

The Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (No 778)

Came into force 1st September 2007

As amended by:

- [The Education \(Student Fees, Awards and Support\) \(Amendment\) \(No. 2\) Regulations 2007 \(No 2263\)](#)
- [The Student Fees \(Qualifying Courses and Persons\) \(England\) \(Amendment\) Regulations 2008 \(No 1640\)](#)
- [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2011 \(No 87\)](#)
- [The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2012 \(No 1653\)](#)
- [**The Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2016 \(No 584\)** \[coming into force on 6 June 2016 to add a provision which applies to an academic year beginning on/after 1 August 2016\]](#)

The Secretary of State for Education and Skills makes the following Regulations, in exercise of the powers conferred by sections 24(6) and 47 of the Higher Education Act 2004.

Citation, Commencement, Application and Interpretation

1.—(1) These Regulations may be cited as the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 and come into force on 1st September 2007.

(2) These Regulations apply in relation to England.

Interpretation

2. In these Regulations—

“the Act” means the Higher Education Act 2004;

“course for the initial training of teachers” includes such a course leading to a first degree;

“equivalent or lower qualification” has the meaning given in regulation 2 of the Education (Student Support) Regulations 2009;

“public funds” means moneys provided by Parliament;

“publicly-funded” means maintained or assisted by recurrent grants out of public funds;

“qualified teacher” has the meaning given in section 132(1) of the Education Act 2002(c) but for courses beginning on or after 1st September 2012 does not include a person who—

(a) is a qualified teacher by virtue of paragraph 13B of Schedule 2 to the Education (School Teachers' Qualifications) (England) (Regulations) 2003(d); and

(b) has not been assessed by an accredited institution (within the meaning of regulation 11 of those regulations) as meeting the specified standards (within the meaning of paragraph 1 of Schedule 2 to those regulations).

“single course” means a course to which regulation 6(5) of the Student Support Regulations 2007 applies and which falls within the description of a course in that regulation.

Revocation

3. The Student Fees (Qualifying Courses and Persons) Regulations 2006 are revoked.

Prescribed description of a qualifying course

4.—(1) A qualifying course which is prescribed for the purposes of section 24 of the Act is a course of higher education which, subject to paragraph (3), is a course which is designated for the purposes of section 22 of the Teaching and Higher Education Act 1998 on the first day of an academic year which begins during the grant period and is provided by an institution in England.

(2) For the purposes of paragraph (1) the reference to an institution in England means an institution whose activities are carried on in England.

(3) A course is not a qualifying course if at the time the qualifying person received an offer of a place on that course the institution providing it was not publicly funded.

Prescribed description of a qualifying person

5.—(1) A qualifying person who is prescribed for the purposes of section 24 of the Act is a person who falls within the Schedule on the first day of an academic year which begins during the grant period, other than—

- (a) a person who is not eligible for support under the Student Support Regulations 2007 by reason of regulation 5(3)(c), (d), (e) or (f) of those Regulations, or
- (b) a person mentioned in paragraph (2) or (5).

(2) Subject to the exceptions in paragraphs (3), (4) and (4A), a person is not a qualifying person if—

- (a) the person holds a higher education qualification; and
- (b) the qualifying course leads to a qualification which is an equivalent or lower qualification.

(3) Paragraph (2) does not apply where—

- (a) the qualifying course is a course for the initial training of teachers;
- (b) the duration of the course does not exceed two years (the duration of a part-time course being expressed as its full-time equivalent); and
- (c) the qualifying person is not a qualified teacher.

(4) Paragraph (2) does not apply in respect of any part of a single course where—

- (a) the single course leads to an honours degree being conferred on the qualifying person from an institution in the United Kingdom before the final degree or equivalent qualification; and
- (b) the qualifying person only has an honours degree which was received as part of that single course.

(4A) Paragraph (2) does not apply where the qualifying course is a foundation degree.

(5) Where an event occurs in the course of an academic year and as a result a person falls within the Schedule in the course of an academic year, he is not a qualifying person in respect of the academic year in which the relevant event occurred or any previous academic year.

Transitional Cases

6.—(1) Where a qualifying person, disregarding any intervening vacation, begins an end-on course within the meaning of regulation 2(1) of the Student Support Regulations 2006 immediately after a qualifying course (“the relevant course”) in a case where paragraph (3)

or (4) applies, the end-on course shall be treated as if the offer for it had been received on the same date as the offer for the relevant course.

(2) In a case where paragraph (3) or (4) applies, where a qualifying person undertakes a qualifying course (“the relevant course”) which is a single course, an offer received for any part of the relevant course shall be treated as if it had been received on the same date as the offer for the first part of the relevant course.

(3) This paragraph applies where —

(a) the qualifying person had on or before 1st August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the relevant course, or a similar course, and

(b) the first academic year of the relevant course begins before 1st September 2007.

(4) This paragraph applies where —

(a) the qualifying person had received an offer of a place on a qualifying course (whether or not at the same institution as the relevant course) the first academic year of which began before 1st September 2006,

(b) he was unable to take up the offer because a specified qualification or grade was not awarded to him,

(c) he appealed against the decision not to award him the qualification or grade,

(d) the appeal was allowed after the last date on which he could have taken up the offer,

(e) as a result he was offered a place on the relevant course, and

(f) the first academic year of the relevant course begins after 31st August 2006 but before 1st September 2007.

(5) For the purpose of paragraph 3(a) a course (“the original course”) is similar to the relevant course if—

(a) it appears to the governing body of the institution providing the relevant course that the subject matter of the course is in whole or in part the same as the subject matter of the original course, and

(b) except where the original course is no longer being provided, the relevant course is provided by the institution which was to have provided the original course.

SCHEDULE

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

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1st January and before 1st April, on or after 1st April and before 1st July, on or after 1st July and before 1st August or on or after 1st August and on or before 31st December, respectively;

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

“EC national” means a national of a Member State of the European Community;

“EEA frontier self-employed person” 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 other than the United Kingdom and returns to his residence in Switzerland or that EEA State daily or at least once a week;

“EEA frontier worker” 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 other than the United Kingdom and returns to his residence in Switzerland or that EEA State daily or at least once a week;

“EEA migrant worker” means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” means a national of an EEA State other than the United Kingdom;

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

“employed person” means an employed person with the meaning of Annex 1 to the Swiss Agreement;

“employment” means full-time or part-time employment;

“European Community” means the territory comprised by the Member States of the European Community as constituted from time to time;

“European Economic Area” means the area comprised by the EEA States;

“family member” means—

(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) his 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) dependents of the person or the person’s spouse or civil partner; or

(iii) dependent direct relatives in his ascending line or that of his 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) his spouse or civil partner; or

(ii) his child or the child of his spouse or civil partner;

(c) in relation to an EC national who falls within article 7(1)(c) of Directive 2004/38—

(i) his spouse or civil partner; or

(ii) direct descendants of his or of his spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of his or his spouse or civil partner;

(d) in relation to an EC national who falls within article 7(1)(b) of Directive 2004/38—

(i) his spouse or civil partner;

(ii) direct descendants of his or of his spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of his or his spouse or civil partner; or

(iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;

(e) in relation to a United Kingdom national, for the purposes of paragraph 9—

(i) his spouse or civil partner; or

(ii) direct descendants of his or of his spouse or civil partner who are—

- (aa) under the age of 21; or
- (bb) dependants of his or his spouse or civil partner;

“the Islands” means the Channel Islands and the Isle of Man;

“overseas territories” means Anguilla; Aruba; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Montserrat; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten); Pitcairn, Henderson, Ducie & Oeno Islands; South Georgia and the South Sandwich Islands; St-Barthélemy; St Helena and Dependencies (Ascension Island and Tristan de Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

“person granted humanitarian protection” means a person—

- (a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules as defined in section 33(1) of the Immigration Act 1971;
- (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002); and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain;

“refugee” 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 28th July 1951 as extended by the Protocol thereto which entered into force on 4th October 1967

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

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

“Swiss Agreement” 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 21st June 1999 and which came into force on 1st June 2002;

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

“Swiss frontier employed person” 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 other than the United Kingdom and returns to his residence in Switzerland or that EEA State daily or at least once a week;

“Swiss frontier self-employed person” 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 other than the United Kingdom and returns to his residence in Switzerland or that EEA State daily or at least once a week;

“Swiss self-employed person” means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“Turkish worker” 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.

“worker” 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” means a parent, guardian or any other person having parental responsibility for a child and “child” is to be construed accordingly.

(2A) For the purposes of this Schedule, a person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place.

(3) For the purposes of this Schedule, a person is to be treated as ordinarily resident in the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories if he would have been so resident but for the fact that—

- (a) he;
- (b) his spouse or civil partner;
- (c) his parent; or
- (d) in the case of dependent direct relative in the ascending line, his child or child’s spouse or civil partner, is or was temporarily employed outside the area in question.

(4) For the purposes of paragraph (3), temporary employment 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 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 the territory comprising 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 Community or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or the other or both of these areas, is to be considered to have always been a part of the European Economic Area.

(6) For the purposes of this Schedule a person who is ordinarily resident in the United Kingdom as a result of having moved from the Islands for the purpose of undertaking a course is to be considered to be ordinarily resident in the Islands;

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 on the first day of an 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 preceding the first day of the first academic year of the course; and

(d) in a case where his 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 European Economic Area, Switzerland and the overseas territories immediately before the period of residence referred to in paragraph (c).

Refugees and their family members

4.—(1) A person—

(a) who is a refugee;

(b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was recognised as a refugee; and

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

(2) A person—

(a) who is the spouse or civil partner of a refugee;

(b) who was the spouse or civil partner of the refugee on the date on which the refugee made his application for asylum;

(c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to remain in the United Kingdom; and

(d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(3) A person—

(a) who is the child of a refugee or the child of the spouse or civil partner of a refugee;

(b) who, on the date on which the refugee made his 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) who was under 18 on the date on which the refugee made his application for asylum;

(d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to remain in the United Kingdom; and

(e) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

Persons granted humanitarian protection and their family members

5.—(1) A person granted humanitarian protection who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(2) A person—
(a) who is the spouse or civil partner of a person granted humanitarian protection;
(b) who was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”); and
(c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(3) A person—
(a) who is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
(b) who, on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
(c) who was under 18 on the asylum application date; and
(d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

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 European Economic Area, Switzerland and the overseas territories 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 falls within paragraph (a)(iv), (v) or (vi) of that sub-paragraph.

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 European Economic Area, Switzerland and the overseas territories 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 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers, as extended by the EEA Agreement.

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) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;

- (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 European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where his 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 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 he 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 he goes to the state within the territory comprising the European Economic Area and Switzerland of which he is a national or of which the person in relation to whom he is a family member is a national.

EC nationals

9.—(1) A person who—

(a) is either—

- (i) an EC national on the first day of an academic year of the course; or
- (ii) a family member of a such a person;
- (b) is undertaking the course in the United Kingdom;
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) [...]
- (e) subject to sub-paragraph (2), whose ordinary residence in the relevant territory 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.

(1A) Paragraph (c) of sub-paragraph (1) does not apply to a family member of an EU national where that EU national—

(a) is—

- (i) a United Kingdom national who has exercised a right to reside in the territory of another Member State under Article 7(1) of Directive 2004/38; or
- (ii) not a United Kingdom national; and
- (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the relevant territory in accordance with paragraph 1(3).

9A.—(1) A person who—

- (a) is an EC national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;

(c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
(d) in a case where his 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 European Economic Area, Switzerland and the overseas territories immediately prior to the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the European Community 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 EC national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

10. 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 European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where his 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 European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

11. 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 European Economic Area, Switzerland, Turkey and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.

Long Residence

13.—

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

(a) is either—

(i) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or

(ii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either—

(aa) half their life; or

(bb) a period of twenty-years;

(b) is ordinarily resident in England;

(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 regulation 1(3).

Original footnotes removed.

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