
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 28

The Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021

Amendment of regulation 2 (interpretation)

16. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “child of an asylum seeker”, insert—

““Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(1),”

(ii) in the definition of “Directive 2004/38”, insert at the end—

“, and reference to a provision of this Directive—

(a) is reference to the Directive as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”

(iii) after the definition of “EC national”, insert—

““EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”

(iv) in the definition of “EEA frontier self-employed person”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”, and

(bb) for sub-paragraph (b), substitute—

“(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”

(v) in the definition of “EEA frontier worker”—

(aa) in sub-paragraph (a), omit “(within the meaning of article 7 of Directive 2004/38)”, and

(bb) for sub-paragraph (b), substitute—

- “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
- (vi) in the definition of “EEA migrant worker”, omit “within the meaning of article 7 of Directive 2004/38”,
- (vii) in the definition of “EEA national”, omit “other than the United Kingdom”,
- (viii) after the definition of “EEA national”, insert—
 - ““EEA Regulations 2016” means the Immigration (European Economic Area) Regulations 2016(2),”,
- (ix) in the definition of “EEA self employed person, omit “within the meaning of article 7 of Directive 2004/38”,
- (x) omit the definition of “non UK EC national”,
- (xi) after the definition of “partner”, insert—
 - ““person with protected rights” means—
 - (a) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement who—
 - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
 - (ii) is a relevant person within the meaning of regulation 3 (grace period) of the Citizens’ Rights Regulations where the grace period (within the meaning of that regulation) has not ended,
 - (iii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended, or
 - (iv) is an Irish national (“P”) who—
 - (aa) has not made a valid application under residence scheme immigration rules, and
 - (bb) would be granted leave to remain or enter in the United Kingdom if P made such an application, or
 - (b) a family member (“P”) of a relevant person of Northern Ireland (“R”) where—
 - (i) P has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, and
 - (ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement,”
- (xii) after the definition of “relevant date”, insert—
 - ““relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,

“residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020(3),

“right of permanent residence” means a person who—

- (a) meets one of the following conditions—
 - (i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
 - (ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the grace period,
 - (iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the relevant period,
 - (iv) the person is an Irish national (“P”) settled in the United Kingdom who—
 - (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of “person with protected rights”,
 - (bb) has not made a valid application under residence scheme immigration rules, and
 - (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
 - (v) the person is a person (“P”) referred to in sub-paragraph (b) of the definition of “person with protected rights”, where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,

“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 Switzerland Agreement,

“Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement,”

- (xiii) in the definition of “Swiss frontier employed person”, for sub-paragraph (b), substitute—

(3) 2020 c.1. The residence scheme immigration rules can be viewed at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

- “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
 - (xiv) in the definition of “Swiss frontier self employed person”, for sub-paragraph (b), substitute—
 - “(b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,”
 - (xv) in the definition of “Switzerland Agreement”, insert at the end—
 - “, and reference to a provision of the Agreement—
 - (a) is reference to the Agreement as it had effect immediately before IP completion day,
 - (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,”
 - (xvi) after the definition of “Turkish worker”, insert—
 - ““worker” means a worker within the meaning of article 7 of Directive 2004/38 or the EEA Agreement as the case may be,”
 - (b) after paragraph (4), insert—
 - “(5) Where—
 - (a) a student (“A”) is a person eligible for an allowance within the meaning of schedule 1 for the purposes of—
 - (i) an application for support for the first year of A’s current course, or
 - (ii) an application for support for an earlier year of A’s current course, and
 - (b) as at the day before the relevant date for the academic year in respect of which A is applying for support—
 - (i) A’s limited leave to remain granted by virtue of residence scheme immigration rules has expired, and no further leave to remain has been granted,
 - (ii) A has not made an in-time application within the meaning of regulation 4(6) of the Citizens’ Rights Regulations, or
 - (iii) A is an applicant for the purposes of regulation 4 of the Citizens’ Rights Regulations (applications which have not been finally determined by the deadline), the relevant period (within the meaning of that regulation) has ended in the circumstances described in paragraph (6)(b) or (c) of that regulation, and A is not otherwise an eligible student under schedule 1,
- A ceases to be a person eligible for an allowance immediately before the first day of the academic year in respect of which the student is applying for support.”.