accordance with reg. 1(4)(a) of the amending S.I.) by *The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 3) Regulations 2020* (S.I. 2020/1203), regs. 1(2), **16(3)(b)**
- F35** Word in reg. 6(2) repositioned (with application in accordance with reg. 1(3)(c) of the amending S.I.) by *The Education (Student Fees, Awards and Support) (Amendment) (No. 3) Regulations 2021* (S.I. 2021/1348), regs. 1(1), **51(3)**
- F36** Reg. 6(2)(m) inserted (with application in accordance with reg. 1(3)(c) of the amending S.I.) by *The Education (Student Fees, Awards and Support) (Amendment) (No. 3) Regulations 2021* (S.I. 2021/1348), regs. 1(1), **51(3)**

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^{M5} 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.

[^{F37}(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

- F37** 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*

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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**.

Department for Education

Jo Johnson
Minister of State for Education

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SCHEDULE

Regulation 5

PART 1

Interpretation

Interpretation: general

1.—(1) In this Schedule—

[^{F38}“the 2020 Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020;]

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 ^{M6} 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;

[^{F39}“EEA EFTA separation agreement” has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;]

“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 ^{F40}... 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 ^{F40}... 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 ^{F40}...;

“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 [^{F41}, an EEA self-employed person, or a relevant person of Northern Ireland who is treated as an EEA migrant worker or an EEA self-employed person by virtue of paragraph 7A(3)]—
 - (i) the person's spouse or civil partner;

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- (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;
- (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 [^{F42}or, for the purposes of paragraph 10A, in relation to a relevant person of Northern Ireland who would fall within article 7(1)(c) of Directive 2004/38 if that person were an EU national or solely an EU national]—
 - (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 [^{F43}or, for the purposes of paragraph 10A, in relation to a relevant person of Northern Ireland who would fall within article 7(1)(b) of Directive 2004/38 if that person were an EU national or solely an EU national]—
 - (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 [^{F44}paragraphs 10, 10B and 10E and for the purposes of paragraphs 10C and 10D in relation to persons settled in the United Kingdom]—
 - (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; [^{F45}Gibraltar;] 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;

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[^{F46}“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;]

[^{F47}“person with protected rights” means—

- (1) (a) [^{F48}a person within the personal scope of the citizens’ rights provisions who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;
 - (ii) is an Irish citizen who, pursuant to section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom; ^{F49} ...
 - (iii) is an applicant for the purposes of regulation 4 of the 2020 Citizens’ Rights Regulations where the relevant period has not expired; or
 - (iv) [^{F50}otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or]
- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;]
- (2) (a) [^{F51}Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or
- (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement.]]

[^{F39}“residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020;]

^{F52} ...

“self-employed person” means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” has the meaning given by section 33(2A) of the Immigration Act 1971 ^{M7}

[^{F53}“specified British overseas territories” means Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; St Helena and Dependencies (Ascension Island and Tristan da Cunha); and Turks and Caicos Islands;]

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“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 21st June 1999 and which came into force on 1 June 2002^{M8}; [F39“Swiss citizens’ rights agreement” has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;]

“Swiss employed person” means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

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

- (a) is an employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State^{F40}... 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^{F40}... 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;

[F54“United Kingdom national” has the meaning given by Article 2(d) of the EU withdrawal agreement;]

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

[F55(1A) For the purposes of this Schedule, a reference to a “Member State” or “State” in Article 7 of Directive 2004/38 is to be read as including the United Kingdom.

(1B) For the purposes of this Schedule, a person is within the personal scope of the citizens’ rights provisions if that person falls within—

- (a) Article 10 (personal scope) of the EU withdrawal agreement;
- (b) Article 9 (personal scope) of the EEA EFTA separation agreement; or
- (c) Article 10 (personal scope) of the Swiss citizens’ rights agreement.]

(2) In this Schedule, an area [F56other than the United Kingdom or Gibraltar] 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

- F38** Words in Sch. para. 1(1) inserted (1.3.2021) by *The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021* (S.I. 2021/127), regs. 1(1), **61(2)(a)(i)**
- F39** Words in Sch. para. 1(1) inserted (31.12.2020) by *The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020* (S.I. 2020/1181), regs. 1(3), **30(2)(a)(i)(aa)**
- F40** Words in Sch. para. 1(1) omitted (31.12.2020) by virtue of *The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020* (S.I. 2020/1181), regs. 1(3), **30(2)(a)(i)(bb)**
- F41** Words in Sch. para. 1(1) substituted (1.3.2021) by *The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021* (S.I. 2021/127), regs. 1(1), **61(2)(a)(ii)(aa)**

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- F42** Words in Sch. para. 1(1) inserted (1.3.2021) by The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127), regs. 1(1), **61(2)(a)(ii)(bb)**
- F43** Words in Sch. para. 1(1) inserted (1.3.2021) by The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127), regs. 1(1), **61(2)(a)(ii)(cc)**
- F44** Words in Sch. para. 1(1) substituted (with application in accordance with reg. 1(3)(j) of the amending S.I.) by The Education (Student Fees, Awards and Support) (Amendment) (No. 3) Regulations 2021 (S.I. 2021/1348), regs. 1(1), **53(a)**
- F45** Words in Sch. para. 1(1) inserted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(2)(a)(i)(cc)**
- F46** 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)**
- F47** Words in Sch. para. 1(1) inserted (1.3.2021) by The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127), regs. 1(1), **61(2)(a)(iii)**
- F48** Words in Sch. para. 1(1) renumbered (1.9.2021) by The Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/929), regs. 1(1), **28(a)(i)**
- F49** Word in Sch. para. 1(1) omitted (1.9.2021) by virtue of The Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/929), regs. 1(1), **28(a)(ii)**
- F50** Words in Sch. para. 1(1) inserted (1.9.2021) by The Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/929), regs. 1(1), **28(a)(ii)**
- F51** Words in Sch. para. 1(1) inserted (1.9.2021) by The Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/929), regs. 1(1), **28(a)(iii)**
- F52** Words in Sch. para. 1(1) omitted (1.3.2021) by virtue of The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127), regs. 1(1), **61(2)(a)(iv)**
- F53** Words in Sch. para. 1(1) inserted (1.3.2021) by The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127), regs. 1(1), **61(2)(a)(v)**
- F54** Words in Sch. para. 1(1) inserted (1.3.2021) by The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127), regs. 1(1), **61(2)(a)(vi)**
- F55** Sch. paras. 1(1A)(1B) inserted (1.3.2021) by The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021 (S.I. 2021/127), regs. 1(1), **61(2)(b)**
- F56** Words in Sch. para. 1(2) inserted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(2)(a)(ii)**

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.

(2) A person (“A”) is to be treated as ordinarily resident in the United Kingdom, the United Kingdom and Islands [^{F57}, the territory comprising the United Kingdom, the Islands and the Republic of Ireland], in [^{F58}the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland], in [^{F59}the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories][^{F60}, the territory comprising the United Kingdom, the Islands and the specified British overseas territories], or in [^{F61}the territory comprising the United Kingdom, the European Economic Area, Switzerland, Turkey and the overseas territories] if A would have been so resident but for the fact that—

- (a) A;

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- (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.

^{F62}(3)

(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)—

^{F63}(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;

[^{F64}(ia) the Republic of Ireland, any period which they serve outside the territory comprising the United Kingdom, the Islands and the Republic of Ireland as members of such forces;]

(ii) an EEA State or Switzerland, any period which they serve outside the territory comprising [^{F65}the United Kingdom, Gibraltar,] the European Economic Area and Switzerland as members of such forces; and

(iii) Turkey, any period which they serve outside the territory comprising [^{F65}the United Kingdom, Gibraltar,] the European Economic Area, Switzerland and Turkey as members of such forces.

Textual Amendments

- F57** Words in Sch. para. 2(2) inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(3)(a)(i)**
- F58** Words in Sch. para. 2(2) substituted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(2)(b)(i)(aa)**
- F59** Words in Sch. para. 2(2) substituted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(2)(b)(i)(bb)**
- F60** Words in Sch. para. 2(2) inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(3)(a)(ii)**
- F61** Words in Sch. para. 2(2) substituted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(2)(b)(i)(cc)**
- F62** Sch. para. 2(3) omitted (1.3.2021) by virtue of [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(3)(b)**
- F63** 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)**
- F64** Sch. paras. 2(5)(b)(ia) inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(3)(c)**
- F65** Words in Sch. para. 2(5) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(2)(b)(ii)**

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PART 2

Qualifying Persons

Persons who are settled in the United Kingdom

3.—(1) A person who on the first day of the [^{F66}first] academic year of the course—

- [^{F67}(a) is settled in the United Kingdom and does not fall within paragraph 4;]
- (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) 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

F66 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)**

F67 Sch. para. 3(1)(a) substituted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(4)**

[^{F68}**3A**.—(1) A person—

- (a) who is settled in the United Kingdom [^{F69}on the day on which the first term of the first academic year actually begins] and does not fall within paragraph 4;
- (b) who is ordinarily resident in the United Kingdom [^{F69}on the day on which the first term of the first academic year actually begins];
- (c) who has been ordinarily resident in the territory comprising the United Kingdom, the Islands and the Republic of Ireland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the Islands and the Republic of Ireland 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 United Kingdom, the Islands and the Republic of Ireland in accordance with paragraph 2(2).]

Textual Amendments

F68 Sch. para. 3A inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(5)**

F69 Words in Sch. para. 3A(1)(a)(b) substituted (1.9.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/929\)](#), regs. 1(1), **28(b)**

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4.—^[F70](1) A person who—

^[F71](a) meets one of the following conditions on the first day of an academic year of the course—

(i) the person is within the personal scope of the citizens’ rights provisions and is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules;

(ii) the person—

(aa) is within the personal scope of the citizens’ rights provisions;

(bb) is an Irish citizen settled in the United Kingdom who, pursuant to section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom; and

(cc) would meet the eligibility requirements for indefinite leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules if that person were to make an application for such leave;

(iii) the person—

(aa) is within the personal scope of the citizens’ rights provisions;

(bb) is an applicant for the purposes of regulation 4 of the 2020 Citizens’ Rights Regulations ^[F72]or otherwise has rights deemed to apply by virtue of any of the citizens’ rights provisions specified in paragraph (3) ; and

(cc) has, or is treated as having, a right of permanent residence for the purposes of the Immigration (European Economic Area) Regulations 2016, as those Regulations continue to have effect by virtue of the 2020 Citizens’ Rights Regulations in relation to that person during the relevant period ^[F73]or otherwise has a deemed right of permanent residence by virtue of any of the citizens’ rights provisions specified in paragraph (3) ; or

(iv) the person is a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules;]

(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 ^[F74]the United Kingdom,] the European Economic Area, Switzerland and the overseas territories immediately before the period of residence referred to in paragraph (c).

^[F75](2) For the purposes of sub-paragraph (1)(a)(ii)(cc), “eligibility requirements for indefinite leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules” means the eligibility requirements for such leave in accordance with paragraph EU11 of Appendix EU to the immigration rules (as defined in section 33(1) of the Immigration Act 1971).]

^[F76](3) For the purposes of sub-paragraph (1)(a)(iii), the citizens’ rights provisions referred to are—

(a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement;

(b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or

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(c) Article 16(3) (issuance of residence documents) of the Swiss citizens' rights agreement.]

Textual Amendments

- F70** Sch. para. 4 renumbered as Sch. para. 4(1) (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(6)(a)**
- F71** Sch. para. 4(1)(a) substituted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(6)(b)**
- F72** Words in Sch. para. 4(1)(a)(iii)(bb) inserted (1.9.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/929\)](#), regs. 1(1), **28(c)(i)**
- F73** Words in Sch. para. 4(1)(a)(iii)(cc) inserted (1.9.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/929\)](#), regs. 1(1), **28(c)(ii)**
- F74** Words in Sch. para. 4(d) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(a)(ii)**
- F75** Sch. para. 4(2) inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(6)(c)**
- F76** Sch. para. 4(3) inserted (1.9.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/929\)](#), regs. 1(1), **28(c)(iii)**

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 28th July 1951^{M9} as extended by the Protocol thereto which entered into force on 4th October 1967^{M10}.

Marginal Citations

M9 Cmnd. 9171.

M10 Cmnd. 3906.

[^{F77}Persons granted stateless leave and their family members

5A.—[^{F78}(1) A person granted stateless leave, who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.]

(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;

[^{F79}(b) who 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

(c) who is ordinarily resident in the United Kingdom on 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;

[^{F80}(c) who 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) who is ordinarily resident in the United Kingdom on 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).]

Textual Amendments

F77 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)**

F78 Sch. para. 5A(1) substituted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **23(2)(a)**

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- F79** Sch. para. 5A(2)(b)(c) substituted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **23(2)(b)**
- F80** Sch. para. 5A(3)(c)(d) substituted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **23(2)(c)**

[^{F81}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; [^{F82}and]

[^{F83}(b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.]]

Textual Amendments

- F81** 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)**
- F82** Word in Sch. para. 5B(a) inserted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **23(3)(a)**
- F83** Sch. para. 5B(b) substituted for Sch. para. 5B(b)-(d) (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **23(3)(b)**

[^{F84}Persons granted indefinite leave to remain as a victim of domestic violence or domestic abuse

5C. A person granted indefinite leave to remain as a victim of domestic violence or domestic abuse, who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.]

Textual Amendments

- F84** Sch. para. 5C inserted (with application in accordance with reg. 1(3)(a) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/48\)](#), regs. 1(1), **2(6)(c)**

Persons granted Calais leave

[^{F85}**5D.** A person granted Calais leave, who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.]

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Textual Amendments

F85 Sch. para. 5D substituted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **23(4)**

[^{F86}Persons granted indefinite leave to remain as a bereaved partner

5E. A person granted indefinite leave to remain as a bereaved partner, who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.]

Textual Amendments

F86 Sch. para. 5E inserted (with application in accordance with reg. 1(4)(a) of the amending S.I.) by [The Education \(Student Fees, Awards and Support etc.\) \(Amendment\) \(No. 3\) Regulations 2020 \(S.I. 2020/1203\)](#), regs. 1(2), **16(4)**

[^{F87}Persons granted leave under the Afghan Relocations and Assistance Scheme

5F. A person granted leave under the Afghan Relocations and Assistance Scheme who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.]

Textual Amendments

F87 Sch. para. 5F inserted (with application in accordance with reg. 1(3)(c) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **51(4)**

Persons granted humanitarian protection and their family members

6.—[^{F88}(1) A person granted humanitarian protection, who is ordinarily resident in the United Kingdom on 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”);

[^{F89}(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 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;
- (c) was under 18 years of age on the asylum application date;

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- [^{F90}(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 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) ^{M11};
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain.

Textual Amendments

- F88** Sch. para. 6(1) substituted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/1203), regs. 1(2), **23(5)(a)**
- F89** Sch. para. 6(2)(c)(d) substituted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/1203), regs. 1(2), **23(5)(b)**
- F90** Sch. para. 6(3)(d)(e) substituted (with application in accordance with reg. 1(3)(a)(5) of the amending S.I.) by The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/1203), regs. 1(2), **23(5)(c)**

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 [^{F91}the United Kingdom,] 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.

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Textual Amendments

F91 Words in Sch. para. 7(1)(c) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(b)**

[^{F92}7A.—(1) A person with protected rights, or a frontier worker within the meaning of regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in sub-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 sub-paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), 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 United Kingdom, 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 applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

(3) In this paragraph, a description of a person in sub-paragraph(1)(a)(i) is to be read as if it includes a relevant person of Northern Ireland who would, if that person were an EEA national or solely an EEA national, be an EEA migrant worker or an EEA self-employed person.]

Textual Amendments

F92 Sch. para. 7A inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(7)**

8.—[^{F93}(1)] 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 [^{F94}the United Kingdom,] 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^{M12}](#) on the freedom of movement of workers, as extended by the EEA Agreement.

[^{F95}(2) Any description of person who would have fallen within this paragraph immediately before IP completion day is to be treated as falling within this paragraph on and after IP completion day.]

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Textual Amendments

- F93** Sch. para. 8 renumbered as Sch. para. 8(1) (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(c)(i)**
- F94** Words in Sch. para. 8(1)(b) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(c)(ii)**
- F95** Sch. para. 8(2) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(c)(iii)**

Marginal Citations

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

[^{F96}**8A.**—(1) A person with protected rights 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 United Kingdom, 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 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (“the Workers Regulation”), as it had effect immediately before IP completion day, as extended by the EEA Agreement, as it had effect immediately before IP completion day.
- (2) For the purposes of sub-paragraph (1)(c), in Article 10 of the Workers Regulation—
- (a) the reference to a “national of a Member State” is to be read as including a relevant person of Northern Ireland; and
 - (b) the reference to “another Member State” is to be read as including the United Kingdom, and the references to “that State” construed accordingly.]

Textual Amendments

- F96** Sch. para. 8A inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(8)**

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 [^{F97}before IP completion day] ;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;

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- (d) has been ordinarily resident in the territory comprising [^{F98}the United Kingdom,] 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 [^{F99}the United Kingdom, Gibraltar,] 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 [^{F100}had the right] of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or 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 [^{F101}has gone] 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.

[^{F102}(3) For the purposes of sub-paragraph (2), a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.]

Textual Amendments

- F97** Words in Sch. para. 9(1)(b) inserted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(3)(d)(i)(aa)**
- F98** Words in Sch. para. 9(1)(d) inserted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(3)(d)(i)(bb)**
- F99** Words in Sch. para. 9(1)(e) inserted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(3)(d)(i)(cc)**
- F100** Words in Sch. para. 9(2) substituted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(3)(d)(ii)(aa)**
- F101** Words in Sch. para. 9(2) substituted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(3)(d)(ii)(bb)**
- F102** Sch. para. 9(3) inserted (31.12.2020) by The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1181), regs. 1(3), **30(3)(d)(iii)**

[^{F103}**9A.**—(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 before IP completion day;
- (c) was ordinarily resident immediately before IP completion day—
 - (i) in the territory comprising the European Economic Area, Switzerland and the overseas territories; or
 - (ii) in the United Kingdom, where that ordinary residence began after 31st December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area, Switzerland and the overseas territories,

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and has remained ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;

- (d) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (e) has been ordinarily resident in the territory comprising the United Kingdom, 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
- (f) in a case where the person's ordinary residence referred to in paragraph (e) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (e).

(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 had the right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or 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 had the right of permanent residence, if the person has gone 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.

(3) For the purposes of sub-paragraph (2), a person had the right of permanent residence if they had a right which arose under Directive 2004/38 to reside permanently in the United Kingdom without restriction.]

Textual Amendments

F103 Sch. para. 9A inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(9)**

EU nationals [^{F104}etc.]

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 [^{F105}the United Kingdom,] 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.

[^{F106}(2) Paragraph (c) of sub-paragraph (1) does not apply to a family member of a person who—

- (a) is—

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- (i) a United Kingdom national who has exercised a right to reside in the territory of a Member State under Article 7(1) of Directive 2004/38; or
- (ii) an EU national; and
- (b) has been ordinarily resident in the territory comprising the United Kingdom, 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.]
- (3) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the [^{F107}relevant territory] in accordance with paragraph (2)(2).
- [^{F108}(4) Any description of person who would have fallen within this paragraph immediately before IP completion day is to be treated as falling within this paragraph on and after IP completion day.]

Textual Amendments

- F104** Word in Sch. para. 10 heading inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(10)**
- F105** Words in Sch. para. 10(1)(c) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(e)(i)**
- F106** Sch. para. 10(2) substituted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(e)(ii)**
- F107** 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)**
- F108** Sch. para. 10(4) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(e)(iii)**

[^{F109}**10A.**—(1) A person with protected rights—

- (a) who is —
 - (i) an EU national on the first day of the first academic year of the course;
 - (ii) a family member of a person mentioned in sub-paragraph (i); or
 - (iii) a family member of a relevant person of Northern Ireland;
 - (b) who is undertaking the course in the United Kingdom;
 - (c) who, subject to sub-paragraph (2), has been ordinarily resident in the territory comprising the United Kingdom, 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) subject to sub-paragraph (3), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories 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 a person who—
- (a) is an EU national or a relevant person of Northern Ireland; and
 - (b) has been ordinarily resident in the territory comprising the United Kingdom, 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.

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(3) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with paragraph 2(2).

Textual Amendments

F109 Sch. paras. 10A-10E inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(11)**

United Kingdom nationals

10B.—(1) A person—

- (a) who is—
 - (i) a United Kingdom national on the first day of an academic year of the course; or
 - (ii) a family member of a person mentioned in sub-paragraph (i);
- (b) who was ordinarily resident immediately before IP completion day—
 - (i) in the territory comprising the European Economic Area, Switzerland and the EU overseas territories; or
 - (ii) in the United Kingdom, where that ordinary residence began after 31st December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area, Switzerland and the EU overseas territories,

and has remained ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the EU overseas territories throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;
- (c) who is undertaking the course in the United Kingdom;
- (d) who, subject to sub-paragraph (2), has been ordinarily resident in the territory comprising the United Kingdom, 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) subject to sub-paragraph (3), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories has not during any part of the period referred to in paragraph (d) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to the family member of a United Kingdom national, where that United Kingdom national—

- (a) had, before IP completion day, exercised a right to reside in the territory of a Member State under Article 7(1) of Directive 2004/38; and
- (b) has been ordinarily resident in the territory comprising the United Kingdom, 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.

(3) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with paragraph 2(2).

(4) Where a person (“P”) falls within sub-paragraph (1)(a)(ii), the person in relation to whom P is a family member must also meet the requirements of sub-paragraph (1)(b) and (d).

Status: Point in time view as at 23/12/2021.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Higher Education (Fee Limit Condition) (England) Regulations 2017*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(5) In this paragraph, “EU overseas territories” means Aruba; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); St Barthélemy; St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; and Wallis and Futuna.

Textual Amendments

F109 Sch. paras. 10A-10E inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(11)**

^{F110}**10BA.**—(1) A person—

- (a) who is an Irish citizen on the first day of an academic year of the course;
- (b) who was ordinarily resident immediately before IP completion day—
 - (i) in the territory comprising the European Economic Area, Switzerland and the EU overseas territories; or
 - (ii) in the United Kingdom, where that ordinary residence began after 31st December 2017 immediately following a period of ordinary residence in the territory comprising the European Economic Area, Switzerland and the EU overseas territories,and has remained ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the EU overseas territories throughout the period beginning on IP completion day and ending immediately before the first day of the first academic year of the course;
- (c) who is undertaking the course in the United Kingdom;
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, 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) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories has not during any part of the period referred to in paragraph (d) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with paragraph 2(2).

(3) In this paragraph, “EU overseas territories” means Aruba; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); St Barthélemy; St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; and Wallis and Futuna.]

Textual Amendments

F109 Sch. paras. 10A-10E inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(11)**

F110 Sch. para. 10BA inserted (1.9.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 2\) Regulations 2021 \(S.I. 2021/929\)](#), regs. 1(1), **29(2)**

Status: Point in time view as at 23/12/2021.

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10C.—(1) A person—

- (a) who is—
 - (i) [^{F111}a person who is settled in the United Kingdom] on the first day of the first academic year of the course; or
 - (ii) a family member of a person mentioned in sub-paragraph (i) [^{F112}, or who would be such a person if they were ordinarily resident in the United Kingdom];
- (b) who is undertaking the course in the United Kingdom;
- (c) who has been ordinarily resident in the specified British overseas territories for at least part of the three year period preceding the first day of the first academic year of the course;
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, the Islands and the specified British overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, the Islands and the specified British overseas territories has not during any part of the period referred to in paragraph (d) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, the Islands and the specified British overseas territories in accordance with paragraph 2(2).

Textual Amendments

F109 Sch. paras. 10A-10E inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(11)**

F111 Words in Sch. para. 10C(1)(a)(i) substituted (with application in accordance with reg. 1(3)(j) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **53(b)(i)**

F112 Words in Sch. para. 10C(1)(a)(ii) inserted (with application in accordance with reg. 1(3)(j) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **53(b)(ii)**

10D.—(1) A person—

- (a) who is a family member of a person who is [^{F113}settled in the United Kingdom] on the first day of the first academic year of the course;
- (b) who is undertaking the course in the United Kingdom;
- (c) who 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) subject to sub-paragraph (2), whose ordinary 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).

Status: Point in time view as at 23/12/2021.

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Textual Amendments

- F109** Sch. paras. 10A-10E inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(11)**
- F113** Words in Sch. para. 10D(1)(a) substituted (with application in accordance with reg. 1(3)(f) of the amending S.I.) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 3\) Regulations 2021 \(S.I. 2021/1348\)](#), regs. 1(1), **54**

Persons resident in Gibraltar

10E.—(1) A person—

(a) who is—

- (i) a United Kingdom national who has resident status in Gibraltar granted by the Government of Gibraltar;
- (ii) a family member of a United Kingdom national, where that family member has resident status in Gibraltar granted by the Government of Gibraltar;
- (iii) an EU national who has a right of residence in Gibraltar arising under the EU withdrawal agreement; or
- (iv) a family member of an EU national, where that family member has a right of residence in Gibraltar arising under the EU withdrawal agreement;

(b) who is undertaking the course in the United Kingdom;

(c) who, subject to sub-paragraph (2), has been ordinarily resident in the territory comprising the United Kingdom, 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) subject to sub-paragraph (3), whose ordinary residence in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories 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 a person who—

(a) is an EU national or a relevant person of Northern Ireland; and

(b) has been ordinarily resident in the territory comprising the United Kingdom, 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.

(3) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories in accordance with paragraph 2(2).]

Textual Amendments

- F109** Sch. paras. 10A-10E inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(11)**

[^{F114}EU nationals ordinarily resident in the United Kingdom and Islands]

11.—(1) A person who—

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- (a) is an EU national ^{F115}... 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 [^{F116}the United Kingdom,] 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.

Textual Amendments

- F114** Sch. para. 11 cross-heading inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(12)**
- F115** Words in Sch. para. 11(1)(a) omitted (31.12.2020) by virtue of [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(f)(i)**
- F116** Words in Sch. para. 11(1)(d) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(f)(ii)**

[^{F117}11A. A person with protected rights who—

- (a) is an EU 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 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 United Kingdom, the European Economic Area, Switzerland and the overseas territories immediately prior to the period of ordinary residence referred to in paragraph (c).]

Textual Amendments

- F117** Sch. para. 11A inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(13)**

Children of Swiss nationals

12.—[^{F118}(1)] 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;

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- (c) has been ordinarily resident in the territory comprising [^{F119}the United Kingdom,] 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 [^{F120}the United Kingdom, Gibraltar,] the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

[^{F121}(2) Any description of person who would have fallen within this paragraph immediately before IP completion day is to be treated as falling within this paragraph on and after IP completion day.]

Textual Amendments

- F118** Sch. para. 12 renumbered as Sch. para. 12(1) (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(g)(i)**
- F119** Words in Sch. para. 12(1)(c) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(g)(ii)**
- F120** Words in Sch. para. 12(1)(d) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(g)(iii)**
- F121** Sch. para. 12(2) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(g)(iv)**

[^{F122}**12A.** A person with protected rights who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss citizens' rights 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 United Kingdom, 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 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 United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).]

Textual Amendments

- F122** Sch. para. 12A inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(14)**

Children of Turkish Workers

13.—(1) A person who—

- (a) is the child of a Turkish worker;

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- (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 [^{F123}the United Kingdom,] 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.

Textual Amendments

F123 Words in Sch. para. 13(1)(c) inserted (31.12.2020) by [The Education \(Student Fees, Awards and Support\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1181\)](#), regs. 1(3), **30(3)(h)**

[^{F124}**13A.** A person who—

- (a) is the child of a Turkish worker (“T”), where T was ordinarily resident in the United Kingdom immediately before IP completion day;
- (b) immediately before IP completion day—
 - (i) was the child of T; and
 - (ii) was ordinarily resident in the United Kingdom;
- (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 territory comprising the United Kingdom, 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.]

Textual Amendments

F124 Sch. para. 13A inserted (1.3.2021) by [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2021 \(S.I. 2021/127\)](#), regs. 1(1), **61(15)**

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

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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) 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).

EXPLANATORY NOTE

(This note is not part of the Regulations)

^{M13}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.

^{M14}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;

^{M15}— “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.

Status: Point in time view as at 23/12/2021.

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

Status:

Point in time view as at 23/12/2021.

Changes to legislation:

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