

2023 No. WG23-43

The Education Maintenance Allowance (Wales) Scheme 2023/2024

This Scheme operates under sections 14, 15 and 16 of the Education Act 2002⁽¹⁾ and applies in relation to the academic year 2023/2024.

Interpretation

1. In this Scheme—

“academic year” (“*blwyddyn academaidd*”) means the period from 1 September in one year to 31 August in the next year, except that where the first term of a recognised educational institution begins before 1 September, the academic year is the period beginning at the start of that term and ending immediately before the start of the first such term in the following year;

“applicant” (“*ceisydd*”) means the person applying for education maintenance allowance under this Scheme;

“dependent person” (“*person dibynnol*”) means either an applicant who is not an independent person or a person who—

- (a) normally resides with the applicant,
- (b) entitles the person’s parent, guardian, carer or other persons on whom that person is financially dependent to child benefit in accordance with Part 9 of the Social Security Contributions and Benefits Act 1992⁽²⁾ or any amount that is included in the calculation of the award under regulation 24 of the Universal Credit Regulations 2013⁽³⁾ (the child element), and
- (c) is dependent on the same household income as the applicant calculated in accordance with paragraph 3;

“education maintenance allowance” (“*lwfans cynhالياeth addysg*”) has the meaning given in paragraph 7(1) to (4);

“electronic signature” (“*llofnod electronig*”) is so much of anything in electronic form as—

(1) 2002 c. 32.

(2) 1992 c. 4.

(3) S.I. 2013/376.

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data, and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible education course” (“*cwrs addysg cymwys*”) means a course described in paragraph 6;

“eligible person” (“*person cymwys*”) has the meaning given in paragraph 4;

“eligible returning person” (“*person cymwys sy’n dychwelyd*”) means a person who—

- (a) was in receipt of at least one weekly award of education maintenance allowance in connection with that person’s attendance at an eligible education course in the academic year 2022/2023 but who has not been in receipt of education maintenance allowance for more than three academic years, and
- (b) is an eligible person;

“exempt person” (“*person esempt*”) means a person who is—

- (a) in local authority care, with foster parents or is a care leaver,
- (b) responsible for a child of their own,
- (c) in receipt of Income Support or Income based Employment and Support Allowance,
- (d) entitled to an award of universal credit under the Universal Credit Regulations 2013, or
- (e) in custody or detention within the youth justice system including a Young Offenders Institution, Secure Training Centre or Secure Children’s Home;

“governing body” (“*corff llywodraethu*”) includes a body having the functions of a governing body and includes a person acting with the authority of that body;

“household income” (“*incwm yr aelwyd*”) has the meaning given in paragraph 3;

“Income Tax Acts” (“*Deddfau Treth Incwm*”) means all enactments relating to income tax, including any provisions of any enactments relating to the taxation of the income and chargeable gains of companies and of company distributions which relate to income tax;

“independent person” (“*person annibynnol*”) means a person who—

- (a) has not communicated with either parents or guardians for the period of one year

immediately before the first day of the first term of the academic year in respect of which an application for education maintenance allowance is made, or

- (b) in the opinion of the Welsh Ministers can demonstrate on other grounds that they are irreconcilably estranged from their parents or guardians,

and is not an exempt person;

“Learning Agreement” (“*Cytundeb Dysgu*”) means a signed contract between an applicant and their recognised educational institution setting out the respective responsibilities relating to attendance, learning goals and the payment of weekly awards as described in paragraph 7(3);

“learning goals” (“*nodau dysgu*”) means objectives agreed between an applicant and their recognised educational institution which relate to the applicant’s educational progress;

“learning session” (“*sesiwn ddysgu*”) means a class, or other taught or guided study session, (including practical work or unpaid work experience) for which a recognised educational institution monitors and reports attendance;

“partner” (“*partner*”) means in relation to an applicant any of the following—

- (a) the applicant’s spouse,
- (b) the applicant’s civil partner,
- (c) a person ordinarily living with the applicant as the applicant’s civil partner, or
- (d) a person ordinarily living with the applicant as the applicant’s spouse;

“recognised awarding body” (“*corff dyfarnu cydnabyddedig*”) means the Scottish Qualifications Authority⁽¹⁾, an awarding body approved and regulated by the Scottish Qualifications Authority in accordance with the Education (Scotland) Act 1996⁽²⁾, the Northern Ireland Council for the Curriculum, Examinations and Assessment⁽³⁾, bodies recognised under section 132 of the Apprenticeships, Skills, Children and Learning Act 2009⁽⁴⁾ and bodies or persons recognised under section 30(1)(e) of the Education Act

(1) The Scottish Qualifications Authority was established by S.I. 1996/2248 (S. 180).

(2) 1996 c. 43.

(3) The Northern Ireland Council for the Curriculum, Examinations and Assessment was established by Article 73 of S.I. 1998/1759 (N.I. 13).

(4) 2009 c. 22.

1997(1) or Part 3 of the Qualifications Wales Act 2015(2);

“recognised educational institution” (*“sefydliad addysgol cydnabyddedig”*) means—

- (a) a school in Wales maintained by a local authority or an equivalent institution in England, Scotland or Northern Ireland,
- (b) an independent school in Wales registered under Part 10 of the Education Act 2002(3) or an equivalent institution in England, Scotland or Northern Ireland,
- (c) an institution in Wales within the further education sector or an equivalent institution in England, Scotland or Northern Ireland, or
- (d) any other educational institution which the Welsh Ministers consider appropriate;

“residual income” (*“incwm gweddiol”*) is to be calculated in accordance with paragraph 3(5);

“signed” (*“llofnodi”*) may include signed by way of electronic signature in such form as the Welsh Ministers may require;

“tax year” (*“blwyddyn dreth”*) means a year beginning on 6 April and ending on the following 5 April;

“universal credit” (*“credyd cynhwysol”*) means universal credit under Part 1 of the Welfare Reform Act 2012(4);

“weekly award” (*“dyfardal wythnosol”*) is the amount calculated in accordance with paragraph 7.

2. In this Scheme, a care leaver is a person who—

- (a) is, or has been, a category of young person defined in, or by virtue of, section 104 of the Social Services and Well-being (Wales) Act 2014(5), and
- (b) between the person’s fourteenth birthday and the first day of the first academic year of the course, the person was—
 - (i) looked after, fostered or accommodated (within the meaning of sections 74 and 104 of the Social Services and Well-being (Wales) Act 2014) for an aggregate period of 13 weeks or more, or
 - (ii) a person with respect to whom a special guardianship order (within the meaning given by section 14A of the Children Act

(1) 1997 c. 44. Now repealed, subject to savings and transitional provisions.

(2) 2015 anaw 5.

(3) 2002 c. 32.

(4) 2012 c. 5.

(5) 2014 anaw 4.

1989(1)) was in force for a period of 13 weeks or more.

Household income

3.—(1) Household income is the total residual income, applied in accordance with sub-paragraphs (2) to (4), and calculated in accordance with sub-paragraphs (5) and (6).

(2) If the applicant is not an independent person, household income is the total residual income of the applicant's parents, guardians, carers or other persons on whom the applicant is financially dependent.

(3) If the applicant is an independent person who has a partner, the household income is the total residual income of the applicant and the applicant's partner.

(4) If the applicant is an independent person who has no partner, the household income is the total residual income of the applicant.

(5) The residual income is that income of the relevant tax year on which a person is charged income tax in accordance with Step 1 of the calculation in section 23 of the Income Tax Act 2007(2), minus any amounts deducted in accordance with sub-paragraph (6) (unless already deducted in calculating the taxable income).

(6) For the purpose of determining residual income, the following amounts may be deducted from the taxable income (unless already deducted when calculating the taxable income)—

- (a) the gross amount of allowable expenses, for which tax relief was claimed during the relevant tax year,
- (b) the gross amount of wages paid during the relevant tax year in connection with domestic help due to the incapacity of—
 - (i) the eligible student,
 - (ii) the partner of an independent person, or
 - (iii) the parent, or parent's partner, of an eligible student who is not an independent person,
- (c) any redundancy payment received during the relevant tax year, up to a maximum of £30,000, and
- (d) the gross amount of—

(1) 1989 c. 41; section 14A was inserted by the Adoption and Children Act 2002 (c. 38) and amended by the Children and Families Act 2014 (c. 6) and the Children and Young Persons Act 2008 (c. 23).

(2) 2007 c. 3; section 23 was amended by the Finance Act 2009 (c. 10), Schedule 1, paragraph 6(o)(i), the Finance Act 2013 (c. 29), Schedule 3, paragraph 2(2), and the Finance Act 2014 (c. 26) Schedule 17(3), paragraph 19.

- (i) any payment made during the relevant tax year in relation to a pension (not being a premium payable under a policy of life insurance) in respect of which relief is given under section 188 of the Finance Act 2004⁽¹⁾, or
- (ii) where the individual's income is computed for the purposes of the income tax legislation of a Member State, the gross amount of any such premium or sum in respect of which relief would be given during the relevant tax year if that legislation made provision equivalent to the Income Tax Acts.

(7) In this paragraph, “relevant tax year” means the tax year ending in April 2022.

Eligible persons

4.—(1) An applicant who is an eligible person qualifies for an education maintenance allowance in connection with an eligible education course subject to and in accordance with this Scheme.

(2) An applicant is an eligible person who qualifies for an education maintenance allowance under this Scheme if—

- (a) the Welsh Ministers, in assessing the application, determine that the applicant falls within one of the categories set out in—
 - (i) paragraph 2, 3, 4, 5, 6, 7, 9, 11, 13, 14, 16, 18, 20, 21 or 22 of the Schedule, or
 - (ii) paragraph 8, 10, 12, 15, 17 or 19 of the Schedule where sub-paragraph (3) applies,
- (b) the applicant undertakes an eligible education course,
- (c) the applicant is an exempt person or the household income was less than or equal to the amounts set out in the table in paragraph 7(3) of this Scheme in the tax year ending in April 2022,
- (d) in the academic year 2023/2024 the applicant has their seventeenth, eighteenth, nineteenth or, subject to sub-paragraph (6), twentieth birthday, and
- (e) an application is made in accordance with paragraph 10 of this Scheme.

(3) This sub-paragraph applies where—

(1) 2004 c. 12.

- (a) in connection with an eligible education course, the Welsh Ministers—
 - (i) in assessing an application for an education maintenance allowance by a person (“A”) determined that A fell within one of the categories set out in paragraph 8, 10, 12, 15, 17 or 19 of the Schedule in relation to an academic year of the course beginning before 1 September 2021, or
 - (ii) would have so determined had A made an application for an education maintenance allowance in accordance with this Scheme in relation to an academic year of the course beginning before that date, and
- (b) A applies for an education maintenance allowance in connection with that course or an eligible education course to which A transfers in accordance with paragraph 13 of this Scheme.

(4) An applicant is not an eligible person if the eligible education course begins on or after 1 January 2028 and the only paragraph or paragraphs in the Schedule into which the applicant falls is one or more of paragraphs 13 or 14.

(5) No payment of an education maintenance allowance will be made unless an eligible person satisfies the conditions in paragraph 9 of this Scheme.

(6) An eligible person may receive payment in the academic year in which that eligible person has their twentieth birthday if that eligible person has received an education maintenance allowance in one or two of the three preceding academic years and the recognised educational institution, in consultation with any other educational body or other organisation it sees fit, advises the Welsh Ministers that the eligible person should receive an education maintenance allowance for the academic year 2023/2024.

Qualifying for an education maintenance allowance during the academic year

5.—(1) Where one of the events in sub-paragraph (3) occurs during the academic year, the applicant may qualify for education maintenance allowance.

(2) The amount of education maintenance allowance payable to the eligible person is determined in accordance with paragraph 10(6) and will be subject to the rules about weekly awards of education maintenance allowance in paragraph 9.

(3) The events are—

- (a) the student’s course becomes an eligible education course;

- (b) the student becomes an eligible person on the grounds that—
- (i) the student or the student’s spouse, civil partner or parent is recognised as a refugee, becomes a person granted stateless leave, becomes a person with leave to enter or remain or becomes a person granted humanitarian protection under paragraph 339C of the immigration rules;
 - (ii) the student or the student’s parent becomes a person with section 67 leave to remain or a person granted leave to remain as a protected partner;
 - (iii) the student becomes a person with Calais leave;
 - (iv) the student becomes a family member of a person described in paragraph 14(1)(a)(i) of the Schedule;
 - (v) the student becomes a person with a right of permanent residence or leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;
 - (vi) the student becomes a person described in paragraph 18 of the Schedule;
 - (vii) the student becomes a person with leave to enter or remain as a relevant Afghan citizen;
 - (viii) the student becomes a protected Ukrainian national;
 - (ix) the student becomes a person described in paragraph 3(1)(a) of the Schedule;
 - (x) the student becomes a person described in paragraph 9(1)(a) of the Schedule.

(4) In this paragraph, the following terms have the same meaning as in the Schedule—

“family member” (“*aelod o deulu*”);

“person granted leave to remain as a protected partner” (“*person y rhoddwyd caniatâd iddo aros fel partner a ddiogelir*”);

“person granted stateless leave” (“*person y rhoddwyd caniatâd iddo aros fel person diwladwriaeth*”);

“person with Calais leave” (“*person sydd â chaniatâd Calais*”);

“person with leave to enter or remain” (“*person sydd â chaniatâd i ddod i mewn neu i aros*”);

“person with leave to enter or remain as a relevant Afghan citizen” ([...]);

“person with section 67 leave to remain” (“*person sydd â chaniatâd i aros o dan adran 67*”)

“protected Ukrainian national” (“[...]”);

“refugee” (“*ffoadur*”);

“residence scheme immigration rules” (“*rheolau mewnfudo'r cynllun preswyllo*”).

Eligible education course

6. A course is an eligible education course for the purposes of this Scheme if—

- (a) it is a programme of full-time academic or vocational education or a full-time programme in preparation for life and work,
- (b) the duration of the programme of full-time academic or vocational education is at least ten weeks,
- (c) it is provided by or in a recognised educational institution,
- (d) the eligible person’s timetable in relation to that course would require the eligible person to be in a learning session for not less than twelve hours per week, and
- (e) it leads either to qualifications up to and including National Qualifications Level 3 issued by a recognised awarding body, or to the achievement of a personalised learning programme funded by the Welsh Government under the Preparation for Life and Work programme area.

Structure, level of payments and assessment

7.—(1) Education maintenance allowance is payable in relation to the period of three academic years, including an academic year in which an eligible person has already received payment, beginning in the academic year in which the eligible person ceases to be of compulsory school age or, subject to paragraph 4(6), the period of four academic years beginning in the academic year in which the eligible person ceases to be of compulsory school age.

(2) Education maintenance allowance consists of a weekly award, as described in sub-paragraph (3) and paragraph 9, paid fortnightly to the eligible person.

(3) The weekly award for the academic year 2023/2024 in respect of—

- (a) an eligible person who is an exempt person is £40;
- (b) an eligible person who is not an exempt person is to be determined in accordance with the following table—

<i>Household Income</i>	<i>Weekly award</i>
Up to and equal to £20,817 with one dependent person living in the household	£40
Equal to or more than £20,818 with one dependent person living in the household	£0
Up to and equal to £23,077 with two or more dependent persons living in the household	£40
Equal to or more than £23,078 with two or more dependent persons living in the household	£0

(4) Subject to sub-paragraphs (5) to (7), the assessment of an eligible person's financial eligibility for an education maintenance allowance made under this paragraph will be valid for the whole of the academic year 2023/2024.

(5) In cases where household income has been assessed under paragraph 3 and the result of that assessment is that an applicant is not entitled to a payment of education maintenance allowance, an applicant may apply to be reassessed if one or more of the following conditions is fulfilled—

- (a) a person whose income was taken into account in assessing household income has died,
- (b) since the assessment of household income was made, the eligible person no longer lives with either parents, guardians or other persons whose income was taken into account in assessing household income and is responsible financially for themselves,
- (c) since the assessment of household income was made, the eligible person has become an exempt person,
- (d) since the assessment of household income was made, there has been a reduction in household income of a non-temporary nature, or
- (e) since the assessment of household income was made, one or more dependent persons have become reliant on the household income.

(6) Following an application under sub-paragraph (5), the Welsh Ministers may determine that an eligible person is entitled to receive a weekly award in accordance with sub-paragraph (3).

(7) If the Welsh Ministers make a determination under sub-paragraph (6) they must notify the eligible person of the determination.

(8) Where the Welsh Ministers determine under sub-paragraph (6) they may—

- (a) back-date payment to the date on which a condition specified in sub-paragraph (5) is fulfilled, and
- (b) make payments of education maintenance allowance under paragraph 9 to an eligible person who qualifies for support under this Scheme.

Assessment enquiries

8. In assessing eligibility for education maintenance allowance, including reassessment under paragraph 7(5), the Welsh Ministers may, at any time, take such steps and make such enquiries as they consider necessary to determine whether the applicant qualifies for support and the amount of support payable.

Weekly award

9.—(1) A weekly award is payable only in respect of a week of the eligible education course where the eligible person's timetable requires the eligible person to attend learning sessions.

(2) An eligible person qualifies for a weekly award assessed in accordance with paragraph 7(2) and (3) if they have signed a Learning Agreement and—

- (a) have, in respect of a week to which the weekly award relates, attended every learning session in connection with an eligible education course, or
- (b) if they have not attended every such learning session in respect of a week to which the weekly award relates, the recognised educational institution has authorised each absence,

and the recognised educational institution determines that they are making satisfactory progress towards their learning goals as set out in the Learning Agreement.

Applications and back-payment

10.—(1) In order to receive an education maintenance allowance an eligible person must, in each academic year of an eligible education course, submit an application in accordance with sub-paragraphs (2), (3) and (4).

(2) An application for education maintenance allowance must be submitted to the Welsh Ministers by no later than 31 August 2024 subject to sub-paragraphs (5) to (8).

(3) An application by an eligible person (but not an eligible returning person) is a signed application form as required and published by the Welsh Ministers from time to time.

(4) An application by an eligible returning person is a signed copy of the Learning Agreement.

(5) Where an application by an eligible person (but not a person applying following an event listed in paragraph 5(3) or an eligible returning person) is made after the first day of the course, payment of an education maintenance allowance may be backdated—

- (a) if it is received by the Welsh Ministers no later than thirteen weeks after the eligible person has started their course, to the date the eligible person started their course, or
- (b) if it is received by the Welsh Ministers after the end of the first thirteen weeks after the eligible person has started their course, to the date on which the Welsh Ministers received the application.

(6) Where an application is made by an eligible person (but not an eligible returning person) following an event listed in paragraph 5(3), payment of an education maintenance allowance may be backdated—

- (a) if one of the events in paragraph 5(3) occurs no later than thirteen weeks after the first day of the course in academic year 2023/2024 and the application is received by the Welsh Ministers no later than thirteen weeks after the applicant has started their course, to the date of the event,
- (b) if one of the events listed in paragraph 5(3) occurs no later than thirteen weeks after the first day of the course in academic year 2023/2024 and the application is received by the Welsh Ministers after the end of the first thirteen weeks after the first day of the course in academic year 2023/2024, to the date on which the Welsh Ministers received the application, or
- (c) if one of the events listed in paragraph 5(3) occurs after the end of the first thirteen weeks after the first day of the course in academic year 2023/2024, to the date on which the Welsh Ministers received the application.

(7) Where an application by an eligible returning person is made after the first day of the course in the academic year to which the application relates, payment of an education maintenance allowance may be backdated—

- (a) if it is received by the Welsh Ministers no later than thirteen weeks after first day of the course in academic year 2023/2024, to the first day of the course in academic year 2023/2024, or
- (b) if it is received by the Welsh Ministers after the end of the first thirteen weeks after the first day of the course in academic year

2023/2024, to the date on which the Welsh Ministers received the application.

(8) Any back-payment made under this paragraph is subject to the rules about weekly awards of education maintenance allowance in paragraph 9.

Obligations of a recognised educational institution

11. The governing body of a recognised educational institution which is providing eligible education courses to applicants under this Scheme must—

- (a) take steps to promote the awareness of the availability of education maintenance allowance to their pupils or students and prospective pupils or students,
- (b) ensure that staff are properly trained in the administration of education maintenance allowance,
- (c) notify the Welsh Ministers of each eligible person registered with the recognised educational institution and confirm that they and the eligible person have signed the Learning Agreement,
- (d) ensure that eligible persons are made aware of how education maintenance allowance is administered at the recognised educational institution,
- (e) ensure that attendance records are maintained in respect of all applicants entitled to education maintenance allowance under this Scheme who are enrolled at the recognised educational institution,
- (f) ensure that original signed copies of Learning Agreements are retained in respect of all applicants entitled to education maintenance allowance under this Scheme who are enrolled at the recognised educational institution,
- (g) submit weekly reports to the Welsh Ministers detailing the eligible persons who should or should not receive education maintenance allowance in respect of the previous week, in accordance with paragraph 9(2), and
- (h) establish and publish an appeals process in relation to complaints made by applicants arising out of the obligations imposed on a recognised educational institution under sub-paragraphs (c), (e) and (f).

Prohibition of dual funding

12. An eligible person is not to receive an education maintenance allowance in relation to a course or work placement for which that eligible person is being paid

or is receiving a training allowance or is in receipt of such other financial support from public funds as may be determined by the Welsh Ministers.

Transfers

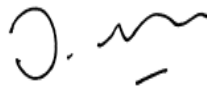
13. Where an eligible person who is entitled to an education maintenance allowance in connection with an eligible education course transfers to another eligible education course during Academic Year 2023/2024, the Welsh Ministers may pay an education maintenance allowance to that eligible person for the remainder for the Academic Year 2023/2024.

Overpayment

14. An eligible person must, if so required by the Welsh Ministers, repay any amount paid to them under this Scheme which for whatever reason—

- (a) exceeds the amount of education maintenance allowance to which the eligible person is entitled to under this Scheme, or
- (b) the eligible person was not entitled to receive under this Scheme.

Name: Jeremy Miles MS

A handwritten signature in black ink, consisting of a stylized 'J' followed by a wavy line and a short horizontal stroke.

Minister for Education and Welsh Language, one of
the Welsh Ministers

Date: 06:09:2023

Eligible Persons

PART 11

Interpretation

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

“the 2020 Citizens’ Rights Regulations” (“*Rheoliadau Hawliau Dinasyddion 2020*”) means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(1);

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004(2) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

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

(1) S.I. 2020/1209, amended by S.I. 2020/1309.

(2) OJ L 158, 30.04.2004, p. 77.

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;

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

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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 9(3)—
 - (i) that person’s spouse or civil partner,
 - (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21, or
 - (bb) dependants of that person or of that person’s spouse or civil partner, or
 - (iii) dependent direct relatives in that person’s ascending line or the ascending line of that 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) that person’s spouse or civil partner, or
 - (ii) that person’s child, or the child of that person’s spouse or civil partner, who are under the age of 21;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
 - (i) that person’s spouse or civil partner, or
 - (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21, or
 - (bb) dependants of that person or of that person’s spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
 - (i) that person’s spouse or civil partner;

- (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21, or
 - (bb) dependants of that person or of that person’s spouse or civil partner, or
- (iii) dependent direct relatives in that person’s ascending line or the ascending line of that person’s spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 14—
 - (i) that person’s spouse or civil partner, or
 - (ii) direct descendants of that person or of that person’s spouse or civil partner who are—
 - (aa) under the age of 21, or
 - (bb) dependants of that person or of that person’s spouse or civil partner;

“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);

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

“person granted leave to remain as a protected partner” (“*person y rhoddwyd caniatâd iddo aros fel partner a ddiogelir*”) means a person with extant 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—

- (a) paragraphs 289B and 289D (victims of domestic violence),
- (b) paragraphs D-DVILR.1.1. and D-DVILR.1.2. of Appendix FM (victims of domestic abuse),
- (c) paragraphs 40 and 41 of Appendix Armed Forces (victims of domestic violence who are partners of members of the armed forces),
- (d) 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),
- (e) paragraphs D-BPILR.1.1. and D-BPILR.1.2. of Appendix FM (bereaved partners),
- (f) paragraphs 36 and 37 of Appendix Armed Forces (bereaved partners), or

(1) 1971 c. 77.

- (g) 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);

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

- (a) has extant leave to remain as a stateless person under 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;

“person with Calais leave” (*“person sydd â chaniatâd Calais”*) means a person with extant leave to remain under paragraph 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);

“person with protected rights” (*“person sydd â hawliau gwarchoddedig”*) means—

- (1) a person within the personal scope of the citizens’ rights provisions who—

- (i) has extant leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
- (ii) is an Irish citizen who, pursuant to section 3ZA of the Immigration Act 1971⁽¹⁾, does not require leave to enter or remain in the United Kingdom,
- (iii) is an applicant for the purposes of regulation 4 of the 2020 Citizens’ Rights Regulations where the relevant period has not expired,
- (iv) otherwise has rights deemed to apply by virtue of any citizens’ rights deeming provisions; or

- (b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;

- (2) In paragraph (1)(a)(iv) “citizens’ rights deeming provisions” means—

- (a) Article 18(2) and (3) (issuance of residence documents) of the EU withdrawal agreement;
- (b) Article 17(2) and (3) (issuance of residence documents during the transition period) of the EEA EFTA separation agreement (as defined

⁽¹⁾ 1971 c. 77, section 3ZA inserted by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

in section 39(1) of the European Union (Withdrawal Agreement) Act 2020); or

- (c) Article 16(2) and (3) (issuance of residence documents) of the Swiss citizens' rights agreement.

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

- (a) has extant leave to remain in the United Kingdom under section 67 of the Immigration Act 2016⁽¹⁾ and in accordance with the immigration rules, and
- (b) has been ordinarily resident in the United Kingdom and the Islands throughout the period since the person was granted such leave;

“refugee” (“*ffoadur*”) means a person who is recognised by His 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;

“relevant period” (“*cyfnod perthnasol*”) has the meaning given by regulation 4 of the 2020 Citizens’ Rights Regulations;

“relevant person of Northern Ireland” (“*person perthnasol o Ogledd Iwerddon*”) has the meaning given by residence scheme immigration rules;

“residence scheme immigration rules” (“*rheolau mewnfudo'r cynllun preswyllo*”) has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020⁽²⁾;

“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⁽³⁾;

“Swiss Agreement” (“*Cytundeb y Swistir*”) means the Agreement between the European Union and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement

(1) 2016 c.19.

(2) 2020 c. 1.

(3) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

of Persons signed at Luxembourg on 21 June 1999⁽¹⁾ and which came into force on 1 June 2002;

“Swiss citizens’ rights agreement” (“*cytundeb ar hawliau dinasyddion Swisaidd*”) has the meaning given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020;

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

“temporary protection” (“*diogelwch dros dro*”) means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules⁽²⁾;

“Turkish worker” (“*gweithiwr Twrcaidd*”) means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom, and
- (b) is, or has been, lawfully employed in the United Kingdom;

“United Kingdom national” (“*gwladolyn o’r Deyrnas Unedig*”) has the meaning given by Article 2(d) of the EU withdrawal 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.

(1) Cm. 4904 and OJ No L 114, 30.04.02, p. 6.

(2) HC 395.

(3) 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.

(4) For the purposes of this Schedule, a person is to be treated as ordinarily resident in the United Kingdom and Islands, in the territory comprising the United Kingdom, Islands and the Republic of Ireland, in the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland, or in the territory comprising the United Kingdom, Gibraltar, the EEA, Switzerland and Turkey if the person would have been so resident but for the fact that—

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

is or was temporarily employed outside the United Kingdom and Islands, the territory comprising the United Kingdom, Islands and the Republic of Ireland, the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland, or the territory comprising the United Kingdom, Gibraltar, the EEA, Switzerland and Turkey.

(5) For the purposes of this Schedule, a person who is ordinarily resident in Wales as a result of having moved from another part of the United Kingdom or the Islands 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 he or she moved.

(6) For the purposes of sub-paragraph (3), temporary employment outside the United Kingdom and Islands, the territory comprising the United Kingdom, Islands and the Republic of Ireland, the territory comprising the United Kingdom, Gibraltar, the EEA and Switzerland, or the territory comprising the United Kingdom, Gibraltar, the EEA, 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;
- (b) 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;

- (c) 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 EEA and Switzerland as members of such forces;
- (d) 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 EEA, Switzerland and Turkey as members of such forces.

(7) For the purposes of this Schedule an area other than the United Kingdom or Gibraltar which—

- (a) was previously not part of the European Union or the EEA, but
- (b) at any time before or after 1 September 2008 has become part of one or other or both of these areas,

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

(8) 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.

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

- (a) Article 10 (personal scope) of the EU withdrawal agreement,
- (b) Article 9 (personal scope) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), or
- (c) Article 10 (personal scope) of the Swiss citizens’ rights agreement.

PART 22

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 and does not fall within paragraph 3,
- (b) is ordinarily resident in Wales,
- (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.—(1) A person who—

- (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 an applicant for the purposes of regulation 4 of the 2020 Citizens' Rights Regulations, or otherwise has rights deemed to apply by virtue of any of the citizens' rights provisions specified in subparagraph (3), and

- (cc) has, or is treated as having, a right of permanent residence for the purposes of the Immigration (European Economic Area) Regulations 2016, as those Regulations continue to have effect by virtue of the 2020 Citizens' Rights Regulations in

relation to that person during the relevant period, or otherwise has a deemed right of permanent residence by virtue of any of the citizens' rights provisions specified in sub-paragraph (3), or

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

- (b) is ordinarily resident in 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 ordinary residence as 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 as referred to in paragraph (c).

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

(3) For the purposes of sub-paragraph (1)(a)(iii), the citizens' rights provisions referred to are—

- (a) Article 18(3) (issuance of residence documents) of the EU withdrawal agreement,
- (b) Article 17(3) (issuance of residence documents) of the EEA EFTA separation agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020), or
- (c) Article 16(3) (issuance of residence documents) of the Swiss citizens' rights agreement.

Refugees

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 that 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 their 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 their 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 their application for asylum,

(d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since they were 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.

Protected persons and their family members

5.—(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;
 - (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
 - (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 resident since being granted leave to enter or remain in the United Kingdom;
 - (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 leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules,
 - (ii) a person granted stateless leave,
 - (iii) a person with section 67 leave to remain,
 - (iv) a person with Calais leave, or
 - (v) a person with leave to enter or remain as a relevant Afghan citizen;
 - (c) “person with leave to enter or remain as a relevant Afghan citizen” means a person granted—

- (i) indefinite leave to enter the United Kingdom under paragraph 276BA2 of the immigration rules, indefinite leave to remain in the United Kingdom under paragraph 276BS2 of the immigration rules or leave to enter or indefinite leave to enter the United Kingdom under paragraph 276BJ2 or 276BO2 of the immigration rules or paragraph ARAP 16.1 of Appendix Afghan Relocation and Assistance Policy of the immigration rules,
 - (ii) indefinite leave to enter the United Kingdom under paragraph ARAP 6.1 of Appendix Afghan Relocation and Assistance Policy of the immigration rules or indefinite leave to remain in the United Kingdom under paragraph ARAP 6.2 of that Appendix of the immigration rules,
 - (iii) leave to enter or indefinite leave to enter or remain in the United Kingdom outside the immigration rules on the basis of the Afghan Relocations and Assistance Policy Scheme,
 - (iv) indefinite leave to enter or remain in the United Kingdom outside the immigration rules on the basis of the Afghan Citizens Resettlement Scheme, or
 - (v) indefinite leave to enter or remain in the United Kingdom outside the immigration rules as the spouse, civil partner or dependent child of a person falling into paragraph (iii) or dependent child of such a spouse or civil partner;
- (d) “protected child” means—
- (i) a child of—
 - (aa) a person who has extant leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules,
 - (bb) a person granted stateless leave, or
 - (cc) a person with section 67 leave to remain;
 - (ii) a child of the spouse or civil partner of—
 - (aa) a person who has extant leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules, or
 - (bb) a person granted stateless leave;

- (e) “protected spouse or civil partner” means a spouse or civil partner of—
 - (i) a person who has extant leave to enter or remain on the grounds of humanitarian protection under paragraph 339C of the immigration rules, or
 - (ii) a person granted stateless leave.

Persons granted leave to remain as a protected partner and their children

- 6.—(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;
 - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.

(3) In this paragraph, “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.

Persons with leave to enter or remain and their family members

- 7.—(1) A person—
 - (a) with leave to enter or remain,
 - (b) who 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, and
 - (c) who is ordinarily resident in Wales 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,
 - (c) who 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) who 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 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) 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) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since that person was given 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 “person with leave to enter or remain” means a person (“P”)—
- (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 discretionary leave⁽¹⁾, 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 thought right to allow that person 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,

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

- (iii) been granted leave to remain on the grounds of private or family 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 P is not considered to qualify for leave to remain on the grounds of private or family life under the immigration rules, that P has been granted leave to remain outside the rules⁽¹⁾ on the 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 2002⁽²⁾), and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since they were granted leave to enter or remain.

(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.

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

8.—(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 sub-paragraph (i) or (ii),
 - (iv) an EEA frontier worker or an EEA frontier self-employed person,
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or

(1) Paragraph 276BE(2) of the immigration rules refers.
 (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, the Immigration, Asylum and Nationality Act 2006 (c. 13), the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), Schedule 1 and the Immigration Act 2014 (c. 22).

- (vi) a family member of a person mentioned in sub-paragraph (iv) or (v),
- (b) subject to sub-paragraph (2), 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 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) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

9.—(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⁽¹⁾ who—

- (a) is—
 - (i) an EEA migrant worker or an EEA self-employed person,
 - (ii) a Swiss employed person or a Swiss self-employed person,
 - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii),
 - (iv) an EEA frontier worker or an EEA frontier self-employed person,
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person, or
 - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v),
- (b) subject to sub-paragraph (2), is ordinarily resident in Wales 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 EEA 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 falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

(3) In this paragraph, a description of 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.

(1) S.I. 2020/1213.

10.—(1) 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 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,
- (c) is entitled to support by virtue of Article 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union⁽¹⁾ (“the Workers Regulation”), as it had effect immediately before IP completion day, as extended by the EEA Agreement⁽²⁾, as it had effect immediately before IP completion day, and
- (d) for the purposes of sub-paragraph (1)(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.

(2) Any description of person who would have been eligible under this paragraph immediately before IP completion day is to be eligible on and after IP completion day.

11.—(1) 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 the Workers Regulation, as it had effect immediately before IP completion day, as extended by the EEA Agreement, as it had effect immediately before IP completion day.

(2) For the purposes of sub-paragraph (1)(c), in Article 10 of the Workers Regulation—

(1) OJ No L 141, 27.05.2011, p. 1, amended by Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 (OJ L 107, 22.4.2016, p. 1) and Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 (OJ L 186, 11.7.2019, p. 21).

(2) Annex V of the EEA Agreement refers to Regulation (EU) No. 492/2011, with modifications that are not relevant for these purposes. Section 3(1) and (2)(b) of the European Union (Withdrawal) Act 2018 (c. 18) make provision for incorporation of Annexes to the EEA Agreement into domestic law.

- (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.

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

12.—(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 before IP completion day,
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins,
- (d) 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) in a case where the 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 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—

- (a) the person is—
 - (i) a United Kingdom national, or a person with a right of permanent residence in the United Kingdom, or
 - (ii) a family member of such a person for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement),

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;

- (b) the person is—
 - (i) settled in the United Kingdom and had the right of permanent residence, or

- (ii) a family member of such a person for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement),

who has gone to the state within the territory comprising the EEA and Switzerland of which they are a national or of which the person in relation to whom that person is a family member is a national.

(3) 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.

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

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

United Kingdom nationals

14.—(1) A person—

- (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 attending an eligible education course,
- (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) subject to sub-paragraph (2), 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.

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

(3) 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).

EU nationals ordinarily resident in the United Kingdom and Islands

15.—(1) A person 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 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) 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.

16. 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 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).

Children of Swiss nationals

17.—(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 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).

(2) Any description of person who would have been eligible under this paragraph immediately before IP completion day is to be eligible on and after IP completion day.

18. 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).

Children of Turkish workers

19. 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 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.

20. 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.

Temporary protection

21. A person who at the date the Welsh Ministers received their application for an education maintenance allowance had been granted temporary protection and has been ordinarily resident in the United Kingdom at all times since that person was first granted temporary protection.

Protected Ukrainian Nationals

22.—(1) A person who—

- (a) is a protected Ukrainian national,
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period since becoming a protected Ukrainian national, and

- (c) is ordinarily resident in Wales on the first day of the first academic year of the course.

(2) In this paragraph, “protected Ukrainian National” means a person granted leave to enter or remain in the United Kingdom—

- (a) under paragraph 9.1 (Ukraine Family Scheme), 19.1 (Homes for Ukraine Sponsorship Scheme) or 27.1 (Ukraine Extension Scheme) of Appendix Ukraine Scheme of the immigration rules, or
- (b) outside the immigration rules, where the person—
 - (i) was residing in Ukraine immediately before 1 January 2022, and
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022.