

## **2019 Number: 32**

# **The Financial Contingency Fund (Open University) (Wales) Scheme 2019/2020**

### **EXPLANATORY NOTE**

*(This note is not part of the Scheme)*

This Scheme provides funding to the Open University for the purpose of establishing discretionary funds to provide emergency payments to eligible students in Wales in respect of unexpected crises, and to assist in cases where an eligible student in Wales may be considering leaving higher education because of financial problems. It provides the Open University with information in respect of policy 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 academic year beginning 1 September 2019 and ending 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.

# The Financial Contingency Fund (Open University) (Wales) Scheme 2019/2020

## PART 1 - GENERAL

### **Title, commencement and application**

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

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

### **Interpretation**

3. In this Scheme—

“DSG” means a grant for disabled students’ living costs under the Education (Student Support) (Wales) Regulations 2018 (No.191 W.42), or an equivalent allowance under the student’s respective government funded student support scheme or legislation;

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

“the Institution” means the Open University;

“loan payment” means a loan payment under the Education (Student Support) (Wales) Regulations 2018 (No.191 W.42), or the eligible student’s equivalent government funded student support scheme or legislation;

“undergraduate taster module” means a module of an undergraduate higher education course which—

- (a) either leads to a higher education qualification or is self-standing and leads to no such qualification; and
- (b) is of at least 8% or 10 credits of a full-time course.

### **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 operation of this Scheme.

6. Administrators should be aware that it may be a concern for some Muslim students to be required to exercise their entitlement to a student loan (1). In these cases administrators may find it helpful to advise students to visit the Federation of Student Islamic Societies (FOSIS) website at: <http://www.fosis.org.uk> for information and advice. Administrators will also no doubt be aware that several banks in the UK offer personal bank accounts that conduct banking according to Sharia law.

## **PART 2 – PURPOSES OF SCHEME**

### **Priority groups**

7. The Institution must give priority to students who fall into one or more of the priority groups set out in paragraph 8.

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

(1) Students with dependant children under 18 years of age;

(2) Students with existing essential financial commitments, including priority debts (see paragraph 13);

(3) Disabled students, in particular those whose DSG is unable to meet particular costs and neither is the Institution under any obligation to do so;

(4) Students who, at any time within the period of 3 years prior to the first day of their course, have been in the care of a local authority;

(5) Final year students who are in financial difficulty, including those unable to undertake paid work due to academic pressures;

(6) Students who are ineligible for support under the Education (Student Support) (Wales) Regulations 2018 or under the eligible student's equivalent government funded student support scheme or legislation, though such students must be able to demonstrate that they have made adequate provision in respect of living costs for the duration of their course; and

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(1) Loans payable under the Education (Student Support) (Wales) Regulations 2018 or equivalent government funded student support scheme.

(7) Students who are also carers providing unpaid support to someone who could not manage without this help.

### **Purposes for which payments may be used**

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

### **General**

10. Any funding made to the Institution by virtue of this Scheme must be used for the purpose of providing funding to eligible students whose access to higher education may be inhibited by financial considerations or who, for whatever reason, face financial hardship associated with their living costs. The Institution must not provide funding in respect of an eligible student's tuition fees in any circumstances except for those specified in paragraphs 15 and 18.

### **Costs arising from disabilities**

11. The Institution 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 which are not met by DSG, for example in respect of a preliminary diagnostic test or certain equipment. Where the Institution has made a purchase of equipment for a disabled 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.

### **Course costs**

12. The Institution may make payments to eligible students for the purpose of helping with their course costs. Such costs include, but are not limited to, those related to childcare, travel, books and field trips. Course costs do not include tuition fees in respect of which see paragraphs 15 and 17 below.

### **Exceptional costs**

13. The Institution may make payments to eligible students for the purpose of helping with their exceptional costs. Such costs include, but are not limited to, repairs to essential household equipment, emergency situations (including travel costs for family illness or bereavement, and hardship due to burglary or fire) and assistance with priority debts (those being debts where non-payment would result in the creditor having the right to deprive the debtor of their home, or

essential goods or services, and therefore do not include those incurred in the form of bank overdrafts or credit cards).

#### **Living costs**

**14.** The Institution may make payments to eligible students for the purpose of helping with their living costs whilst undertaking a higher education course. Such costs include, but are not limited to, rent, mortgage payments, food, utility bills, clothing and laundry, and may include costs incurred during the summer vacation as well as during term time.

#### **Tuition fees**

**15.** The Institution may provide additional fee support for low income eligible students whose other fee support is insufficient to meet the full tuition fee, particularly in circumstances where the resulting financial hardship will prevent a student from accessing and remaining in higher education.

#### **Undergraduate taster modules – Course costs and tuition fees**

**16.** The Institution may make payments to eligible students undertaking an undergraduate taster module.

**17.** The Institution may offer support under this Scheme in respect of the fees charged for one undergraduate taster module or one academic year of an undergraduate taster module, whichever is the shorter of those two periods. Limited assistance could also be made available for course-related costs, such as books or travel.

**18.** Where an eligible student undertakes an undergraduate taster module and within the same academic year transfers credits accrued from that module into the first year of a part-time higher education course, the Institution must ensure that any tuition fee support that the eligible student receives during that academic year (whether that fee support is received under this Scheme or through any statutory fee support) does not exceed the tuition fee charged by the institution to students who enrol directly onto that part-time higher education course.

## **PART 3 - ELIGIBILITY**

#### **Eligible students and courses**

**19.** Eligible students must have explored and applied for all alternative sources of funding, including public funding, before an application can be considered under this Scheme.

**20.** Payments under this Scheme may only be made available to eligible students.

**21.** An eligible student is a part-time student:

(1) whose study at the Institution is administered by the Open University in Wales;

(2) who, in the opinion of the Institution, falls within one of the categories set out in Part 2 of the Schedule to this Scheme; and

(3) who, in the opinion of the Institution, falls within one of the categories in paragraphs (a) and (b) below-

(a) Undergraduate students: including distance learners following a higher education course or any periods of work placement or study on foundation degree courses. Students studying on foundation years which are an integral part of an undergraduate course, and where progression to the HE part of the course is dependent on completion of that year, are also eligible to apply for support under this Scheme.

(b) Postgraduate students: following a higher education course at a level above first degree that is at least one academic year's duration. This may include, at the Institution's discretion, those who are writing up their thesis for a maximum 6 month period from date of the end of course registration and are not therefore attending the Institution.

**22.** An eligible student does not qualify for support under this Scheme, other than tuition fee support which may be available under paragraph 15 or 18, if the only paragraph in Part 2 of the Schedule into which the eligible student falls is paragraph 9.

**23.** The Institution may accept more than one application for funding under this Scheme from an eligible student but usually only where the eligible student's circumstances have changed or where the eligible student applies for assistance during the summer vacation.

**24.** 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

**25.** The Institution may provide funding to eligible students in the form of grants.

### **Short-term loans**

**26.** The Institution may provide funding to eligible students in the form of short-term loans. Eligible students may receive an emergency short-term loan under this Scheme where their first loan payment has been delayed beyond the start of the term in question. It is for the Institution to determine the amount of short-term loan to be awarded to an eligible student, though it is recommended that this should not exceed the equivalent of four weeks of loan payment. There may also be other circumstances where the Institution wishes to assess the benefit of offering a short-term loan.

## **PART 5 – DETERMINATION OF PAYMENTS**

### **Applications for funding**

**27.** Applications for funding under this Scheme must be evaluated by the Institution on a case-by-case basis. In each case, the Institution 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 or not their application for funding has been successful within four weeks of receipt of that application by the Institution.

### **Consideration of funding from other sources in assessing eligibility**

**28.** The Institution should consider whether it is appropriate to take into account any discretionary bursaries it has previously awarded a student, either attainment based or means-tested, when assessing their eligibility under this Scheme, and also whether the student is in receipt of any bursaries or monetary training incentives from other sources which are connected to specific courses, for example those associated with the NHS and teacher training.

### **Parental/Partner contribution**

**29.** The Institution should be mindful of the fact that parental or partner contributions, for a variety of reasons including estrangement and financial difficulties within the family, may not always be as much as expected.

## PART 6 – PROCESSES: INTERFACE BETWEEN WELSH MINISTERS AND INSTITUTION

### **Payment to the Institution**

**30.** The Welsh Ministers will provide funding under this Scheme to the Institution upon written confirmation from the Institution that it accepts the terms and conditions of this Scheme.

**31.** The amount of funding to be paid to the Institution will be the amount that has been allocated to the Institution by the Welsh Ministers.

**32.** The Welsh Ministers will provide the funding to the Institution in three instalments. The instalments will be made in advance of each term in the ratio 40:30:30, but the Welsh Ministers may choose to withhold any instalment if the Institution has confirmed that it is holding sufficient funds to meet existing need.

### **Unspent funds**

**33.** 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**

**34.** The Institution may use up to 3% of its total funding allocation under this Scheme or £525, whichever is the greater, to ensure that the Scheme is effectively publicised and administered.

### **Accountability**

**35.** The Director of the Institution in Wales 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 purposes of this Scheme and that 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 the Institution to fulfil its financial obligations.

### **Provision of accounts, audit and additional information**

**36.** The Institution is required to have regard to the requirements contained in the offer letter. The Institution must make information in respect of its audited accounts available to the Welsh Ministers upon request.

**37.** The Institution must use the repayments made by students in respect of short-term loans made under paragraph 25 of this Scheme for the purposes set out in this Scheme, or for further payments, which must be documented in the same way as the original payments.

**38.** The Institution may only use the repayments made by students in respect of loans made under paragraph 25 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 THE INSTITUTION AND STUDENTS**

### **Policy**

**39.** The Institution is required to have a written policy for the allocation of payments to eligible students under this Scheme. The written policy must be clear and published (together with the appeals procedure under paragraph 47) in such manner as the Institution considers appropriate, provided that it is easily accessible to its students and those who advise them. The written policy, and any other materials or advertisements published in relation to the Scheme, must refer to the Scheme as “the Financial Contingency Fund (Open University) (Wales) Scheme 2019/20”.

### **Payments to students**

**40.** The Institution must deal with students’ payments promptly, bearing in mind the purposes of this Scheme and circumstances which give rise to financial hardship.

**41.** The Institution must not commit to any year on year awards to students.

**42.** The Institution 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.

43. The Institution may make payments to eligible students under this Scheme either in a lump sum or by way of instalments.

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

#### **Payments other than directly to the student / debt owed to the Institution**

45. Subject to the exception which follows, the Institution may use this Scheme to reimburse itself for amounts owed to it by the student, provided the student first consents to the using of the funding for that purpose. The exception is that the institution may not use the Scheme to directly reimburse itself in respect of unpaid tuition fees (other than a debt which has arisen in respect of a payment made under paragraph 15 of this Scheme).

46. The Institution must not make payments under this Scheme conditional on a student first settling any debt owed by that student to the Institution, nor require a student to use any payment under this Scheme to settle such debt.

#### **Payments during periods when study is suspended**

47. The 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**

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

49. The Institution 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 1

## 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” (“*EU national*”) 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<sup>(1)</sup>;

“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”) (“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 <sup>(2)</sup> 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

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<sup>(1)</sup> 1971 C.77

<sup>(2)</sup> 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 rules<sup>1</sup>; 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 2002<sup>2</sup>); 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 the 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;

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<sup>1</sup> Paragraph 276BE(2) of the immigration rules refer.

<sup>2</sup> 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<sup>(1)</sup>;

“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<sup>(2)</sup> 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 ffin y Swistir”*) 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

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(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;
- (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—

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

(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;
- (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) has been ordinarily resident in the United Kingdom and Islands throughout the period 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;
- (d) who 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

- (e) has been ordinarily resident in the United Kingdom and Islands throughout the period 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;
- (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course.

(2) A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain;
- (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 on the first day of the first academic year of the course; and
- (d) 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.

(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;
- (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 throughout the three-

year period immediately preceding 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<sup>(1)</sup>.

**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 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.

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(1) OJ No L141, 27.05.2011, p1.

## **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 preceding three-year period ; 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 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;

- (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 United Kingdom and Islands throughout the three year period immediately preceding 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 to remain;
- (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;
- (d) 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
- (e) 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.