

2019 No. 387

EXITING THE EUROPEAN UNION

EDUCATION, NORTHERN IRELAND

**The Education (Student Fees and Support) (Amendment)
(Northern Ireland) (EU Exit) Regulations 2019**

<i>Sift requirements satisfied</i>	<i>14th February 2019</i>
<i>Made - - - -</i>	<i>27th February 2019</i>
<i>Laid before Parliament</i>	<i>1st March 2019</i>
<i>Coming into force in accordance with regulation 1</i>	

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

Citation and commencement

1. These Regulations may be cited as the Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and come into force on exit day.

Amendment of the Education (Student Support) (No.2) Regulations (Northern Ireland) 2009

2. The Education (Student Support) (No.2) Regulations (Northern Ireland) 2009(b) are amended as follows.

Amendment of regulation 2

3. In regulation 2(1)(c) (interpretation), in the definition of “Erasmus year”—
- (a) after “year of a course”, insert “, whether or not that academic year began before exit day,”;
 - (b) after “where a student is”, insert “or was, immediately before exit day,”;
 - (c) in sub-paragraph (c)—

(a) 2018 c.16.
(b) S.R. 2009 No. 373, amended by S.R. 2010 No. 383, S.R. 2012 Nos. 62 and 398, S.R. 2013 Nos. 128 and 223, S.R. 2014 Nos. 97 and 309, S.R. 2016 No. 21, S.R. 2017 Nos. 7 and 43 and S.R. 2018 No. 35.
(c) The definition of “Erasmus year” was substituted by S.R. 2013/223 and subsequently amended by S.R. 2017/43.

- (i) in paragraph (ii)—
 - (aa) in sub-paragraph (aa), before “in respect of”, insert “subject to paragraph (iii),”;
 - (bb) in sub-paragraph (bb), after “30 weeks;”, insert “and”;
- (ii) after paragraph (ii), insert—
 - “(iii) in respect of an academic year beginning before 1st August 2019, any one or more periods of full-time study at the institution in the United Kingdom after exit day will not be counted for the purposes of paragraph (ii)(aa);”.

Amendment of regulation 5

- 4. In regulation 5(3)(h) for “another Member State”, substitute “a Member State”.

Amendment of regulation 18

- 5. In regulation 18(d) (events), after “EC national”, insert “or of a person who is eligible other than as a family member under paragraph 9 of Part 2 of Schedule 2 by virtue of paragraph 9(4) of that Schedule”.

Amendment of regulation 43

- 6. In regulation 43(1)(ge) (interpretation of chapter 4)—
 - (a) in paragraph (ii), for “another Member State”, substitute “a Member State”;
 - (b) for paragraph (iii), substitute—
 - “(iii) where the legislation of—
 - (aa) the United Kingdom and one or more Member States; or
 - (bb) more than one Member State

applies to the period, A’s total income from all sources as determined for the purposes of the income tax legislation under which the Department considers that A’s total income in that period is greatest,”.

Amendment of regulation 83

- 7. In regulation 83(2)(c) (students becoming eligible during the course of an academic year), after the first reference to “EC national”, insert “, or of a person who is eligible other than as a family member under paragraph 9 of Part 2 of Schedule 2 by virtue of paragraph 9(4) of that Schedule,”.

Amendment of regulation 106

- 8. In regulation 106(4)(d) (students becoming eligible during the course of the academic year), after “EC national”, insert “or of a person who is eligible other than as a family member under paragraph 9 of Part 2 of Schedule 2 by virtue of paragraph 9(4) of that Schedule”.

Amendment of regulation 123

- 9. In regulation 123(3)(d) (students becoming eligible during the course of the academic year), after “EC national”, insert “or of a person who is eligible other than as a family member under paragraph 9 of Part 2 of Schedule 2 by virtue of paragraph 9(4) of that Schedule”.

Amendment of regulation 151

10. In regulation 151(d) (events), after “EC national”, insert “or of a person who is eligible other than as a family member under paragraph 9 of Part 2 of Schedule 2 by virtue of paragraph 9(4) of that Schedule”.

Amendment of Schedule 2

11.—(1) Schedule 2 (eligible students) is amended as follows.

(2) In Part 1 (interpretation), paragraph 1—

(a) in sub-paragraph (1)—

(i) omit “other than the United Kingdom” each time it occurs;

(ii) in the definition of “Swiss frontier self-employed person”, omit “, other than the United Kingdom,”;

(b) in sub-paragraphs (4) and (5), after “the territory comprising”, insert “the United Kingdom, Gibraltar,” each time it occurs;

(c) in sub-paragraph (6), after “an area” insert, “other than the United Kingdom or Gibraltar”.

(3) In Part 2 (categories)—

(a) in the following paragraphs, after “the territory comprising”, insert “the United Kingdom, Gibraltar,”—

(i) paragraph 3(1)(d) (persons who are settled in the United Kingdom);

(ii) paragraph 6(1)(c) (workers, employed persons, self-employed persons and their family members);

(iii) paragraph 7(b) (workers, employed persons, self-employed persons and their family members);

(iv) paragraph 8(1)(d) and (e) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere);

(v) paragraph 9(1)(c) and (d) and (2) (EC nationals);

(b) in paragraph 9 (EC nationals), after sub-paragraph (3), insert—

“(4) Any description of person who would have been eligible under this paragraph immediately before exit day is to be eligible on and after exit day.”;

(c) in paragraph 10 (EC nationals)—

(i) in sub-paragraphs (1)(a) and (2), omit “other than a United Kingdom national”;

(ii) in sub-paragraph (1)(d), after “the territory comprising”, insert “the United Kingdom, Gibraltar,”;

(d) for paragraph 11 (children of Swiss nationals), substitute—

“**11.**—(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 Northern Ireland on the first day of the first academic year of the course;

(c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland 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 before the period of ordinary residence referred to in paragraph (c).

- (2) Any description of person who would have been eligible under this paragraph immediately before exit day is to be eligible on and after exit day.”;
- (e) in paragraph 12(c) (children of Turkish workers), after “the territory comprising”, insert “the United Kingdom, Gibraltar.”.

Amendment of Schedule 5

12.—(1) Schedule 5 (financial assessment) is amended as follows.

(2) In paragraph 1(1)(n) (definitions)—

- (a) in sub-paragraph (ii), for “another Member State”, substitute “a Member State”;
- (b) for sub-paragraph (iii), substitute—
- “(iii) where the legislation of—
- (aa) the United Kingdom and one or more Member States; or
- (bb) more than one Member State

applies to the period, A’s total income from all sources as determined for the purposes of the income tax legislation under which the Department considers that A’s total income in that period is greatest (except as otherwise provided in paragraph 5),”.

(3) In paragraph 2(1)(g) (independent eligible student), after “residing outside”, insert “the United Kingdom, Gibraltar and”.

(4) In the following paragraphs, for “another Member State”, substitute “a Member State”—

- (a) paragraph 4(1)(b) (calculation of eligible student’s residual income);
- (b) paragraph 5 (calculation of parent’s residual income)—
- (i) sub-paragraph (2)(a);
- (ii) sub-paragraph (6) each time it occurs;
- (iii) sub-paragraph (7).

Amendment of the Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007

13.—(1) The Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007(a) are amended as follows.

(2) In the Schedule(b)—

- (a) in paragraph 1(1)(c)—
- (i) omit “other than the United Kingdom” each time it occurs;
- (ii) in the definition of “overseas territories”, after “French Southern and Antarctic Territories;”, insert “Gibraltar.”;
- (b) in paragraph 1(3)(d)—
- (i) for “the territory comprising the European Economic Area and Switzerland”, substitute “the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland”;
- (ii) for “the territory comprising the European Economic Area, Switzerland and the overseas territories”, substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland and the overseas territories”;

(a) S.R. 2007 No. 328 as amended by S.R. 2007 No. 375, S.R. 2011 Nos. 70 and 376 and S.R. 2013 No. 37.

(b) The Schedule was amended by S.R. 2007/375, S.R. 2011 Nos. 70 and 376 and S.R. 2013/37.

(c) Paragraph 1(1) was amended by S.R. 2011/70, S.R. 2011/376 and S.R. 2013/37.

(d) Paragraph 1(3) was amended by S.R. 2007/375.

- (iii) for “the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories”, substitute “the territory comprising the United Kingdom, the European Economic Area, Switzerland, Turkey and the overseas territories”;
- (c) in paragraph 1(4)(b) and (c), after “the territory comprising”, insert “the United Kingdom, Gibraltar,”;
- (d) in paragraph 1(5), after “an area”, insert “other than the United Kingdom or Gibraltar”;
- (e) in the following paragraphs, after “the territory comprising”, insert “the United Kingdom,”
 - (i) paragraph 3(d)(a) (persons who are settled in the United Kingdom);
 - (ii) paragraph 6(1)(c)(b) (workers, employed persons, self-employed persons and their family members);
 - (iii) paragraph 7(b)(c) (workers, employed persons, self-employed persons and their family members);
- (f) in paragraph 8 (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere)—
 - (i) in sub-paragraph (1)(d)(d) after “the territory comprising”, insert “the United Kingdom,”;
 - (ii) in sub-paragraph (1)(e), after “the territory comprising”, insert “the United Kingdom, Gibraltar,”;
- (g) in paragraph 9(e) (EC nationals)—
 - (i) in sub-paragraph (1)—
 - (aa) in paragraph (a)(i)(f), omit “other than a United Kingdom national”;
 - (bb) in paragraph (c)(g), after “the territory comprising”, insert “the United Kingdom,”;
 - (ii) in sub-paragraph (1A)(h) —
 - (aa) omit “other than a United Kingdom national”;
 - (bb) after “the territory comprising”, insert “the United Kingdom,”;
 - (iii) after sub-paragraph (2), insert—

“(3) Any description of person who would have fallen within this paragraph immediately before exit day is to be treated as falling within this paragraph on and after exit day.”;
- (h) in paragraph 9A(i) (EC nationals)—
 - (i) in sub-paragraphs (1)(a) and (2) omit “other than a United Kingdom national”;
 - (ii) in sub-paragraph (1)(d), after “the territory comprising”, insert “the United Kingdom,”;
- (i) for paragraph 10(j) (children of Swiss nationals), substitute—

“**10.**—(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;

(a) Paragraph 3(d) was amended by S.R. 2007/375.
 (b) Paragraph 6 was substituted by S.R. 2007/375.
 (c) Paragraph 7(b) was amended by S.R. 2007/375.
 (d) Paragraph 8(d) was amended by S.R. 2007/375.
 (e) Paragraph 9 was amended by S.R. 2007/375, S.R. 2011/376 and S.R. 2013/37.
 (f) Paragraph 9(1)(a)(i) was amended by S.R. 2011/376.
 (g) Paragraph 9(1)(c) was substituted by S.R. 2007/375.
 (h) Paragraph 9(1A) was added by S.R. 2013/37.
 (i) Paragraph 9A was added by S.R. 2007/375.
 (j) Paragraph 10(c) was amended by S.R. 2007/375.

- (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 his 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 before the period of ordinary residence referred to in paragraph (c).

(2) Any description of person who would have fallen within this paragraph immediately before exit day is to be treated as falling within this paragraph on and after exit day.”;

- (j) in paragraph 11(c)(a) (children of Turkish workers), after “the territory comprising”, insert “the United Kingdom,”.

Amendment of the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012

14.—(1) The Schedule to the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012(b) is amended as follows.

(2) In Part 1 (interpretation)—

- (a) in paragraph 1—
 - (i) in sub-paragraph (1), omit “other than the United Kingdom” each time it occurs;
 - (ii) in sub-paragraphs (3) and (4), after “the territory comprising”, insert “the United Kingdom, Gibraltar,” each time it occurs;
 - (iii) in sub-paragraph (5), after “an area”, insert “other than the United Kingdom or Gibraltar”.

(3) In Part 2 (categories)—

- (a) in paragraph 5(b) (workers, employed persons, self-employed persons and their family members), after “the territory comprising”, insert “the United Kingdom, Gibraltar,”;
- (b) in paragraph 6 (EU nationals)—
 - (i) the existing provisions become sub-paragraph (1);
 - (ii) in sub-paragraph (1)(c), after “the territory comprising”, insert “the United Kingdom, Gibraltar,”;
 - (iii) after sub-paragraph (1), insert—

“(2) Any description of person who would have been eligible under this paragraph immediately before exit day is to continue to be eligible on and after exit day.”;

- (c) for paragraph 7 (children of Swiss nationals), substitute—

“7.—(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 designated further education course;

(a) Paragraph 11(c) was amended by S.R. 2007/375.

(b) S.R. 2012 No. 306.

- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the three-year period preceding the first day of the designated further education course; and
 - (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).
- (2) Any description of person who would have been eligible under this paragraph immediately before exit day is to continue to be eligible on and after exit day.”;
- (d) in paragraph 8(b) (children of Turkish workers), after the “territory comprising”, insert “the United Kingdom, Gibraltar,”.

27th February 2019

Chris Skidmore
Minister of State
Department for Education

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Education (Student Support) (No.2) Regulations (Northern Ireland) 2009 (S.R. 2009/373) (“the Student Support Regulations”), the Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007 (S.R. 2007/328), and the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012 (S.R. 2012/306).

The principal amendments which these Regulations make to the Student Support Regulations are as follows.

Regulation 3 amends the definition of “Erasmus year” in regulation 2(1) of the Student Support Regulations so that access to current levels of support is preserved for students on an Erasmus year, in order to ensure that they are not disadvantaged in student support terms by reason of having made plans to undertake an Erasmus year during the academic year in which exit occurs. These amendments also provide that, in respect of the 2018/2019 academic year, periods spent studying at the relevant institution in the United Kingdom after exit day will not count towards the time limit imposed by sub-paragraph (c)(ii)(aa) of the Erasmus year definition.

Regulation 4 amends a reference to “Member State” to reflect the withdrawal of the United Kingdom from the European Union.

Regulations 5, 7, 8, 9 and 10 are consequential on regulation 11(3)(b) and amend regulations 18, 83, 106, 123 and 151 of the Student Support Regulations. Regulations 18, 83, 106, 123 and 151 stipulate that a student who becomes a family member of an EU national during the course of an academic year may qualify for support in respect of that academic year. The amendments made by regulations 5, 7, 8, 9 and 10 extend this position to a student who becomes a family member of a person who is eligible by virtue of the new provision in paragraph 9(4) of Part 2 of Schedule 2. This does not apply if the person in respect of whom the student is a family member is themselves only eligible as a family member.

Regulations 6 and 12 amend references to “Member State” in provisions relating to the calculation of students’ income, to ensure that these references continue to operate effectively following the withdrawal of the United Kingdom from the European Union.

Regulation 11 amends definitions and references relating to the European Economic Area and the European Union which are used in Schedule 2 to the Student Support Regulations, to ensure that these definitions and references continue to operate effectively following the withdrawal of the United Kingdom from the European Union.

Regulation 11(3)(b) amends paragraph 9 of Part 2 of Schedule 2, which confers eligibility on EU nationals and their family members. This regulation adds a new sub-paragraph (4) to paragraph 9, which provides that any description of person who would have been eligible under that paragraph immediately before exit day is to be eligible on and after exit day.

Regulation 11(3)(d) makes similar provision in relation to children of Swiss nationals who may no longer fall within paragraph 11 of Part 2 of Schedule 2.

Regulation 13 makes equivalent amendments to the Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007.

Regulation 14 makes equivalent amendments to the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012.

An impact assessment has not been produced for this instrument as it has no impact, or no significant impact, on the costs of business, charities or the voluntary sector.

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