

2019 No. 33

The Financial Contingency Fund (Further Education) (Wales) Scheme 2019/2020

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme allows the Welsh Ministers to provide funding to further education institutions and Y Ganolfan Dysgu Cymraeg Genedlaethol (formerly Welsh for Adults language centres) in Wales for the purpose of establishing discretionary funds to be used to provide emergency payments in respect of unexpected crises; and to provide financial help for those eligible students whose access to further education at a further education institution or Y Ganolfan Dysgu Cymraeg Genedlaethol might be inhibited by financial considerations, or who, for whatever reason, including physical or other disability face financial difficulties. It provides institutions and language centres with information regarding the purpose of the Scheme and the administrative arrangements of such funding, and imposes requirements in respect of those arrangements.

This Scheme comes into force on 1 September 2019 and applies in respect of the period beginning on 1 September 2019 and ending on 31 March 2020.

This Scheme was amended with effect from 1 February 2020 to allow it to continue to operate after the United Kingdom leaves the European Union.

2019 No. 33

The Financial Contingency Fund (Further Education) (Wales) Scheme 2019/2020

PART 1 - GENERAL

Title, commencement and application

1. The title of this Scheme is the Financial Contingency Fund (Further Education) (Wales) Scheme 2019/2020.

2. This Scheme comes into force on 1 September 2019 and applies in respect of the period beginning 1 September 2019 and ending on 31 March 2020. This Scheme applies in relation to Wales.

Interpretation

3. In this Scheme—

“Institution” means an institution within the further education sector in Wales or Y Ganolfan Dysgu Cymraeg Genedlaethol which is in receipt of funding for the purposes of this Scheme from the Welsh Ministers;

“exit day” has the meaning given by the European Union (Withdrawal) Act 2018.

Revision

4. The Welsh Ministers may at any time revise, revoke or add to the provisions set out in this Scheme.

Financial advice

5. The provision of financial advice to a student is a key part of ensuring the effective use of this Scheme.

PART 2 – PURPOSE OF SCHEME

6. Funding allocated to an Institution for the purposes of this Scheme is to be used to provide financial help to those eligible students whose access to education might be inhibited by financial considerations, or who, for whatever reason, including physical or other disability, face financial difficulties.

Purposes for which payments may be used

7. Payments made to students by virtue of this Scheme must only be used for the purposes specified in this Scheme.

Priority Groups

8. Institutions must assess a student's application for funding in accordance with Part 5 (Determination of Payments) of this Scheme. When determining which individual students, from amongst those eligible, to support Institutions must give priority to students who fall into one or more of the priority groups set out in paragraph 9. The order in which priority groups are listed in paragraph 9 does not indicate an order of priority within the list.

9. The priority groups for support under this Scheme are eligible students who are:

(1) Students who need help with childcare costs, especially lone parents;

(2) Students who will reach the age of 20 before they complete their A levels or other FE courses and who face particular financial difficulties because their families will cease to receive child benefit and dependency additions in Social Security benefits or tax credits for these students as of their 20th birthday;

(3) Students who are carers (providing unpaid support to someone who could not manage without this help); have been in care, on probation or are otherwise considered at risk;

(4) Students on low income, including learners who do not qualify for income support, or students from low income families, including those families in receipt of Job Seekers allowance or means tested state benefits such as Working Tax Credit and those that have unwaged dependents;

(5) Students ordinarily resident in an area with an overall ranking of 190 or less according to the latest Welsh Index of Multiple Deprivation;⁽¹⁾

(6) Students who face particular financial difficulties because their families will cease to receive the children element of universal credit as of the 1st September following their 19th birthday.

Institutions should note that if an eligible student falls within one or more of the priority groups listed above, that is not, of itself, a basis for making an award from the funding allocated for the purposes of this Scheme.

(1) The latest Welsh Index of Multiple Deprivation was published on 1 May 2014, and will apply for the entire life of this scheme. (<http://wales.gov.uk/statistics-and-research/welsh-multiple-deprivation-indicator-data/>)

10. Institutions are required to have a written policy for the allocation of payments to eligible students under this Scheme. It must be published (together with the appeals procedure under paragraph 43) in such manner as an Institution considers appropriate, provided that it is accessible to its students and those who advise them. The policy must explain the Institution's operational arrangements for allocating such payments. The written policy and any materials or advertisements published in relation to this Scheme must refer to the Scheme as the "Financial Contingency Fund (Further Education) (Wales) Scheme 2019/20".

PART 3 - ELIGIBILITY

Eligible students and courses

11. Payments under this Scheme may only be made to eligible students.

12. An eligible student is a student who, in the opinion of the Institution: (a) falls within one of the categories set out in Part 2 of the Schedule to this Scheme; and (b) is a further education student who is aged 16 or over who is undertaking full or part-time courses at the Institution including Welsh for Adult courses.

13. An eligible student does not qualify for support under this Scheme, other than for support for tuition fees under paragraph 21 below, if the only paragraph in Part 2 of the Schedule into which the eligible student falls is paragraph 9.

14. Any description of person who would have been an eligible person under this Scheme before exit day is to be treated as an eligible person on or after exit day.

PART 4 – TYPES OF PAYMENT

Grants

15. Institutions may provide funding to eligible students in the form of grants.

Short-term loans

16. Institutions may make payments to eligible students in the form of short-term loans. It is for the Institution to determine the amount of short-term loan to be awarded to an eligible student.

Bulk Purchase Arrangements

17. Institutions may make bulk purchase arrangements with local transport companies and provide equipment or services at a lower cost for eligible students who would otherwise need support under this Scheme.

18. Funding under this Scheme may not be used to replace or subsidise existing bulk purchase arrangements financed by the Institution's own funds.

19. Where an Institution enters into a bulk purchase arrangement, a clear audit trail must be maintained which clearly identifies the student beneficiaries and the amount of funding allocated from this Scheme. The records must also demonstrate that the majority of students benefitting from the bulk purchasing arrangement are eligible students facing financial hardship and who, without such support, would have difficulty accessing their studies.

PART 5 – DETERMINATION OF PAYMENTS

Applications for funding

20. Applications for funding under this Scheme must be evaluated by Institutions on a case-by-case basis in accordance with their written policy for the allocation of funding, as referred to in paragraph 10. In each case, Institutions must assess a student's application on the basis of the evidence provided by that student and their individual circumstances. A student should be notified of whether their application for funding has been successful or not within four weeks of receipt of that application by the Institution.

Consideration of funding from other sources in assessing eligibility

21. Institutions must take account of the student's financial circumstances and the availability of support from other sources such as the Education Maintenance Allowance, Welsh Government Learning Grant (Further Education) (Wales) Scheme 2019 or other equivalent government funded scheme, social security benefits and any relevant tax credits, payments through career development loans and similar schemes and support provided from the student's local authority.

Tuition fees and course related costs

22. Funding under this Scheme must not be used to meet the cost of tuition fees for any eligible student, except in cases where a part-time eligible student undertakes a higher education taster module of

between 10% and less than 50% of a full-time higher education course. Institutions have discretion to provide funding under this Scheme to eligible students undertaking higher education taster modules, which are less than 10% of a full-time higher education course or less than 12 credits and otherwise fulfil the Institution's eligibility criteria for taster module support.

23. Funding under this Scheme may be used to help eligible students meet the costs of course related fees such as awarding body examination and registration fees, and items of equipment or materials essential for the eligible student to participate in course activities. Any such equipment or materials purchased by an Institution under this Scheme should usually remain the property of the Institution.

24. Institutions may also make payments to eligible students for the purpose of helping with other course related costs. Such costs include, but are not limited to, those related to childcare, travel, books and field trips.

25. Institutions may not make a payment to an eligible student in respect of fines and deposits.

Costs arising from disabilities

26. Institutions may make payments for the purpose of helping disabled eligible students and eligible students with disabled dependants. This includes, but is not limited to, payments in respect of reasonable costs associated with the disability. Where the Institution has made a purchase of equipment for a disabled eligible student under this Scheme, that equipment should remain the property of the Institution, unless that equipment is tailored to meet the individual needs of that student.

PART 6 – PROCESSES: INTERFACE BETWEEN WELSH MINISTERS AND INSTITUTIONS

Payment to Institutions

27. In order to access funding for the purposes of this Scheme, an Institution must provide the Welsh Ministers with written confirmation that it accepts the terms and conditions of this Scheme, prior to receipt of funding.

28. The total amount of funding to be paid to an Institution will be the amount that has been allocated to that Institution by the Welsh Ministers.

29. The Welsh Ministers will provide the funding to Institutions in three instalments. The instalments will

be made in advance of each term in the ratio 40:30:30, but the Welsh Minister may decide to withhold in-year funding if an Institution has confirmed that it is holding sufficient funds to meet existing need.

Unspent funds

30. If the Welsh Ministers decide not to establish a successor hardship scheme following the end of the period to which this Scheme relates, all unspent funds and interest under this Scheme must be returned to the Department of Education and Skills not later than 31 July 2020.

Publicity and administrative costs

31. Institutions may use 3% of their total funding allocation under this Scheme or £525, whichever is the greater, to ensure that the Scheme is effectively publicised and administered.

Accountability

32. The Chief Executive Officer (or equivalent officer) of the Institution is responsible for -

(1) advising the Governing Body of the Institution of its responsibilities under this Scheme;

(2) ensuring that the uses to which the Institution puts its funding allocation are consistent with the purpose of this Scheme and the terms and conditions of this Scheme are complied with; and

(3) taking those measures which the Welsh Ministers may from time to time require to ensure that a system of financial controls and managements are in place to enable it to fulfil its financial obligations.

Provision of accounts and additional information

33. Institutions are required to have regard to the advice in the document entitled 'Financial Memorandum between the Welsh Government, further education institutions and higher education institutions providing further education' (Guidance document No: 160/2015 dated March 2015) or any such revised or successor Financial Memorandum that may be issued by the Welsh Ministers.

34. Institutions must follow the audit arrangements contained in the above Financial Memorandum.

35. Institutions must make information in respect of their audited accounts available to the Welsh Ministers upon their request.

36. Institutions must use the repayments made by students in respect of short term loans made under

paragraph 15 of this Scheme for the purposes set out in this Scheme, or for further payments which must be documented in the same way as original payments.

PART 7 – PROCESSES: INTERFACE BETWEEN INSTITUTIONS AND STUDENTS

Payments to students

37. Institutions must deal with students' payments promptly bearing in mind the purpose of this Scheme and circumstances which give rise to financial hardship.

38. Institutions must not commit to any year on year awards to students.

39. Institutions may agree payments to eligible students under this Scheme in principle prior to the start of the eligible student's course, although actual payment cannot occur until the student has started the course.

40. Institutions may make payments to eligible students under this Scheme either in a lump sum or by instalments.

41. Institutions should have regard to any Code of Practice issued from time to time by the Equality and Human Rights Commission in respect of requirements imposed by Chapter 2 of Part 6 of the Equality Act 2010.

Payments to students in respect of equipment and materials

42. An eligible student may make an application for funding in respect of essential equipment and/or materials they have purchased in order to participate in course related activities. If the student's application is successful, an Institution may reimburse the costs incurred by the student in purchasing that equipment and/or materials in full or in part.

Payments during periods where study is suspended

43. An Institution may make payments under this Scheme to eligible students who have suspended their studies due to health, caring reasons, pregnancy, or for any other circumstances that the Institution deems appropriate, provided that the Institution is satisfied that the student has not withdrawn from or abandoned the course and that the student intends to return to the course.

Appeals

44. Institutions must have a published appeals procedure in place for cases where students have applied unsuccessfully for support under this Scheme. This procedure should be clear, and students must be informed of their right to appeal. Decisions on eligibility and awards rest with the Institutions responsible for administering this Scheme. It is for Institutions to consider each case and resolve appeals in accordance with their published procedure.

45. Institutions should consider including student representation in the decision making process.

Kirsty Williams AM

Minister for Education, one of the Welsh Ministers

Date 31 January 2020

SCHEDULE

Eligible Students

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

“Directive 2004/38” (“*Cyfarwydddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EEA frontier self-employed person” (“*person hunangyflogedig trawsffiniol AEE*”) means an EEA national who —

(a) is a self-employed person in the United Kingdom; and

(b) resides in Switzerland or the territory of an EEA State and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” (“*gweithiwr trawsffiniol AEE*”) means an EEA national who—

(a) is a worker in the United Kingdom; and

(b) resides in Switzerland or the territory of an EEA State and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or 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 national” (“*gwladolyn AEE*”) means a national of an EEA State;

“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;

“EEA State” (“*gwladwriaeth AEE*”) means a Member State of the European Economic Area;

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

“EU national” (“*gwladolyn UE*”) means a national of a Member State of the European Union;

“European Union” (“*yr Undeb Ewropeaidd*”) means the territory comprised by the Member States of the European Union as constituted from time to time;

“European Economic Area” (“*Ardal Economaidd Ewropeaidd*”) means the area comprised by the EEA States;

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

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) the person’s spouse or civil partner;
 - (ii) direct descendants of the person or of the person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the person or the person’s spouse or civil partner; or
 - (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 employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) the person’s spouse or civil partner; or
 - (ii) the person’s child or the child of the person’s spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
 - (i) the national’s spouse or civil partner; or
 - (ii) direct descendants of the national or of the national’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national’s spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
 - (i) the national’s spouse or civil partner;
 - (ii) direct descendants of the national or of the national’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national’s spouse or civil partner; or

- (iii) dependent direct relatives in the national's ascending line or that of the national's spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
 - (i) the national's spouse or civil partner; or
 - (ii) direct descendants of the national or of the national's spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national's spouse or civil partner;

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

“immigration rules” (“*rheolau mewnfudo*”) means the rules laid before Parliament by the Secretary of State under section 3(2) of the Immigration Act 1971⁽¹⁾;

“person granted stateless leave” (“*person y rhoddwyd caniatâd iddo aros fel person diwlladwriaeth*”) means a person who-

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

“person with leave to enter or remain” (“person sydd â chaniatâd i ddod i mewn neu i aros”) means a person (“A” in this definition)—

- (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 A is considered not to qualify for recognition as a refugee it is thought right to allow A to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave ² and who has been granted leave to enter or remain accordingly; or
 - (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the

⁽¹⁾ 1971 c.77

⁽²⁾ Discretionary leave may be granted by the Secretary of State under section 3(1)(b) of the Immigration Act 1971.

Secretary of State for the Home Department that it is thought right to allow A 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 ;

(iii) been granted leave to remain on the grounds of private life under the immigration rules; or

(iv) been informed in writing by a person acting under the authority of the Secretary of State for the Home Department, that although that person is not considered to qualify for leave to remain on the grounds of private life under the immigration rules¹; that person has been granted leave to remain outside the rules on grounds of Article 8 of the European Convention on Human Rights;

(b) 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 2002²); and

(c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since A was granted leave to enter or remain;

“person with section 67 leave to remain” (“person sydd â chaniatâd i aros o dan adran 67”) means a person who—

(a) has leave to remain in the United Kingdom under section 67 of the Immigration Act 2016 and in accordance with the immigration rules; and

(b) has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave;

“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 as extended by the Protocol thereto which entered into force on 4 October 1967;

¹ Paragraph 276BE(2) of the immigration rules refer.

² 2002 c.41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (c.19), Schedules 2 and 4; by the Immigration, Asylum and Nationality Act 2006 (c.13), by the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), Schedule 1, and by the Immigration Act 2014 (c.22).

“right of permanent residence” (*“hawl i breswyllo ’n barhaol”*) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“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;

“settled” (*“wedi setlo”*) has the meaning given by section 33(2A) of the Immigration Act 1971⁽¹⁾;

“Swiss Agreement” (*“Cytundeb y Swistir”*) means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999⁽²⁾ and which came into force on 1 June 2002;

“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 the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or 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 the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State, and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” (*“person hunangyflogedig Swisaidd”*) means a Swiss national who is a self-employed person, other than

(1) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(2) Cm. 4904 and OJ No L114, 30.04.02, p.6 .

a Swiss frontier self-employed person, in the United Kingdom;

“Turkish worker” (“*gweithiwr Twrcaidd*”) 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;

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

(2) For the purposes of this Schedule, “parent” 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.

(3) For the purposes of this Schedule, a person (“A” in this sub-paragraph) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising Gibraltar, the European Economic Area, Switzerland and Turkey if A would have been so resident but for the fact that—

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

is or was temporarily employed outside Wales, the United Kingdom and Islands or the territory comprising Gibraltar, the European Economic Area, Switzerland and Turkey.

(4) For the purposes of sub-paragraph (3), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising Gibraltar, the European Economic Area, Switzerland and Turkey includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
- (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 the United Kingdom, Gibraltar, the European Economic Area and Switzerland as members of such forces; and
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the United Kingdom, Gibraltar, the European Economic Area, Switzerland and Turkey as members of such forces.

(5) For the purposes of this Schedule an area which—

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

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

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the course—

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(3).

3. A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the 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).

Refugees and their family members

4.—(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 the United Kingdom on the first day of the first academic year of the course.

(2) A person who—

- (a) is the spouse or civil partner of a 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 the United Kingdom on the first day of the first academic year of the course.

(3) A person who—

- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
- (b) on the date on which the refugee 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 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 the United Kingdom on the first day of the first academic year of the course.

Persons granted stateless leave and their family members

4A

(1) A person granted stateless leave who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

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

- (3) A person—
- (a) who—
 - (i) is the child of a person granted stateless leave or the child of the spouse or civil partner of a person granted stateless leave; and
 - (ii) on the leave application date, was the child of a person granted stateless leave or the child of a person who, on the leave application date, was the spouse or civil partner of a person granted stateless leave;
 - (b) who was under 18 on the leave application date;
 - (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
 - (d) has been ordinarily resident in the United Kingdom and Islands since that person's parent, or parent's spouse or civil partner, was granted stateless leave.

(4) In this paragraph, "leave application date" means the date on which a person granted stateless leave made an application to remain in the United Kingdom as a stateless person under the immigration rules.

Persons with leave to enter or remain and their family members

- 5.—(1) A person—
- (a) with leave to enter or remain; and
 - (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (2) A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain;
- (b) who was the spouse or civil partner of the person with leave to enter or remain on the leave application date; and
- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(3) A person—

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

(4) In this paragraph, “leave application date” means the date on which the person 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.

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

6.—(1) A person who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in paragraph (i) or (ii);
 - (iv) an EEA frontier worker or an EEA frontier self-employed person;
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
 - (vi) a family member of a person mentioned in paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland

throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support under this Scheme falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

7. A person who—

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the 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
- (c) is entitled to support by virtue of Article 10 of Council Regulation (EU) No. 492/2011 on the freedom of movement of workers⁽¹⁾.

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

8.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in the United Kingdom and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the 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
- (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 the United Kingdom, Gibraltar, the European Economic Area 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 that person is a United

⁽¹⁾ OJ No L141, 27.05.2011, p1.

Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has a right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if that person goes to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.

UK and EU nationals

9.—(1) A person who on the first day of the first academic year of the course—

- (a) is either—
 - (i) an EU national;
 - (ii) a United Kingdom national who has exercised a right of residence; or
 - (iii) a family member of a person falling within (i) or (ii);
- (b) 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
- (c) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland 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.

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

(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 or the family member of a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.

10.—(1) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where the 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) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the 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 prior to the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

12. A person who—

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

Persons with section 67 leave to remain

13.—(1) A person who—

- (a) has section 67 leave to remain; and
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(2) A person who—

- (a) is the child of a person with section 67 leave;
- (b) was the dependent child of the person with section 67 leave on the leave application date;
- (c) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (d) has been ordinarily resident in the United Kingdom and Islands since the person's parent was granted section 67 leave.

(3) In this paragraph “leave application date” means the date on which the person with section 67 leave to remain made the application that led to that person being granted leave to remain in the United Kingdom.