

## SCHEDULES

### SCHEDULE 2

Regulation 9(1)(a)

#### Categories of eligible student

##### **Category 1 – Persons settled in the United Kingdom**

1.—(1) A person—

(a) who on the first day of the first academic year of the course—

[<sup>F1</sup>(i) is settled in the United Kingdom and does not fall within sub-paragraph (2), and]

(ii) is ordinarily resident in Wales,

(b) 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

(c) whose residence in the United Kingdom and Islands has not, during any part of the period referred to in paragraph (b), been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 9(2)).

(2) A person who—

[<sup>F2</sup>(a) meets one of the following conditions—

(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 a relevant person for the purposes of regulation 3 of the 2020 Citizens' Rights Regulations, 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 grace period,

(iv) the person—

(aa) is within the personal scope of the citizens' rights provisions,

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- (bb) is an applicant for the purposes of regulation 4 of the 2020 Citizens' Rights Regulations, 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, or
  - (v) 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 Wales 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 person's ordinary residence referred to in sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising [<sup>F3</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland immediately before the period of ordinary residence referred to in sub-paragraph (c).
- [<sup>F4</sup>(3) A person—
- (a) who is settled in the United Kingdom on the first day of the first academic year of the course and does not fall within sub-paragraph (2),
  - (b) who is undertaking a designated course in Wales,
  - (c) who has been ordinarily resident in the territory comprising the United Kingdom, 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) whose ordinary residence in the territory comprising the United Kingdom, 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 (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).
- (4) For the purposes of sub-paragraph (2)(a)(ii)(cc), “eligibility requirements for indefinite leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigrations rules” means the eligibility requirements for such leave in accordance with paragraph EU11 of Appendix EU to the immigration rules.]

#### Textual Amendments

- F1** Sch. 2 para. 1(1)(a)(i) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **129(a)**
- F2** Sch. 2 para. 1(2)(a) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **129(b)**
- F3** Words in Sch. 2 para. 1(2)(d) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(2)(b)**
- F4** Sch. 2 para. 1(3)(4) inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **129(c)**

## **Category 2 – Refugees and their family members**

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

## **[<sup>F5</sup>Category 2ZA - Protected persons and their family members**

- 2ZA.—(1) A person—
- (a) granted leave to enter or remain as a protected person,
  - (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted such leave, and
  - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course.
- (2) A person who—
- (a) is a protected spouse or civil partner,
  - (b) on the leave application date, was the spouse or civil partner of a person granted leave to enter or remain as a protected person (by virtue of humanitarian protection under paragraph 339C of the immigration rules or as a stateless person under the immigration rules),
  - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted leave to enter or remain in the United Kingdom, and
  - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (3) A person who—
- (a) is a protected child,
  - (b) on the leave application date was—
    - (i) under 18 years old, and

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- (ii) was the child of a person granted leave to enter or remain as a protected person, or, as the case may be, the child of a person who was the spouse or civil partner of the person granted leave to enter or remain as a protected person on that date (by virtue of humanitarian protection under paragraph 339C of the immigration rules, stateless leave under the immigration rules or section 67 of the Immigration Act 2016 and the immigration rules, as the case may be),
  - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so since being granted leave to enter or remain in the United Kingdom, and
  - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (4) In this paragraph—
- (a) “leave application date” means the date on which a person (“P”) made an application for leave to enter or remain in the United Kingdom that results in P becoming a person granted leave to enter or remain as a protected person,
  - (b) “leave to enter or remain as a protected person” means—
    - (i) a person granted humanitarian protection,
    - (ii) a person granted stateless leave,
    - (iii) a person with section 67 leave to remain, or
    - (iv) a person with Calais leave,
  - (c) “person granted humanitarian protection” means a person with extant leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules,
  - (d) “person granted stateless leave” means a person with extant leave to remain on the grounds of stateless leave under the immigration rules,
  - (e) “person with Calais leave” means a person with extant leave to remain under paragraphs 352J, 352K, 352L or 352T of the immigration rules (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave),
  - (f) “person with section 67 leave to remain” means a person with extant leave to remain under section 67 of the Immigration Act 2016 and in accordance with the immigration rules,
  - (g) “protected child” means—
    - (i) a child of—
      - (aa) a person granted humanitarian protection,
      - (ab) a person granted stateless leave, or
      - (ac) a person with section 67 leave to remain, or
    - (ii) a child of the spouse or civil partner of—
      - (aa) a person granted humanitarian protection, or
      - (ab) a person granted stateless leave,
  - (h) “protected spouse or civil partner” means a spouse or civil partner of—
    - (i) a person granted humanitarian protection, or
    - (ii) a person granted stateless leave.]

#### Textual Amendments

- F5** Sch. 2 para. 2ZA substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **130**

#### [<sup>F6</sup>Category 2ZB - Persons granted leave to remain as a protected partner and their children

##### 2ZB.—(1) A person—

- (a) granted leave to remain as a protected partner,
- (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted such leave, and
- (c) who is ordinarily resident in Wales on the first day of the first academic year of the course.

##### (2) A person who—

- (a) is the child of a person granted leave to remain as a protected partner,
- (b) on the leave application date was under 18 years old and was the child of a person granted leave to remain as a protected partner,
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being granted leave to remain in the United Kingdom, and
- (d) is ordinarily resident in Wales on the first day of the first academic year of the course.

##### (3) In this paragraph—

- (a) “leave application date” means the date on which a person (“P”) made an application for leave to enter or remain in the United Kingdom that results in P becoming a person granted leave to remain as a protected partner,
- (b) “person granted leave to remain as a protected partner” means a person granted leave to remain in the United Kingdom as either a victim of domestic violence or domestic abuse or as a bereaved partner under any of the following provisions of the immigration rules—
  - (i) paragraphs 289B and 289D (victims of domestic violence),
  - (ii) paragraphs D-DVILR.1.1. and D-DVILR.1.2. of Appendix FM (victims of domestic abuse),
  - (iii) paragraphs 40 and 41 of Appendix Armed Forces (victims of domestic violence who are partners of members of the armed forces),
  - (iv) paragraph 288, as a person in relation to whom the requirements in paragraph 287(b) of those rules are met (bereaved spouses or civil partners),
  - (v) paragraphs D-BPILR.1.1. and D-BPILR.1.2. of Appendix FM (bereaved partners),
  - (vi) paragraphs 36 and 37 of Appendix Armed Forces (bereaved partners), or
  - (vii) paragraph 295N, as a person in relation to whom the requirements in paragraph 295M of those rules are met (bereaved unmarried or same sex partners).]

#### Textual Amendments

- F6** Sch. 2 para. 2ZB inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **131**

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*Changes to legislation: There are currently no known outstanding effects for the The Education (Student Support) (Wales) Regulations 2018, SCHEDULE 2. (See end of Document for details)*

**Category 2A - Persons granted stateless leave and their family members**

**F7 2A.** .....

**Textual Amendments**  
**F7** Sch. 2 para. 2A omitted (with application in accordance with reg. 2 of the amending S.I.) by virtue of The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), 132

**Category 3 – Persons with leave to enter or remain and their family members**

- 3.—(1) A person—
  - (a) with leave to enter or remain,
  - (b) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (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.
- (2) A person—
  - (a) who is the spouse or civil partner of a person with leave to enter or remain,
  - [<sup>F8</sup>(b) who was the spouse or civil partner of the person with leave to enter or remain on the leave application date,]
  - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (d) 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.
- (3) A person—
  - (a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain,
  - [<sup>F9</sup>(b) who, on the leave application date, was under 18 years old and was the child of the person with leave to enter or remain or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date,]
  - (c) who is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (d) 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.
- (4) In this paragraph, a “person with leave to enter or remain” means a person (“P”)—
  - [<sup>F10</sup>(a) who has—
    - (i) applied for refugee status but has, as a result of that application, been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is considered not to qualify for recognition as a refugee it is thought right to allow P to enter or remain in the United Kingdom on the grounds of <sup>F11</sup>... discretionary leave, and who has been granted leave to enter or remain accordingly,
    - (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is

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- thought right to allow P to enter or remain in the United Kingdom on the grounds of discretionary leave, and who has been granted leave to enter or remain accordingly,
- [<sup>F12</sup>(ia) been granted leave to remain on the grounds of family life under the immigration rules;]
- (iii) been granted leave to remain on the grounds of private life under the immigration rules,
- (iv) been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is not considered to qualify for leave to remain on the grounds of private [<sup>F13</sup>or family] life under the immigration rules, P has been granted leave to remain outside the rules on the grounds of Article 8 of the European Convention on Human Rights,]
- (c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002), and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since P was granted leave to enter or remain.

[<sup>F14</sup>(5) In this paragraph, “leave application date” means the date on which the person with leave to enter or remain made the application that led to that person being granted leave to enter or remain in the United Kingdom.]

#### Textual Amendments

- F8** Sch. 2 para. 3(2)(b) substituted (30.7.2018) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/814\)](#), regs. 1(2), **16(b)(i)**
- F9** Sch. 2 para. 3(3)(b) substituted (30.7.2018) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/814\)](#), regs. 1(2), **16(b)(ii)**
- F10** Sch. 2 para. 3(4)(a) substituted for Sch. 2 para. 3(4)(a)(b) (30.7.2018) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/814\)](#), regs. 1(2), **16(b)(iii)**
- F11** Words in Sch. 2 para. 3(4)(a)(i) omitted (28.1.2021) by virtue of [The Education \(Student Fees, Awards and Support\) \(Ordinary Residence\) \(Wales\) Regulations 2021 \(S.I. 2021/9\)](#), regs. 1(2), **47**
- F12** Sch. 2 para. 3(4)(ia) inserted (9.9.2019) by [The Education \(Student Finance\) \(Amendments to Student Eligibility\) \(Wales\) Regulations 2019 \(S.I. 2019/1192\)](#), regs. 1(2), **7(2)(a)**
- F13** Words in Sch. 2 para. 3(4)(a)(iv) inserted (9.9.2019) by [The Education \(Student Finance\) \(Amendments to Student Eligibility\) \(Wales\) Regulations 2019 \(S.I. 2019/1192\)](#), regs. 1(2), **7(2)(b)**
- F14** Sch. 2 para. 3(5) inserted (30.7.2018) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/814\)](#), regs. 1(2), **16(b)(iv)**

#### Category 3A – Persons with section 67 leave to remain

<sup>F15</sup>**3A.** . . . . .

#### Textual Amendments

- F15** Sch. 2 para. 3A omitted (with application in accordance with reg. 2 of the amending S.I.) by virtue of [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2021 \(S.I. 2021/481\)](#), regs. 1(2), **132**

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**Category 4 – Workers, employed persons, self-employed persons and their family members**  
**[<sup>F16</sup>— courses beginning before 1 August 2021]**

- 4.—(1) A person who—
- (a) is one of the following—
    - (i) an EEA migrant worker or an EEA self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
    - (ii) a Swiss employed person or a Swiss self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
    - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii), who is ordinarily resident in Wales on the first day of the first academic year of the course;
    - (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;
    - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v), and
  - (b) has been ordinarily resident in the territory comprising [<sup>F17</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (b) has been ordinarily resident in the territory comprising [<sup>F18</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland 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 on freedom of movement for workers within the Union [<sup>F19</sup>(“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,]
- [<sup>F20</sup>(d) for the purposes of paragraph (c), in Article 10 of the Workers Regulation the reference to “another Member State” is to be read as including the United Kingdom and the references to “that State” construed accordingly.]
- [<sup>F21</sup>(2A) Any description of person who would have been eligible under sub-paragraph (2) immediately before [<sup>F22</sup>IP] completion day is to be eligible on and after [<sup>F22</sup>IP] completion day.]
- (3) In sub-paragraph (1) [<sup>F23</sup>and sub-paragraph (1) of paragraph 4A]—
- “EEA frontier self-employed person” (“*person hunangyflogedig trawsffiniol AEE*”) means an EEA national who—
- (a) is a self-employed person in Wales, and
  - (b) resides in Switzerland or the territory of an EEA State <sup>F24</sup>... and returns to the national's residence in Switzerland or that EEA State, as the case may be, at least once a week;
- “EEA frontier worker” (“*gweithiwr trawsffiniol AEE*”) means an EEA national who—
- (a) is a worker in Wales, and
  - (b) resides in Switzerland or the territory of an EEA State <sup>F25</sup>... and returns to the national's residence in Switzerland or that EEA State, as the case may be, at least once a week;
- “EEA migrant worker” (“*gweithiwr mudol AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;



“EEA self-employed person” (“*person hunangyflogedig AEE*”) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“family member” (“*aelod o deulu*”) means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person [<sup>F26</sup>, 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 4A(4)]—
  - (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 under the age of 21 or who are 21 or over and are dependants of the person or the person's spouse or civil partner, or
  - (iii) dependent direct relatives in the ascending line of the person or that of the person's spouse or civil partner;
- (b) in relation to a Swiss frontier employed person, a Swiss 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;

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

“Swiss frontier employed person” (“*person cyflogedig trawsffiniol Swisaidd*”) means a Swiss national who—

- (a) is an employed person in Wales, and
- (b) resides in Switzerland or in the territory of an EEA State <sup>F25</sup>... and returns to the national's residence in Switzerland or that EEA State, as the case may be, at least once a week;

“Swiss frontier self-employed person” (“*person hunangyflogedig trawsffiniol Swisaidd*”) means a Swiss national who—

- (a) is a self-employed person in Wales, and
- (b) resides in Switzerland or in the territory of an EEA State, <sup>F24</sup>... and returns to the national's residence in Switzerland or that EEA State, as the case may be, at least once a week;

“Swiss self-employed person” (“*person hunangyflogedig Swisaidd*”) means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom.

- (4) For the purposes of sub-paragraph (3)—

“EEA national” (“*gwladolyn AEE*”) means a national of an EEA State <sup>F25</sup>...;

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

“self-employed person” (“*person hunangyflogedig*”) 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;

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

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### Textual Amendments

- F16** Words in Sch. 2 para. 4 heading inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **133(a)**
- F17** Words in Sch. 2 para. 4(1)(b) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(3)(a)**
- F18** Words in Sch. 2 para. 4(2)(b) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(3)(a)**
- F19** Words in Sch. 2 para. 4(2)(c) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **133(b)(i)**
- F20** Sch. 2 para. 4(2)(d) inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **133(b)(ii)**
- F21** Sch. 2 para. 4(2A) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(3)(b)**
- F22** Word in Sch. 2 para. 4(2A) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **133(c)**
- F23** Words in Sch. 2 para. 4(3) inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **133(d)(i)**
- F24** Words in Sch. 2 para. 4(3) omitted (31.12.2020) by virtue of The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(3)(c)**
- F25** Words in Sch. 2 para. 4(4) omitted (31.12.2020) by virtue of The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(3)(c)**
- F26** Words in Sch. 2 para. 4(3) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **133(d)(ii)**

### [<sup>F27</sup>Category 4A - Workers, employed persons, self-employed persons and their family members with protected rights

**4A.**—(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 one of the following—
- (i) an EEA migrant worker or an EEA self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (ii) a Swiss employed person or a Swiss self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii), who is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (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), and
- (b) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

- (2) A person with protected rights who—
- (a) is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (b) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland 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 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.
- (3) For the purposes of sub-paragraph (2)(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.
- (4) 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

**F27** [Sch. 2 para. 4A](#) inserted (with application in accordance with reg. 2 of the amending S.I.) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2021 \(S.I. 2021/481\)](#), regs. 1(2), **134**

### Category 5 – Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere [<sup>F28</sup>— courses beginning before 1 August 2021]

- 5.—(1) A person who—
- (a) is settled in the United Kingdom,
  - (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence [<sup>F29</sup>before [<sup>F30</sup>IP] completion day],
  - (c) is ordinarily resident in the United Kingdom on the day on which the course begins,
  - (d) has been ordinarily resident in the territory comprising [<sup>F31</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
  - (e) in a case where the person's ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full time education, was ordinarily resident in the territory comprising [<sup>F32</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).
- (2) For the purposes of this paragraph, a person has exercised a right of residence if sub-paragraph (3) or (4) applies to the person.
- (3) This sub-paragraph applies to a person who is—
- (a) a United Kingdom national,

**Status:** Point in time view as at 25/04/2021.

**Changes to legislation:** There are currently no known outstanding effects for the The Education (Student Support) (Wales) Regulations 2018, SCHEDULE 2. (See end of Document for details)

- (b) 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
- (c) a person who [<sup>F33</sup>had the right] of permanent residence,
- who 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.
- (4) This paragraph applies to a person (“P”)—
- (a) who is settled in the United Kingdom and [<sup>F34</sup>had the right] of permanent residence, and
- (b) who [<sup>F35</sup>has gone] to the state within the territory comprising the EEA and Switzerland of which P is a national or of which the person in relation to whom P is a family member is a national.

<sup>F36</sup>(5) .....

[<sup>F37</sup>(6) For the purposes of this paragraph, 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

- F28** Words in Sch. 2 para. 5 heading inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **135(a)**
- F29** Words in Sch. 2 para. 5(1)(b) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(4)(a)**
- F30** Word in Sch. 2 para. 5(1)(b) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **135(b)**
- F31** Words in Sch. 2 para. 5(1)(d) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(4)(b)**
- F32** Words in Sch. 2 para. 5(1)(e) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(4)(b)**
- F33** Words in Sch. 2 para. 5(3)(c) substituted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(4)(c)**
- F34** Words in Sch. 2 para. 5(4)(a) substituted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(4)(d)(i)**
- F35** Words in Sch. 2 para. 5(4)(b) substituted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(4)(d)(ii)**
- F36** Sch. 2 para. 5(5) omitted (with application in accordance with reg. 2 of the amending S.I.) by virtue of The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **135(c)**
- F37** Sch. 2 para. 5(6) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(4)(e)**

#### [<sup>F38</sup>Category 5A - Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

- 5A.—(1) A person who—
- (a) is settled in United Kingdom,

**Status:** Point in time view as at 25/04/2021.

**Changes to legislation:** There are currently no known outstanding effects for the The Education (Student Support) (Wales) Regulations 2018, SCHEDULE 2. (See end of Document for details)

- (b) was ordinarily resident in Wales 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 Gibraltar, the EEA and Switzerland, or
    - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising Gibraltar, the EEA and Switzerland,and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland 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 course begins,
  - (e) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland 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 purpose of receiving full-time education, was ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA 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 sub-paragraph (3) or (4) applies to the person.
- (3) This sub-paragraph applies to a person who is—
- (a) a United Kingdom national,
  - (b) 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
  - (c) a person who had the right of permanent residence, who 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.
- (4) This sub-paragraph applies to a person (“P”) who—
- (a) is settled in the United Kingdom and had the right of permanent residence, and
  - (b) has gone to the state within the territory comprising the EEA and Switzerland of which P is a national or of which the person in relation to whom P is a family member is a national.
- (5) For the purposes of this paragraph, 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

**F38** Sch. 2 para. 5A inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), 136

#### Category 6 – EU nationals [<sup>F39</sup>— courses beginning before 1 August 2021]

6.—(1) A person—

[<sup>F40</sup>(a) who, on the first day of the first academic year of the course, is—

Status: Point in time view as at 25/04/2021.

Changes to legislation: There are currently no known outstanding effects for the The Education (Student Support) (Wales) Regulations 2018, SCHEDULE 2. (See end of Document for details)

- (i) an EU national,
- (ii) a United Kingdom national who has exercised a right of residence, or
- (iii) the family member of a person in sub-paragraph (i) or (ii),]
- (b) who is undertaking a designated course in Wales,
- (c) who has been ordinarily resident in the territory comprising [<sup>F41</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) whose ordinary residence in the territory comprising [<sup>F42</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).

[<sup>F43</sup>(1A) Any description of person who would have been eligible under sub-paragraph (1) immediately before [<sup>F44</sup>IP] completion day is to be eligible on and after [<sup>F44</sup>IP] completion day.]

(2) A person who—

- (a) is an EU national <sup>F45</sup>...on the first day of the first academic year of the course,
- (b) is ordinarily resident in Wales 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 [<sup>F46</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(3) 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 sub-paragraph (1)(a) or (2) (a) is treated as being satisfied.

[<sup>F47</sup>(4) For the purpose of sub-paragraph (1)(a), a United Kingdom national has exercised a right of residence if that person has resided in Gibraltar or 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.]

<sup>F48</sup>(5) .....

**Textual Amendments**

- F39** Words in Sch. 2 para. 6 heading inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **137(a)**
- F40** Sch. 2 para. 6(1)(a) substituted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(5)(a)**
- F41** Words in Sch. 2 para. 6(1)(c) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(5)(b)**
- F42** Words in Sch. 2 para. 6(1)(d) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(5)(b)**
- F43** Sch. 2 para. 6(1A) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(5)(c)**

- F44** Word in Sch. 2 para. 6(1A) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **137(b)**
- F45** Words in Sch. 2 para. 6(2)(a) omitted (31.12.2020) by virtue of The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(5)(d)**
- F46** Words in Sch. 2 para. 6(2)(d) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(5)(e)**
- F47** Sch. 2 para. 6(4) substituted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(5)(f)**
- F48** Sch. 2 para. 6(5) omitted (with application in accordance with reg. 2 of the amending S.I.) by virtue of The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **137(c)**

#### [<sup>F49</sup>Category 6A - EU nationals etc. with protected rights

**6A.—(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 a designated course in Wales,

(c) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and

(d) whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).

(2) 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 Wales 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, Gibraltar, the EEA and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).

#### Textual Amendments

- F49** Sch. 2 paras. 6A-6D inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **138**

#### Category 6B - United Kingdom nationals

**6B.—(1)** A person—

**Status:** Point in time view as at 25/04/2021.

**Changes to legislation:** There are currently no known outstanding effects for the The Education (Student Support) (Wales) Regulations 2018, SCHEDULE 2. (See end of Document for details)

- (a) who is—
- (i) a United Kingdom national 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),
- (b) who was ordinarily resident immediately before IP completion day—
- (i) in the territory comprising the EEA and Switzerland, or
  - (ii) in the United Kingdom, where that ordinary residence began after 31 December 2017 immediately following a period of ordinary residence in the territory comprising the EEA and Switzerland,
- and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland 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 a designated course in Wales,
- (d) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (e) whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland 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 (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).

(2) 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).

#### Textual Amendments

**F49** Sch. 2 paras. 6A-6D inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **138**

### Category 6C – Family members of United Kingdom nationals

#### 6C. A person—

- (a) who is a family member of a person who is a United Kingdom national on the first day of the first academic year of the course,
- (b) who is undertaking a designated course in Wales,
- (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) whose ordinary residence in the United Kingdom and Islands has not during any part of the period referred to in sub-paragraph (c) been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).

#### Textual Amendments

**F49** Sch. 2 paras. 6A-6D inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **138**



## Category 6D - Persons resident in Gibraltar

### 6D. 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 a designated course in Wales,
- (c) who has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and
- (d) whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland has not during any part of the period referred to in sub-paragraph (c) been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).]

#### Textual Amendments

**F49** Sch. 2 paras. 6A-6D inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **138**

## [<sup>F50</sup>Category 7 – Children of Swiss nationals [<sup>F51</sup>— courses beginning before 1 August 2021]

### 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 Wales 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 EEA 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 EEA 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 [<sup>F52</sup>IP] completion day is to be eligible on and after [<sup>F52</sup>IP] completion day.]

#### Textual Amendments

**F50** Sch. 2 para. 7 substituted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(6)**

**Status:** Point in time view as at 25/04/2021.

**Changes to legislation:** There are currently no known outstanding effects for the The Education (Student Support) (Wales) Regulations 2018, SCHEDULE 2. (See end of Document for details)

- F51** Words in Sch. 2 para. 7 heading inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **139(a)**
- F52** Word in Sch. 2 para. 7(2) substituted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **139(b)**

### **[<sup>F53</sup>Category 7A - Children of Swiss nationals within scope of the Swiss citizens' rights agreement**

**7A.** 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 Wales 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 EEA 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 sub-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 EEA and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).]

#### **Textual Amendments**

- F53** Sch. 2 para. 7A inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **140**

### **Category 8 – Children of Turkish workers [<sup>F54</sup>— courses beginning before 1 August 2021]**

**8.—(1)** A person who—

- (a) is the child of a Turkish worker,
  - (b) is ordinarily resident in Wales on the first day of the first academic year of the course, and
  - (c) has been ordinarily resident in the territory comprising [<sup>F55</sup>the United Kingdom, Gibraltar,] the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.
- (2) In this paragraph, “Turkish worker” means a Turkish national who—
- (a) is ordinarily resident in the United Kingdom and Islands, and
  - (b) is, or has been, lawfully employed in the United Kingdom.

#### **Textual Amendments**

- F54** Words in Sch. 2 para. 8 heading inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **141**
- F55** Words in Sch. 2 para. 8(1)(c) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(7)**

[<sup>F56</sup>Category 8A - Children of Turkish workers

**8A.**—(1) 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 Wales 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, Gibraltar, the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.
- (2) In this paragraph, “Turkish worker” means a Turkish national who—
- (a) is ordinarily resident in the United Kingdom and Islands, and
  - (b) is, or has been, lawfully employed in the United Kingdom.]

**Textual Amendments**

**F56** Sch. 2 para. 8A inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), 42

**Ordinary residence – additional provision**

**9.**—(1) For the purposes of this Schedule, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the present course, or
- (b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the present course,

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

(2) For the purposes of this Schedule, a person (“P”) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands [<sup>F57</sup>, the territory comprising the United Kingdom, Islands and the Republic of Ireland] or in the territory comprising [<sup>F58</sup>the United Kingdom, Gibraltar,] the EEA, Switzerland and Turkey if P would have been so resident but for the fact that—

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

is or was temporarily employed outside Wales, the United Kingdom and Islands [<sup>F57</sup>, the territory comprising the United Kingdom, Islands and the Republic of Ireland] or the territory comprising [<sup>F58</sup>the United Kingdom, Gibraltar,] the EEA, Switzerland and Turkey.

(3) For the purposes of sub-paragraph (2), temporary employment outside Wales, the United Kingdom and Islands [<sup>F59</sup>, the territory comprising the United Kingdom, Islands and the Republic of

**Status:** Point in time view as at 25/04/2021.

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Ireland] or the territory comprising [<sup>F58</sup>the United Kingdom, Gibraltar,] the EEA, Switzerland and Turkey includes—

- (a) in the case of members of the armed forces, any period which they serve outside the United Kingdom as members of such forces;
- [<sup>F60</sup>(aa) in the case of members of the regular armed forces of the Republic of Ireland, any period which they serve outside the territory comprising the United Kingdom, Islands and the Republic of Ireland as members of such forces;]
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside the territory comprising [<sup>F58</sup>the United Kingdom, Gibraltar,] the EEA and Switzerland as members of such forces;
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising [<sup>F58</sup>the United Kingdom, Gibraltar,] the EEA, Switzerland and Turkey as members of such forces.

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

(5) For the purposes of this Schedule, an area [<sup>F61</sup>other than the United Kingdom or Gibraltar] which—

- (a) was previously not part of the EU or the EEA, but
- (b) at any time before or after these Regulations come into force becomes part of one or other or both of these territories,

is to be considered to have always been a part of the EEA.

#### Textual Amendments

- F57** Words in Sch. 2 para. 9(2) inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **143(a)**
- F58** Words in Sch. 2 para. 9 inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(8)(a)**
- F59** Words in Sch. 2 para. 9(3) inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **143(b)(i)**
- F60** Sch. 2 para. 9(3)(aa) inserted (with application in accordance with reg. 2 of the amending S.I.) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/481), regs. 1(2), **143(b)(ii)**
- F61** Words in Sch. 2 para. 9(5) inserted (31.12.2020) by The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1302), regs. 1(3), **31(8)(b)**

#### Further provision on ordinary residence: care leavers

**10.**—(1) A care leaver is treated as being ordinarily resident in Wales on the first day of the first academic year of the present course even if, on that day, the care leaver—

- (a) is looked after outside Wales (in a case where regulation 49(c)(i) applies to the student), or
- (b) is residing outside Wales under a special guardianship order (in a case where regulation 49(c)(ii) applies to the student),

under arrangements made by a Welsh local authority.

(2) In paragraph (1)—

“care leaver” (“*person sy'n ymadael â gofal*”) has the meaning given in regulation 49;  
“looked after” (“*derbyn gofal*”) has the meaning given in section 74 of the Social Services and Well-being (Wales) Act 2014;  
“Welsh local authority” (“*awdurdod lleol Cymreig*”) means a local authority within the meaning given by section 197(1) of that Act.

## Interpretation

11.—<sup>F62</sup>(1) In this Schedule—

“Directive 2004/38” (“*Cyfarwydddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States <sup>M1</sup>;

“EEA” (“*AEE*”) means the European Economic Area, that is to say the territory comprised by the EEA States;

<sup>F63</sup> ...

<sup>F64</sup>“family member” (“*aelod o deulu*”) means (unless otherwise indicated) in relation to a person (“P”)—

- (a) P’s spouse or civil partner,
- (b) direct descendants of P or of P’s spouse or civil partner who are—
  - (i) under the age of 21, or
  - (ii) dependants of P or P’s spouse or civil partner, or
- (c) in a case where P is—
  - (i) an EU national who falls within Article 7(1)(b) of Directive 2004/38, or
  - (ii) for the purposes of paragraph 6A, 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,

dependent direct relatives in P’s ascending line or the ascending line of P’s spouse or civil partner;]

<sup>F65</sup>“immigration rules” (“*rheolau mewnfudo*”) means the rules laid before Parliament by the Secretary of State under section 3(2) of the Immigration Act 1971;]

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

“parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly;

“refugee” (“*ffoadur*”) means a person who is recognised by Her Majesty's government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28 July 1951 <sup>M2</sup> as extended by its 1967 Protocol <sup>M3</sup>;

<sup>F63</sup> ...

<sup>F63</sup> ...

“settled” (“*wedi setlo*”) has the meaning given by section 33(2A) of the Immigration Act 1971 <sup>M4</sup>;

“Swiss Agreement” (“*Cytundeb y Swistir*”) means the Agreement between the EU and its Member States, of the one part, and the Swiss Confederation of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999 <sup>M5</sup> and which came into force on 1 June 2002;

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F63  
...

[<sup>F64c</sup>“United Kingdom national” (“*gwladolyn o’r Deyrnas Unedig*”) has the meaning given by Article 2(d) of the EU withdrawal agreement.]

[<sup>F66</sup>(2) 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.]

#### Textual Amendments

- F62** Sch. 2 para. 11 renumbered as Sch. 2 para. 11(1) (with application in accordance with reg. 2 of the amending S.I.) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2021 \(S.I. 2021/481\)](#), regs. 1(2), **144(a)**
- F63** Words in Sch. 2 para. 11(1) omitted (with application in accordance with reg. 2 of the amending S.I.) by virtue of [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2021 \(S.I. 2021/481\)](#), regs. 1(2), **144(b)(i)**
- F64** Words in Sch. 2 para. 11(1) inserted (with application in accordance with reg. 2 of the amending S.I.) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2021 \(S.I. 2021/481\)](#), regs. 1(2), **144(b)(ii)**
- F65** Words in Sch. 2 para. 11 inserted (30.7.2018) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/814\)](#), regs. 1(2), **16(e)**
- F66** Sch. 2 para. 11(2) inserted (with application in accordance with reg. 2 of the amending S.I.) by [The Education \(Student Finance\) \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2021 \(S.I. 2021/481\)](#), regs. 1(2), **144(c)**

#### Marginal Citations

- M1** OJ No L158, 30.04.2004, p.77-123.
- M2** Cmnd. 9171.
- M3** Cmnd. 3906, the Protocol entered into force on 4 October 1967.
- M4** [1971 c.77](#); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the [British Nationality Act 1981 \(c. 61\)](#).
- M5** Cm. 4904 and OJ No L1 14, 30.04.02, p6.

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**Changes to legislation:**

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